

1 USA v. RICHARD HATCH JURY CHARGE JANUARY 25, 2006

2 THE COURT: Ladies and gentlemen, this is
3 the time when it's my duty to explain to you what the
4 law is that applies in this case and it's your duty to
5 apply the law as I explain it to you. In considering
6 what I am about to tell you, it's important that you
7 consider my explanation in its entirety. In other
8 words, don't pick out one or two of these points and
9 focus on them to the exclusion of everything else. In
10 order to apply the law accurately and fairly, you must
11 consider my explanation in its entirety and in context.

12 Now, as I told you at the very beginning of the
13 case, the indictment in this case charges Mr. Hatch
14 with several different types of offenses. One type of
15 offense with which he is charged is tax evasion, income
16 tax evasion. Another is signing a false tax return.
17 There are also two counts of wire fraud, four counts of
18 mail fraud, and one count of bank fraud. And you'll
19 have the indictment with you in the jury room to refer
20 to in refreshing your memories as to exactly what the
21 charges are and what each count specifically alleges.
22 But let me be a little more specific as to the counts.
23 And, again, you can look at the indictment when you go
24 back into the jury room.

25 Count I charges that Mr. Hatch knowingly and

1 willfully attempted to evade a substantial amount of
2 income tax due for the year 2000 in violation of
3 Section 7201 of Title 26 of the United States Code by
4 filing a personal income tax return for that year that
5 failed to report the following amounts of taxable
6 income that he received during that year.

7 First, one million and ten thousand dollars that
8 he received from the Survivor Entertainment Group. And
9 second, \$18,708.50 that he allegedly received from the
10 tenants of property that Mr. Hatch owned at
11 21 Annandale Road in Newport, as rent. And third,
12 \$25,000 paid to Horizon Bound, Inc. by Chambers
13 Communications Corporation, which Mr. Hatch allegedly
14 used for personal expenses.

15 Count II charges that Mr. Hatch knowingly and
16 willfully attempted to evade a substantial amount of
17 income tax due for the year 2001 in violation of the
18 same federal statute, by filing a personal income tax
19 return that failed to report several items of taxable
20 income for that year, and the items alleged in the
21 indictment that were not reported were \$326,540 paid by
22 Entercom Boston to Tri-Whale Enterprises, a subchapter
23 S-corporation in which Mr. Hatch was the sole
24 shareholder; \$9,396.40 received from tenants at
25 21 Annandale Road as rent; \$27,074.40 being the fair

1 market value of a Pontiac Aztec motor vehicle received
2 from General Motors Corporation as additional prize for
3 winning the Survivor competition; \$1,000 paid to
4 Horizon Bound by East Boston Savings Bank, which Mr.
5 Hatch allegedly used for personal expenses; \$500 paid
6 to Horizon Bound by CAM Media & Graphics which Mr.
7 Hatch allegedly used for personal expenses; and \$10,000
8 paid to Horizon Bound by Weakest Link Productions,
9 Inc., again, which Mr. Hatch allegedly used for
10 personal expenses.

11 Count III of the indictment charges that Mr.
12 Hatch violated a different section of the United States
13 Code, Section 7206 of Title 26, by filing a 2001
14 Chapter S income tax return on behalf of Tri-Whale
15 Enterprises, which, under penalty of perjury, he stated
16 that he believed to be correct as to every material
17 matter when, in fact, he knew that it failed to include
18 \$326,540 that Tri-Whale Enterprises received from
19 Entercom Boston, and that should have been reported by
20 Tri-Whale and passed through to Mr. Hatch on his
21 personal return.

22 Counts IV through X of the indictment charge
23 various types of fraud based on allegations that
24 Mr. Hatch defrauded several different companies into
25 making -- I should say IV through IX charge that

1 Mr. Hatch defrauded several companies into making what
2 they believed were charitable contributions to Horizon
3 Bound when, in fact, the indictment alleges that the
4 money went to Mr. Hatch personally or was used by him
5 for personal expenses.

6 And Count X charges bank fraud, charges that
7 Mr. Hatch obtained money from the People's Credit
8 Union, I believe it was, based on some false and
9 fraudulent representations.

10 Now, the three types of fraud charged here, as I
11 think I previously mentioned, are wire fraud, that's
12 what's charged in Counts IX and X, and those charges
13 are based on allegations that Mr. Hatch sent two faxes
14 to NBC regarding Horizon Bound's status as a nonprofit
15 corporation in order to obtain a \$10,000 charitable
16 contribution to Horizon Bound from Weakest Link
17 Productions.

18 Counts VI through IX -- the reason there are two
19 Counts is there were two faxes alleged in the
20 indictment and each one would be a separate count of
21 wire fraud. Counts VI through X charge a type of fraud
22 called mail fraud, and they're based on allegations
23 that on four separate occasions the mails were used to
24 send checks representing charitable contributions to
25 Horizon Bound. These checks allegedly included a

1 \$25,000 contribution from Chambers Communications, a
2 \$500 contribution from CAM Media & Graphics, a \$1,000
3 contribution from East Boston Savings Bank, and the
4 \$10,000 contribution from Weakest Link Productions,
5 that's referred to in the wire fraud counts. So some
6 of these transactions are the subject of more than one
7 count because they are alleged to involve more than one
8 crime.

9 Count X, as I've indicated, charges the type of
10 fraud called bank fraud, and that charge is based on
11 allegations that one of the checks mailed to Horizon
12 Bound, the \$25,000 check from Chambers Communications,
13 was altered by Mr. Hatch and deposited into his
14 personal account at People's Credit Union.

15 Now, with respect to the tax charges, Mr. Hatch
16 claims that even if the returns that he filed were
17 incorrect, any failure to include items of income that
18 should have been reported was not due to any willful
19 attempt on his part to evade taxes, but rather was due
20 to oversight and ignorance of the facts and/or the law.
21 And with respect to the fraud counts, Mr. Hatch's
22 contention is that the amounts received from the
23 companies named in the indictment, in fact, were
24 applied for the benefit of Horizon Bound, because they
25 were used to pay expenses incurred in attempting to get

1 Horizon Bound up and running and/or to reimburse
2 Mr. Hatch for expenses that he previously had incurred
3 for that purpose or for the purpose of promoting and
4 organizing Horizon Bound.

5 Now, there are ten counts here and you have to
6 base your decision -- you have to look at each count
7 separately, and base your decision on each count on the
8 charge, the elements, the things the Government has to
9 prove in order to convict Mr. Hatch of that particular
10 charge and on the evidence that relates to that charge.
11 The fact that you might find Mr. Hatch guilty or not
12 guilty of any one count, does not necessarily mean that
13 you should also find him guilty or not guilty on any
14 other count. You have to look at each count
15 separately, and you have to look at what it is the
16 Government is required to prove as to that count and
17 whether the evidence does or does not establish that
18 the Government has proven those things beyond a
19 reasonable doubt.

20 Now, before I explain the things that the
21 Government is required to prove with respect to each of
22 the counts in the indictment, I want to give you a
23 brief and very general overview of some of the tax laws
24 that form the background or the backdrop for this case.

25 I'm going to start with the personal income tax.

1 Generally speaking, as I'm sure you know, the amount of
2 personal income tax that an individual owes for any
3 given year is based on the amount of income subject to
4 tax that that individual receives during that year
5 minus any deductions and/or exclusions that that
6 individual is lawfully entitled to take in reduction of
7 the otherwise taxable income. The tax laws require
8 individuals who may owe a tax to file a return that
9 shows the amount of income subject to tax that that
10 individual received during the year in question. And
11 income that is subject to tax includes a variety of
12 things. It includes cash prizes and the fair market
13 value of any property that's received as a prize, it
14 includes rental payment received for property that is
15 owned by the taxpayer, it includes salaries and
16 compensation for any services that the taxpayer may
17 perform, it includes amounts obtained by the taxpayer
18 and used to pay the taxpayer's personal expenses, and
19 it includes the taxpayer's share of any net income that
20 is earned by a subchapter S-corporation in which the
21 taxpayer is a shareholder or a stockholder.

22 Corporations also have to file income tax
23 returns showing the amount of income subject to tax
24 that they receive during the taxable year, but the
25 manner in which that income is taxed depends on what

1 type of a corporation is involved. Corporations that
2 are called C-corporations -- C, refers to a section of
3 the Internal Revenue Code -- corporations called
4 C-corporations are taxed in a manner similar to a
5 manner in which individuals are taxed. That is to say
6 that they must pay a tax on their net income, which is
7 the total amount of income they receive subject to tax,
8 minus any deductions to which the corporation is
9 entitled during that particular year. On the other
10 hand, corporations called S-corporations, don't pay any
11 tax on their net income. Rather, their net income is
12 treated as income to the shareholders in the
13 corporation. And that's true even if the money isn't
14 actually distributed to the shareholders. If the
15 subchapter S-corporation has taxable income, net
16 income, that money is treated as income of the
17 shareholders or passed through to the shareholders and
18 it has to be reported by the shareholders on their
19 return. And by the same token, any net losses that are
20 realized by a subchapter S-corporation are treated as
21 net losses of the shareholders. So those net losses
22 pass through to the shareholders, and the shareholders
23 can use those net losses to offset any other income the
24 shareholder may have for that year.

25 Now, in this case, the evidence is that in the

1 year 2001, there's no dispute to this, that in the year
2 2001, Tri-Whale Enterprises was a subchapter
3 S-corporation and Mr. Hatch was its sole shareholder.
4 So, therefore, under the tax laws, any net income that
5 Tri-Whale received during the year 2001, would be
6 income to Mr. Hatch and, conversely, any net losses
7 that Tri-Whale realized or incurred during that year,
8 would go to Mr. Hatch and could be used on his personal
9 return to offset any other income that he had.

10 So much for the background. Let me get to the
11 individual counts now, and I'll take them in the order
12 in which they are listed in the indictment, starting
13 with the tax evasion counts, that's Counts I and II.
14 Counts I and II charge Mr. Hatch with tax evasion for
15 the years 2000 and 2001 respectively. Count I deals
16 with the year 2000. Count II deals with the year 2001.
17 And the indictment alleges that Mr. Hatch engaged in
18 tax evasion in violation of a Federal statute, which as
19 I said earlier, is Section 7201 of Title 26 of the
20 United States Code. Section 7201 provides, I'll read
21 you the relevant portion of the statute. It provides:
22 "Any person who willfully attempts in any many to evade
23 or defeat any tax or the payment thereof shall be
24 guilty of a felony." In order to establish that
25 Mr. Hatch is guilty of evading taxes owed for the year

1 2000 or the year 2001, the Government has to prove four
2 things or what the law refers to as elements, with
3 regard to that year.

4 First, the Government has to prove that for that
5 year, Mr. Hatch owed substantially more Federal income
6 tax than he paid.

7 Second, the Government has to prove that
8 Mr. Hatch intended to evade or defeat the assessments
9 or payment of that tax.

10 Third, it has to show that Mr. Hatch committed
11 an affirmative act in furtherance of that intent.

12 And fourth, the Government has to show that
13 Mr. Hatch acted willfully, or more specifically, the
14 Government has to prove that Mr. Hatch intentionally
15 omitted from his return amounts that he knew were
16 income subject to tax, and that he did so for the
17 purpose of evading the payment or assessment of taxes
18 that he owed. The Government does not have to prove
19 the precise amount of tax that Mr. Hatch owed for a
20 given year, nor does the Government have to prove that
21 Mr. Hatch received or owed taxes on every single item
22 that is alleged in the indictment to have gone
23 unreported. The Government need only prove that the
24 amount of tax owed by Mr. Hatch was substantial. Now,
25 I can't give you a precise definition of what is meant

1 by the term "substantial." I can only tell you that
2 substantial means significant or something more than
3 minimal. It's up to you to decide within the context
4 of the facts that you heard whether any amount that
5 Mr. Hatch may have owed for the years in question was
6 substantial.

7 When you think of tax evasion, you should keep
8 in mind, too, that simple neglect or even gross
9 negligence in failing to pay a tax does not constitute
10 tax evasion. Rather, there has to be an affirmative
11 act of evasion. An affirmative act of evasion is a
12 specific act designed to evade payment of a tax that is
13 due and owing. Affirmative acts of evasion may include
14 such things as filing a false income tax return that
15 substantially understates the defendant's income
16 subject to tax. It may include concealing amounts of
17 income subject to tax by making false statements or by
18 altering documents.

19 I told you that the Government has to prove that
20 not only did Mr. Hatch commit an affirmative act of
21 evasion, but that he did so willfully. A defendant is
22 deemed to have acted willfully if he acted voluntarily,
23 deliberately, and with an intent to do something that
24 he knew was unlawful. Once again, it requires
25 something more than mere negligence or even gross

1 negligence. People aren't convicted of crimes for
2 being inattentive or for being incompetent, they are
3 convicted on the basis of intentional acts that they
4 committed. The purpose of requiring proof that a
5 defendant acted willfully is to prevent the person from
6 being convicted for an act that he did not intend to
7 commit or the nature of which he did not understand.

8 In this case in order to establish that
9 Mr. Hatch acted willfully, the Government must prove
10 that Mr. Hatch filed a return that he knew omitted
11 amounts that the law required to be reported as income
12 and that he did so with the intent to evade or defeat
13 the assessment or payment of the tax that he owed. An
14 individual cannot be convicted of tax evasion for
15 acting on the basis of a good faith belief that what
16 he's doing is lawful. And that's so even if he's
17 mistaken, even if he believes it's lawful, even if it
18 isn't lawful, although he believes that it is. And the
19 Government has to prove that Mr. Hatch did not have a
20 good faith belief that he was acting lawfully.

21 The test in determining willfulness is not what
22 someone else in Mr. Hatch's position should have known
23 or would have believed, but, rather, the test is what
24 Mr. Hatch himself actually believed regardless of
25 whether or not his beliefs were reasonable. In

1 determining what Mr. Hatch knew or believed and whether
2 he acted in good faith, you obviously can't look into
3 his mind, we have no way to look into a person's mind
4 to determine those things, but you can consider such
5 things as his intelligence, his experience, the
6 information that was presented to him or made available
7 to him, what he said, what he did, and the
8 circumstances under which he acted. In other words,
9 whether Mr. Hatch acted willfully or not may be
10 inferred from the evidence that indicates what he knew
11 or believed or intended. In determining whether or not
12 Mr. Hatch acted willfully, you also should focus on his
13 knowledge or intent or belief at the time the return in
14 question was filed, not at some later time, but at the
15 time the return in question was filed. A defendant who
16 files a return that he knows does not include items of
17 taxable income and who does so with the intent to evade
18 payment of the taxes that he owes, may be guilty of tax
19 evasion even if he later decides that he's going to pay
20 the taxes or makes an effort to pay them. Otherwise,
21 obviously, individuals could avoid ever being convicted
22 of tax evasion by simply offering to pay the taxes if
23 and when the individual is caught. But, nevertheless,
24 despite the fact that you need to focus on Mr. Hatch's
25 state of mind at the time these returns were filed,

1 subsequent conduct on his part to attempt to pay the
2 taxes may be considered by you to the extent they
3 assist you in determining what he may have intended or
4 believed back at the time the returns were filed. So,
5 once again, the critical time, the time that you need
6 to focus on determining whether Mr. Hatch is guilty on
7 tax evasion is what did he know, believe, and intend at
8 the time that the returns were filed.

9 I'm going to move now to Count III, which is the
10 signing the false tax return count. Count III charges
11 Mr. Hatch with signing a false tax return on behalf of
12 Tri-Whale Enterprises for the year 2001 in violation of
13 another Federal statute, which is Section 7206 of Title
14 26. And, again, I'll read to you the relevant portion
15 of that statute. That section says, "Any person who
16 willfully makes and subscribes any tax return which
17 contains or is verified by a written declaration that
18 it is made under the penalties of perjury, and which he
19 does not believe to be true and correct as to every
20 material matter, shall be guilty of a felony." Now, in
21 order to establish that Mr. Hatch is guilty of signing
22 a false tax return as charged in Count III, again,
23 there are several things that the Government must
24 prove.

25 First, the Government must prove that Mr. Hatch

1 signed the return in question and that he did so under
2 penalty of perjury.

3 Second, it must prove that the return was false
4 or untrue as to a material matter.

5 Third, it must prove that Mr. Hatch knew the
6 return was false or that he did not believe that it was
7 true and correct as to every material matter.

8 And, fourth, again, it must show that Mr. Hatch
9 acted willfully.

10 Now, material matter is one that is likely to
11 affect the calculation of a tax due and payable or to
12 affect or influence the Internal Revenue Service in
13 monitoring and verifying an individual's tax liability.
14 The fact that an individual's name is signed to a tax
15 return is what the law calls prima facie evidence that
16 the document actually was signed by that individual.
17 And what that means is, what we mean by the term
18 prima facie evidence is that unless there is evidence
19 to the contrary, you may, but you're not required to,
20 you may find that the return, in fact, was signed by
21 the person whose name appears to be signed. If you
22 find that Mr. Hatch signed the return in question, you
23 may, but, again, are not required to infer that
24 Mr. Hatch read the return and knew its contents.

25 When I talked about the tax evasion charges,

1 Counts I and II, I explained that to act willfully,
2 means to act voluntarily, deliberately, and with an
3 intent to do something that is known to be unlawful.
4 In order to establish that Mr. Hatch willfully signed a
5 false tax return, the Government must prove that
6 Mr. Hatch signed a return that he knew omitted matters
7 or amounts that the law required to be reported as
8 income, and that he did so with the knowledge that he
9 was violating the law and with the intent to violate
10 the law. As in the case of tax evasion, an individual
11 cannot be guilty of signing a false return if the
12 individual acted on the basis of a good faith belief
13 that what he did was lawful, even if he was mistaken.
14 So if Mr. Hatch signed the return with a good faith
15 belief that the return was accurate, he wouldn't be
16 guilty of signing a false return. He would only be
17 guilty of the crime of signing a false return if he
18 knew that the return was not accurate and omitted some
19 item of income that should have been reported. And,
20 again, the issue of willfulness turns on what
21 Mr. Hatch's state of mind was at the time he signed the
22 return, not at some other time, but at the time he
23 signed it. That takes care of the tax charges, Counts
24 I through III. I'm now going to move to the fraud
25 counts that are Counts IV through X in the indictment,

1 and I will discuss separately the wire fraud, mail
2 fraud, and bank fraud charges. They have a great deal
3 in common, but they have some distinctions, so I'm
4 going to talk about them separately.

5 I'll start with wire fraud, that's Counts IV and
6 V. Counts IV and V of the indictment charge Mr. Hatch
7 with wire fraud in violation of another Federal
8 statute, which is Section 1343 of Title 18 of the
9 United States Code, and that statute reads or the
10 relevant portion of it says, "Whoever having devised or
11 intending to devise any scheme or artifice to defraud
12 or for obtaining money or property by means of false or
13 fraudulent pretenses, representations, or promises,
14 transmits or causes to be transmitted by means of wire,
15 radio, or television communication, in interstate or
16 foreign commerce, any writings, signs, signals,
17 pictures or sounds for the purpose of executing such
18 scheme or artifice, shall be guilty of an offense
19 against the United States." I know that's quite a
20 mouthful, but in very simple terms, if you strip all
21 the excess verbiage out of there, what that is saying
22 is that wire fraud means "use of interstate wire
23 communications to execute a scheme to defraud or to
24 obtain money or property through false or fraudulent
25 pretenses, representations, or promises." And under

1 this statute, the offense of wire fraud may be
2 committed in one of two different ways, and this is
3 also true of the offenses of mail fraud and bank fraud,
4 which I'll get to later. The offense of wire fraud may
5 be committed in one of two ways. First, by devising a
6 scheme or artifice to defraud, or secondly, by devising
7 a scheme or artifice to obtain money or property by
8 means of false or fraudulent pretenses or promises. In
9 this case you may find Mr. Hatch guilty if the
10 Government proves beyond a reasonable doubt that he
11 committed either/or both forms of wire fraud. In order
12 to establish that Mr. Hatch is guilty of wire fraud
13 that involves a scheme to defraud, the Government has
14 to prove three things. First, it has to prove that
15 Mr. Hatch devised or participated in a scheme to
16 defraud, substantially as described in the indictment.
17 Second, it has to prove that Mr. Hatch participated in
18 that scheme knowingly, willfully, and with the specific
19 intent to defraud. And, third, it has to prove that
20 Mr. Hatch used interstate wire communications or
21 interstate wire communications to be used in
22 furtherance of that scheme. Let me explain what some
23 of these terms mean.

24 Well, before I get to that, let me talk about
25 the second way in which wire fraud may be committed.

1 Those are the things that the Government has to prove
2 in order to establish that the wire fraud was committed
3 in the first way. In order to establish that Mr. Hatch
4 is guilty of wire fraud that involves a scheme to
5 obtain money by means of a false or fraudulent
6 pretenses, representations or promises, the Government
7 has to prove three things, and they're very similar to
8 what they have to prove in order to establish wire
9 fraud by means of a scheme to defraud. But let me go
10 through the three things that they have to prove.
11 First, the Government has to prove that Mr. Hatch
12 devised or participated in a scheme to obtain money by
13 false or fraudulent pretenses, representations, or
14 promises, substantially as charged in the indictment.
15 Second, it has to prove that Mr. Hatch participated in
16 that scheme knowingly, willfully, and with a specific
17 intent to defraud or deceive. And, third, it has to
18 prove that Mr. Hatch used interstate wire
19 communications or caused interstate wire communication
20 to be used in furtherance of that scheme. Now, let me
21 define some of these terms. You probably have a pretty
22 good idea of what some of them mean, but I don't want
23 you to be operating on the basis of what your pretty
24 good idea is. I want to explain to you exactly what
25 these terms mean.

1 First of all, the term fraud, fraud is a general
2 term, and it embraces a variety of methods to cheat or
3 deceive others in order to obtain something of value
4 from them or to induce them to part with something of
5 value. As used in the wire fraud statute, a scheme to
6 defraud is any plan, pattern, or course of action
7 calculated to deprive others of something of value by
8 deceiving them as to what they are to receive in
9 return. It's not necessary that the Government prove
10 all the details of the scheme, it need only prove that
11 the scheme was substantially as alleged in the
12 indictment.

13 To be fraudulent, a representation, statement,
14 concealment, or a deception must be related to a
15 material fact or matter. And in the context of fraud,
16 a material fact or matter is one that either a
17 reasonable and prudent person would consider important
18 in determining his course of action, or one that the
19 defendant knew or should have known that the individual
20 allegedly defrauded would have considered important in
21 choosing his course of action with respect to the
22 transaction in question. So simply stated, a
23 representation, statement, or course of deception is
24 material if it would have a natural tendency to
25 influence the decision of the person or entity at whom

1 it is directed.

2 I mentioned false pretenses or false
3 representations. A representation is false if it is
4 untrue at the time it is made. And the false
5 representation may consist of an affirmative statement
6 that's untrue or it may consist of statements of
7 half-truths or the concealment of material facts that
8 make the statement that was made misleading or
9 deceptive. In order to prove that Mr. Hatch is guilty
10 of wire fraud, as I've told you, the Government also
11 has to prove that he acted knowingly and willfully.
12 And the defendant is considered to have acted knowingly
13 if he understood the nature of what he was doing at the
14 time that he did it. As I've explained to you already
15 in connection with the tax charges, a defendant is
16 considered to have acted willfully if he acted
17 voluntarily, deliberately, and with the specific intent
18 to do something that he knew was unlawful.

19 I've also used the term specific intent to
20 defraud. To act with the specific intent to defraud,
21 means to act with the intent to cheat or deceive
22 another for the purpose of either causing some
23 financial loss to that other person or entity, or for
24 the purpose of bringing about some financial gain to
25 one's self. Therefore, again, an individual acts on

1 the basis of a good faith belief that what he did was
2 not fraudulent, that he wasn't misleading or deceiving
3 anyone, that individual would not be guilty of wire
4 fraud, or for that matter, mail fraud or bank fraud
5 either.

6 The last element that the Government has to show
7 in order to convict Mr. Hatch of wire fraud is that he
8 used or caused to be used an interstate wire
9 communication. An interstate wire communications
10 includes things like telephone and facsimile or fax
11 transmissions from one state to another. In order to
12 prove that Mr. Hatch used interstate wire communication
13 or caused them to be used, the Government is not
14 required to prove that he personally sent or received
15 anything by interstate wire communications. The
16 Government need only prove that Mr. Hatch caused
17 something to be sent by someone or to be received by
18 interstate wire communications, and that he did so in
19 furtherance of the scheme to defraud or obtain money
20 under false pretenses.

21 Now, a defendant causes or is considered to
22 cause interstate wire communication to be used when the
23 defendant commits an act with knowledge that the use of
24 wire communication will follow in the ordinary course
25 of business or when he commits an act under

1 circumstances where he should recognize that interstate
2 wire communication is reasonably foreseeable. The
3 Government doesn't have to prove that Mr. Hatch
4 intended or agreed that interstate wire communications
5 would be used. It need only prove that either he knew
6 such use was likely or that it was reasonably
7 foreseeable at the time that he acted that interstate
8 wire communications would be used. Interstate wire
9 communications are used in furtherance of a scheme to
10 defraud when they are used as part of or for the
11 purpose of carrying out some essential step in the
12 scheme. The material transmitted by wire does not
13 itself have to be false or fraudulent in order to
14 establish that interstate wire communications were used
15 in furtherance of a scheme to defraud. Also, as I
16 think I've already mentioned, each separate use of
17 interstate wire communications in furtherance of a
18 scheme to defraud is a separate offense, and that's why
19 we have two counts charging wire fraud.

20 Now, as I've told you, proof that Mr. Hatch
21 committed either of the two types of wire fraud that
22 I've mentioned, the scheme to defraud type or the
23 scheme to obtain money under false pretenses or by
24 false representations, it's sufficient to convict if he
25 committed either type of wire fraud. If you find that

1 he committed either type of wire fraud, he would be
2 guilty of wire fraud, but in order to return a guilty
3 verdict, you must all agree, you must unanimously agree
4 as to which type of wire fraud you think he committed.
5 If you all agree that he committed both types of wire
6 fraud, then he would be guilty of wire fraud. If you
7 all agree that he committed one type of wire fraud, he
8 would be guilty of that type of wire fraud. But if
9 some but not all of you think that he committed one
10 type of wire fraud, and some but not all of you think
11 that he committed another type of wire fraud, he can't
12 be convicted of wire fraud, even though all of you may
13 have felt that he committed one or the other type of
14 wire fraud. You have to all agree either that he
15 committed both types of wire fraud, or all of you have
16 to agree as to which one type of wire fraud he
17 committed in order to convict him of wire fraud.

18 I'm going to move to the mail fraud counts now,
19 and mercifully, what I'm going to tell you is very
20 similar to what I've told you about wire fraud. Let me
21 start by reading the mail fraud statute.

22 Counts VI through IX charge Mr. Hatch with mail
23 fraud in violation of Section 1341 of Title 18 of the
24 United States Code. This is a pretty lengthy statute,
25 but I'll read it to you, and then I'll try to condense

1 it for you and eliminate some of the surplusage,
2 surplusage only in the sense that it may not apply
3 specifically to this case. That section says "Whoever
4 having devised or intending to devise any scheme or
5 artifice to defraud, or for obtaining money or property
6 by means of false or fraudulent pretenses,
7 representations or promises, for the purpose of
8 executing such scheme or artifice or attempting to do
9 so, places in any Post Office or authorized depository
10 for mail, any matter or thing whatever to be sent or
11 delivered by the postal service or deposits or causes
12 to be deposited any matter or thing whatever, to be
13 sent or delivered by any private or commercial
14 interstate carrier or takes or receives therefrom any
15 such matter or thing, or knowingly causes to be
16 delivered by mail or such carrier according to the
17 direction thereon or at the place at which it is
18 directed to be delivered by the person to whom it is
19 addressed, any such matter or thing, shall be guilty of
20 an offense against the United States."

21 Now, again, simply stated, mail fraud refers to
22 the use of the United States mail or a private or
23 interstate carrier for the delivery of mail to execute
24 a scheme to defraud or to obtain money or property
25 through false pretenses or representations. And the

1 things that the Government must prove in order to
2 establish that Mr. Hatch is guilty of mail fraud are
3 basically the same as the things that it must prove in
4 order to establish that he's guilty of wire fraud,
5 except that mail fraud involves the use of the mails,
6 whereas wire fraud involves the use of interstate wire
7 communications. Like wire fraud, the offense of mail
8 fraud can be committed in either of two ways. It can
9 be committed by devising a scheme to defraud or it can
10 be committed by devising a scheme to obtain money or
11 property by means of false or fraudulent promises or
12 representations. In this case, you may find Mr. Hatch
13 guilty of mail fraud if the Government proves beyond a
14 reasonable doubt that he committed either type of mail
15 fraud, just as you could with respect to wire fraud.
16 And as with wire fraud, you must all agree either that
17 the Government has proven Mr. Hatch guilty of both
18 types of mail fraud or you must agree as to which type
19 of mail fraud the Government has proven he committed.
20 If you don't reach either of those agreements, then you
21 can't convict him of mail fraud. You can't convict him
22 if some but not all of you think he committed one type
23 of mail fraud and some but not all of you think he
24 committed a different type of mail fraud.

25 In order to establish that Mr. Hatch is guilty

1 of mail fraud that involves a scheme to defraud, the
2 Government has to prove three things which, again, you
3 will see are virtually identical to the things that he
4 has to prove to show that he committed a type of wire
5 fraud that involves a scheme to defraud. The first
6 thing the Government has to show is that Mr. Hatch
7 devised or participated in a scheme to defraud,
8 substantially as charged in the indictment. Second,
9 that he participated knowingly, willfully, and with the
10 specific intent to defraud. And, third -- and this is
11 where the difference is between mail fraud and wire
12 fraud -- and, third, it has to prove that Mr. Hatch
13 used the mails or caused the mails to be used in
14 furtherance of a scheme. By the same token, in order
15 to establish that Mr. Hatch is guilty of mail fraud
16 that involves a scheme to obtain money by means of
17 false or fraudulent pretenses, representations or
18 promises, the Government has to prove, first, that
19 Mr. Hatch devised or participated in a scheme to obtain
20 money by means of false or fraudulent pretenses,
21 representations, or promises. Second, that Mr. Hatch
22 participated in the scheme knowingly, willfully, and
23 with the specific intent to defraud. And, third, that
24 Mr. Hatch used the mails or caused the mails to be used
25 in furtherance of that scheme.

1 Now, the definitions of fraud, scheme to
2 defraud, materiality, false representations, knowingly,
3 willfully, and specific intent to defraud, those
4 definitions that I gave you in explaining the wire
5 fraud charges also apply to the mail fraud charges. So
6 I mean the same thing when I use those terms in
7 connection with the mail fraud charges as I did with
8 the wire fraud charges.

9 Now, with respect to the mail fraud charges, use
10 of the mails occurs when something is sent, delivered,
11 or received or when something is caused to be sent,
12 delivered, or received through the United States postal
13 service or through some interstate mail carrier. As
14 was the case with wire fraud, use of the mails in
15 furtherance of the scheme or scheme to defraud, means
16 use as part of or for the purpose of carrying out the
17 objectives of the scheme to defraud. And, again, as
18 with wire fraud, the Government doesn't have to prove
19 that the contents of the mailings themselves were false
20 or fraudulent. The material sent through the mail
21 doesn't have to be itself false or fraudulent. The
22 important thing is whether the material was sent
23 through the mail or caused to be sent through the mail
24 by the defendant in furtherance of the scheme to
25 defraud. It doesn't have to be sent by the defendant.

1 It can be sent by someone else if the defendant causes
2 that person to send it, or it's reasonably foreseeable
3 to the defendant that the person would send it through
4 the mails. And, again, as with wire fraud, each use of
5 the mails in furtherance of a scheme is a separate
6 offense.

7 Count X is the bank fraud count. It charges
8 Mr. Hatch with bank fraud in violation of Section 1344
9 of Title 18. And I will read to you the relevant part
10 of that section. That section says, "Whoever knowingly
11 executes or attempts to execute a scheme or artifice to
12 defraud a financial institution or to obtain any of the
13 money under the custody or control of a financial
14 institution by means of a false or fraudulent
15 pretenses, representations, or promises, shall be
16 guilty of an offense against the United States."

17 Again, to put it simply, bank fraud refers to
18 engaging in a scheme to defraud a Federally insured
19 financial institution through false or fraudulent -- or
20 through a scheme to obtain money from the institution
21 through false or fraudulent pretenses, representations,
22 or promises. And many of the things, almost all of the
23 things that the Government must prove in order to
24 establish that a defendant is guilty of bank fraud are
25 the same as the things it has to prove in order to

1 establish that a defendant is guilty of wire fraud or
2 mail fraud. But there are two exceptions, two wrinkles
3 to bank fraud. The first is that in the case of bank
4 fraud, the Government is obviously not required to
5 prove that interstate wire communications or the mails
6 were used. There doesn't have to be any use of
7 interstate wire communication or the mails in order to
8 establish bank fraud. And the second distinction to
9 keep in mind is that in the case of bank fraud, unlike
10 wire fraud or mail fraud, the Government does have to
11 prove that the entity defrauded was a Federally insured
12 financial institution. And, again, I hate to be
13 repetitious, but I think I have to tell you that like
14 wire fraud and mail fraud, bank fraud can be committed
15 in either of two ways. First, by engaging in a scheme
16 to defraud, or second, by engaging in a scheme to
17 obtain money by means of false or fraudulent pretenses,
18 representations, or promises. And, once again, in this
19 case, you can find Mr. Hatch guilty if you're satisfied
20 that the Government has proved beyond a reasonable
21 doubt either that he has committed both types of bank
22 fraud or you all agree that he has committed one
23 particular type of bank fraud, but you have to all
24 agree on which type of bank fraud that is.

25 The elements the Government has to prove in

1 order to establish that Mr. Hatch is guilty of the bank
2 fraud that involves a scheme to defraud are very
3 similar to the elements they have to prove to establish
4 wire fraud or mail fraud that involves a scheme to
5 defraud. First, the Government has to prove that
6 Mr. Hatch engaged in a scheme to defraud, in this case
7 People's Credit Union, which was the institution named
8 in the indictment. Second, that Mr. Hatch did so
9 knowingly and with a specific intent to defraud. And,
10 third, that People's Credit Union was a Federally
11 insured financial institution. In order to establish
12 that Mr. Hatch is guilty of bank fraud that involved a
13 scheme to obtain money by means of false pretenses,
14 representations, or promises, the Government has to
15 prove essentially the same three things, the difference
16 being that the first thing the Government has to prove
17 is that Mr. Hatch engaged in a scheme to obtain money
18 under the control of People's Credit Union by means of
19 false or fraudulent pretenses, representations or
20 promises substantially as charged in the indictment.
21 And, once again, the definitions that I have previously
22 given you about fraud, scheme to defraud, materiality,
23 false representation, knowingly, willfully, and
24 specific intent to defraud, those apply also to the
25 bank fraud count.

1 One thing you should keep in mind in connection
2 with the bank fraud count is that the Government is not
3 required to prove that People's Credit Union itself
4 actually suffered some kind of a loss. The Government
5 doesn't have to show that People's Credit Union was out
6 money in order to establish a guilt of bank fraud. The
7 Government is required to prove only that Mr. Hatch
8 engaged in a scheme to induce People's Credit Union to
9 transfer money under its control to him by means of
10 false or fraudulent pretenses, representations,
11 promises. Also, keep in mind that to prove that
12 Mr. Hatch is guilty of bank fraud, the Government is
13 not required to prove that Mr. Hatch knew that People's
14 Credit Union was a Federally insured financial
15 institution. The Government need only prove that
16 People's Credit Union actually was a Federally insured
17 financial institution at the time that the alleged
18 fraud was committed.

19 You'll be happy to know that I finished
20 explaining to you what the Government has to prove in
21 order to convict Mr. Hatch of these various charges.
22 You should know that in order for the Government to
23 prove guilt as to any of these charges, the Government
24 has to prove each and every element applicable to that
25 charge beyond a reasonable doubt. If the Government

1 fails to prove any one or more of those elements beyond
2 a reasonable doubt, then you should find Mr. Hatch not
3 guilty of that particular charge. Conversely, if
4 you're satisfied that the Government has proven each
5 and every one of those elements, each and every element
6 that relates to a particular charge beyond a reasonable
7 doubt, then you should find Mr. Hatch guilty of that
8 charge.

9 Now, what do I mean when I say the Government
10 has to prove these things beyond a reasonable doubt.
11 Proof beyond a reasonable doubt does not mean that the
12 Government has to prove these things beyond any shadow
13 of a doubt or beyond any conceivable doubt. What it
14 means is the Government must prove these things beyond
15 a reasonable doubt.

16 Now, what's a reasonable doubt. Well,
17 possibilities or even probabilities are not sufficient.
18 I can't tell you exactly what a reasonable doubt is,
19 you have to use your good judgment and common sense in
20 determining whether the Government has proven these
21 things beyond a reasonable doubt. A reasonable doubt
22 may arise from the evidence that's been presented to
23 you or it may arise from the lack of evidence, there's
24 not sufficient evidence to convince you of something.
25 Beyond that, I can't give you a more precise definition

1 of reasonable doubt. That's something that you have to
2 determine for yourself. You know what it is the
3 Government has to prove. You know what reasonable
4 means and you know what a doubt is, and it's up to you
5 to determine whether the Government has proven these
6 things beyond a reasonable doubt.

7 I told you you'll have the indictment with you
8 in the jury room, and I remind you again that the
9 indictment is not evidence. It doesn't prove anything.
10 It's not evidence of anything. All the indictment
11 tells you is what it is that the defendant has been
12 charged with, and it's up to you to decide whether the
13 Government has proven those charges beyond a reasonable
14 doubt. I've also told you about the presumption of
15 innocence, that unless and until the Government
16 presents evidence that satisfies you of guilt beyond a
17 reasonable doubt, you should presume or assume that
18 Mr. Hatch is not guilty. And that presumption is
19 sufficient to acquit him unless and the until the
20 Government presents evidence to the contrary. And as
21 I've also said, if and when you're satisfied that the
22 Government has presented evidence that proves him
23 guilty beyond a reasonable doubt, the presumption of
24 innocence vanishes. It's no longer operative, and you
25 should find him guilty if the Government has met its

1 burden.

2 You know what it is the Government has to prove
3 and you know the standard of proof to apply, the beyond
4 a reasonable doubt standard. The next question is how
5 do you go about determining whether the Government has
6 proven these things beyond a reasonable doubt.

7 Well, first, as I've told you, you must base
8 your decision solely on the evidence that has been
9 presented during the course of the trial. And there
10 were a couple of stipulations by the lawyers and you
11 can consider that as well. But you are to base your
12 decision on the evidence that was presented and not on
13 anything else, not on any other statements the lawyers
14 may have made, not on any past experience you might
15 have had, not on any answers that I told you to
16 disregard. You have to base it solely on the evidence
17 that was presented and the exhibits that have been
18 admitted into evidence. And in determining what the
19 evidence is or assessing the evidence, your principal
20 task is to assess the credibility of the witnesses, to
21 determine how much weight you should give to the
22 testimony of the various individuals who took the
23 witness stand and answered questions, and in making
24 that determination there are a number of factors that
25 you ought to consider. One is the opportunity or lack

1 of opportunity the witness had to have observed or
2 learned the facts that the witness related to you. In
3 other words, was that person in a good position to have
4 accurately seen, heard, or otherwise perceived the
5 things that the witness told you. The second factor is
6 the witness's memory, the reliability or unreliability
7 of the witness's memory. Even if the witness was in a
8 good position to have accurately perceived what it is
9 the witness said, does it seem to you that the witness
10 had an accurate recollection of what it is that the
11 witness claims to have seen or heard. Or did it seem
12 to you that the witness's memory was flawed and
13 therefore the witness's testimony should be discounted.
14 A third factor is the witness's appearance on the
15 stand. One reason that we require individuals to come
16 in here in person and testify is that it gives you an
17 opportunity to observe that witness and observe their
18 demeanor, and you can make some judgments based on your
19 observation as to how believable this person is. So
20 that's another factor that you can and should consider.
21 Another factor is the probability or improbability of
22 the witness's testimony. Just because a witness says
23 something and nobody directly contradicts what the
24 witness says, doesn't mean you have to accept that
25 testimony at face value. If what the witness says is

1 something that seems to you to be impossible or highly
2 improbable, you don't have to accept that testimony
3 just because nobody is in a position to directly
4 contradict it. You can discount or disregard that
5 witness's testimony in that situation.

6 And the final thing that you may consider is
7 what stake the witness may have had in the outcome of
8 the case. Now, that doesn't mean that just because an
9 individual has an interest in the outcome of the case
10 that you should discount or even -- that you should
11 disregard or even discount the witness's testimony,
12 because by the very nature of things, witnesses in
13 cases usually are people who are involved in the case.
14 But it certainly is a factor that you can consider to
15 whatever extent you think is appropriate. Keep in
16 mind, too, that the fact that a witness may be employed
17 by a Government agency or a law enforcement agency,
18 does not by itself mean that you should give that
19 witness's testimony any greater weight or any lesser
20 weight than you would the testimony of someone else.
21 You should evaluate a witness's credibility on the
22 basis of your assessment of that witness as a person,
23 and not on the basis of what that person's occupation
24 may be or what office that person may hold.

25 Also keep in mind that it's not the number of

1 witnesses that testifies on either side of an issue
2 that should be determinative but, rather, it's the
3 quality of the testimony. So just because there may be
4 two or three witnesses that testify as to A, and only
5 one witness testifies not A, that doesn't mean that you
6 should find A simply because there were more witnesses
7 who said A than not A. You should base your decision
8 on the credibility of the witnesses who testify.

9 In addition to the witnesses, you'll have the
10 exhibits with you in the jury room. You can examine
11 them to your heart's content. But keep in mind that
12 just because an exhibit has been admitted into
13 evidence, doesn't mean that you have to accept
14 everything in the exhibit at face value any more than
15 you have to accept the testimony of the witness at face
16 value. You should look at the exhibits in light of all
17 of the evidence that's been presented and apply your
18 common sense and good judgment in deciding how much
19 weight to give those exhibits. Some of the exhibits
20 that you'll have are what has been referred to as
21 summaries or charts. Remember there were some
22 witnesses who testified that they had gone through
23 other exhibits, and they had compiled information from
24 those exhibits and put them in the form that would be
25 more readily understandable, and that's perfectly

1 appropriate. But keep in mind that the actual
2 evidence, if there's any conflict that you see between
3 the summary of the evidence and the actual evidence
4 itself, the exhibits on which the summary is based, you
5 should base your decision on the underlying evidence
6 and not on the summary. The summary is an aid to you
7 which you may properly consider, but if you think
8 there's a conflict, you should base your decision on
9 what the actual evidence was, not on the summary of the
10 evidence prepared by that witness.

11 I've told you that you can consider only
12 evidence that is properly before you. That doesn't
13 mean, though, that in deciding the facts that you're
14 strictly limited to the testimony of the witnesses and
15 the contents of the exhibits. In reaching your
16 decision, you may draw inferences or conclusions from
17 the evidence that has been presented, as long as the
18 inferences are reasonable.

19 And the process of -- well, let me put it
20 another way. Any fact that must be proven in a case
21 can be proven in either of two ways. First of all, it
22 can be proven by direct evidence, that is to say the
23 testimony of a person who claims to have directly
24 observed the fact in question, or the presentation of
25 an exhibit that is the thing itself, or it can be

1 proven by means of what's called circumstantial
2 evidence, which is another way of saying the fact can
3 be proven by establishing through direct evidence two
4 or more facts from which the existence or nonexistence
5 of a third fact may be reasonably inferred. Now, let
6 me give you an example. I think it's very hard to
7 articulate that in a way that's readily understandable,
8 so let me give you an example that I think will
9 illustrate the point I'm trying to make. Assume that
10 on some winter night before you go to bed you look out
11 the window and the ground is bare. The next morning
12 you get up and there's a foot of snow on the ground.
13 If someone asks you whether it snowed last night, your
14 answer would probably be yes, I would think. Now, if
15 you had to come in to court and prove that it snowed
16 last night, how would you go about doing that? Well,
17 you might find somebody who was awake when the
18 snowflakes were falling. They could come in here and
19 testify they actually saw the snowflakes falling. That
20 would be proof by direct evidence, the direct
21 observation of a witness who claims to have observed
22 the snowflakes actually falling.

23 If you couldn't find somebody who was awake when
24 the snowflakes were falling, you could testify as to
25 two facts that you personally observed. One, that

1 before you went to bed the ground was bare; two, when
2 you woke up there was a foot of snow on the ground.
3 You would be proving those two facts by direct
4 evidence, your direct observation. And from those two
5 facts, it is perfectly reasonable to infer that it
6 snowed last night.

7 Now, a word of caution here. There's a big
8 difference between proof by circumstantial evidence and
9 guessing. The former is permitted, the latter is not.
10 And the difference is that in order to prove something
11 by circumstantial evidence, the inference to be drawn
12 must be based on facts that are established by direct
13 evidence. And, two, the inference that is drawn must
14 be a reasonable inference from those facts. If based
15 on the facts that I just gave you someone asked you if
16 it was going to snow next Tuesday night, you could not
17 reasonably infer from those two facts, you couldn't
18 answer that question from those two facts. You
19 couldn't make a reasonable inference one way or the
20 other. So keep in mind that proof by circumstantial
21 evidence is not a license to guess or speculate. But
22 also keep in mind that the law makes no distinctions
23 between proof of a fact by direct evidence or by
24 circumstantial evidence. The law recognizes either
25 method, but it does require in a criminal case, that

1 any fact that has to be proven, must be proven beyond a
2 reasonable doubt, whether it's proven by direct or
3 circumstantial evidence.

4 Now, I've told you that it's up to you to decide
5 the facts in this case. That's not my role. And you
6 shouldn't interpret anything that I may have said or
7 done as conveying any opinion on my part as to what the
8 facts are or are not. You shouldn't be concerned with
9 what you might think or guess might be my view of the
10 facts. You and you alone are ones who decide the facts
11 in this case. There have been times during the trial
12 when attorneys have objected, when I've ruled on
13 objections, and sometimes may have slightly admonished
14 the attorneys or given the impression that I was
15 admonishing, I hope I didn't do that too often, but
16 regardless, that should play no role in your decision.
17 The attorneys have a right and even a responsibility to
18 object to evidence that they believe is not admissible
19 under our Rules of Evidence. And you shouldn't hold it
20 against them because they may have objected. And you
21 certainly shouldn't hold it against their clients, nor
22 should you discount the evidence if they objected and I
23 overruled the objections. So objections should play no
24 role in your decision.

25 Also, as you know, this case is brought in the

1 name of the United States of America. That does not
2 entitle the Government to any more consideration on
3 your part than the defendant. Every party who comes
4 into a case in this Court is entitled to the same
5 treatment and consideration from you regardless of who
6 they are.

7 I hope that it goes without saying that neither
8 bias in favor of any particular group or cause or
9 person or sympathy or prejudice against any particular
10 person or group or cause, or sympathy of any kind
11 should play any role whatsoever in your deliberations.
12 Your job is to examine the evidence that has been
13 presented objectively and impartially, to determine
14 from that evidence what the facts are, and to apply the
15 facts to the law as I have explained it to you. That's
16 all that either side in this case is entitled to or
17 should expect.

18 Now, I'm going to ask the lawyers to approach
19 the side bar over here for a moment to give them a
20 chance to tell me whether they think I have misstated
21 anything that I've told you or whether they think I've
22 forgotten to tell you anything that I should have told
23 you. If you'd just bear with us, please.

24 Counsel, would you approach the side bar.

25 (Bench Conference Held on the Record)

1 THE COURT: Does the Government have any
2 objection to the charge?

3 MR. VILKER: No, your Honor.

4 THE COURT: Does the defendant have any
5 objection to the charge?

6 MR. MINNS: Two requests I previously made, your
7 Honor, that the Court has already ruled on, but for the
8 record, we would like the jurors to be instructed on
9 the proliferation of statutes and regulations that
10 sometimes made it difficult for the average citizen to
11 know and comprehend the extent of duties and
12 obligations imposed by tax law. We cite Cheek on that.
13 We would like them to be instructed, willfulness
14 generally requires bad purpose or the absence of
15 justifiable excuse. We cite Domanus vs. United States,
16 which is a Seventh Circuit case, but it followed the
17 Cheek decision.

18 MR. MacDONALD: Your Honor, on the wire fraud
19 instruction, you gave an instruction on the good faith
20 exception, the defendant acted in good faith. You did
21 not give that on the bank or the mail fraud. And I
22 would just ask you to repeat the good faith exception
23 that the Court gave in reference to the wire fraud.

24 THE COURT: Do you have any recollection as to
25 whether I mentioned that?

1 MR. REICH: I thought it was mentioned, your
2 Honor.

3 MR. MacDONALD: It wasn't.

4 THE COURT: Anything else?

5 Have you been given copies of the proposed
6 verdict form? The clerk will distribute those. And
7 after I excuse the jury, I'll check back with you to
8 see if you have any objections to that.

9 MR. MINNS: After you excuse the jury, can we
10 have a side bar conference?

11 THE COURT: After I excuse the jury?

12 MR. MINNS: Yes. I don't want the press
13 involved.

14 (Bench Conference Concluded)

15 THE COURT: One thing that I may have forgotten
16 to tell you. I know I told you in connection with the
17 wire fraud counts that good faith would be a defense,
18 that if the defendant acted in good faith, that he
19 couldn't be guilty of wire fraud. The same is true of
20 the mail fraud and the bank fraud counts. So if I
21 forgot to tell you that, I'm telling you now.

22 Now, we've had six wonderful alternates here,
23 you've been very faithful and very attentive throughout
24 this trial, and I want to thank you each for being so
25 attentive. At this time I'm going to excuse you. Your

1 role in this case is probably ended. I say probably
2 because there may be some rare situation in which an
3 alternate can be recalled if something happens to one
4 of the regular jurors during the course of
5 deliberations. So although I'm excusing you now, I'm
6 asking you to continue shielding yourself from any
7 outside sources of information on the case until you
8 learn that the jury has rendered its verdict, and to
9 avoid communicating with the other jurors or among
10 yourselves any further about the case. But I do want
11 to thank you very much.

12 Do any of you have any personal belongings in
13 the jury room across the hall? I'll ask you to
14 retrieve those. And you are excused subject to the
15 remote possibility that you may be recalled.
16 thank you very much.

17 (Alternate Jurors Excused)

18 THE COURT: Ladies and Gentlemen, those of you
19 who remain are the regular jurors in this case. And in
20 order to return a verdict, all twelve of you must agree
21 as to what that verdict ought to be. You cannot return
22 a verdict of either guilty or not guilty as to any
23 count unless you all agree on what that verdict should
24 be. Now, in your deliberations you should keep in mind
25 two very important principles, which on the surface

1 seem to conflict. One is that you ought to approach
2 the deliberations with an open mind and you ought to be
3 humble enough to change your opinion if you initially
4 disagreed with the other jurors, but after listening
5 with an open mind you become convinced that they're
6 correct and you are incorrect. On the other hand, you
7 should also keep in mind that you each have an
8 independent responsibility to vote for the verdict that
9 you believe is the correct verdict based on the law as
10 you understand it and on the law as I've explained it
11 to you and the evidence as you understand it. And you
12 should have the courage to stick to your convictions
13 if, after listening with an open mind, you remain
14 convinced that you're correct, even if all of the other
15 jurors should disagree with you, even if you're the
16 only one.

17 Now, I know that those two things seem to be in
18 conflict, but my experience over the years has been
19 that jurors usually are able to come back with
20 unanimous verdicts without doing violence to either of
21 those principles and I'm convinced that you will be
22 able to do so. If you can't, we'll cross that bridge
23 when we get to it.

24 Now, when you go into the jury room, the first
25 thing that you should do is select a foreperson, a

1 foreman or a forelady. And that person will have
2 several -- three responsibilities. The first
3 responsibility will be to act as the moderator of the
4 Jury's deliberations and to see that those
5 deliberations are conducted in an orderly manner, and
6 that anyone who wishes to express an opinion has a fair
7 chance to do so. The second responsibility would be to
8 complete the verdict form, which will go into the jury
9 room with you in a couple of minutes. It's simply a
10 form that asks you to check off guilty or not guilty
11 with respect to each of the Counts. Complete that form
12 and sign it, bring it back into the courtroom after the
13 jury's reached its verdict, and the clerk will take it
14 from you at that time.

15 The third responsibility, which is one that you
16 may or may not have to exercise is if it should be
17 necessary for you to communicate with me for any
18 reason, the communication should be in the form of a
19 brief written note from the foreman or forelady telling
20 me what it is that your question or problem is. I
21 don't expect that you're going to have questions or
22 problems, but if you do, I'll certainly do my best to
23 help you if I properly can in addressing that question
24 or problem. Notice that I emphasize the word properly,
25 because there are some things that I cannot properly do

1 to assist you.

2 I've told you that you are the sole judges of
3 the facts, and I can't help you in deciding what the
4 facts are, that's something that you have to do
5 yourselves. But if there's anything else that I can
6 help you with, I will certainly try to do so. The
7 request or communication should be in the form of a
8 note from the foreman or the forelady, give it to the
9 Security Officer, he'll be outside of your door, he'll
10 give it to me, I'll discuss it with the attorneys, and
11 I will get back to you as soon as I can with some type
12 of a response. It may take a little while because I
13 may be occupied with other things, this is not the only
14 case that I have, so I may be doing something else, but
15 I will get back to you as quickly as I can.

16 If you should have to send me a note, please
17 don't indicate in the note what the status of your
18 deliberations is. Don't tell us you're eight to four
19 for this or against that. We don't want to know that.
20 All we want to know is what your question is or
21 problem.

22 When you go into the jury room, from here on out
23 your time schedule is up to you. Your hours can be
24 whatever you want them to be. If by the end of the day
25 you haven't reached a verdict on all of the counts, you

1 can either stay late or you can choose to go home and
2 come back tomorrow and resume your deliberations then.
3 If you do want to stay, though, we would like to have
4 some advanced notice so I can make arrangements with
5 the staffing in the courthouse. I'll have the clerk
6 check with you a little later in the afternoon where
7 you are, whether you want to stay later or whether you
8 have a verdict or whether you want to come back
9 tomorrow. I can't think of anything else that I need
10 to tell you now.

11 Counsel, is there anything further that I need
12 to tell the jury?

13 MR. MINNS: No, your Honor.

14 MR. VILKER: No, your Honor your Honor.

15 THE COURT: Okay, I'll ask the Security Officer
16 to come forward so the Clerk can administer the oath.

17 (Security Officer Sworn)

18 THE COURT: Ladies and Gentlemen, this case is
19 in your hands. You may return to the jury room to
20 begin your deliberations. You can bring your notebooks
21 with you. Please do.

22 (Jury Not Present)

23 THE COURT: Counsel, have you checked the
24 exhibits to be sure that everything that has been
25 admitted is there and nothing is there that has not

1 been admitted?

2 MR. VILKER: We have, your Honor.

3 THE COURT: Have you had an opportunity to
4 review the proposed verdict form?

5 MR. MINNS: Yes, your Honor. We have no
6 objection.

7 MR. VILKER: Looks perfect, your Honor.

8 THE COURT: You indicated that you wanted to
9 approach the side bar, Mr. Minns?

10 MR. MINNS: Please.

11 (Bench Conference Held off the Record)

12 THE COURT: Court will be in recess

13 (Jury Deliberations - 2:30 - 4:30 P.M.)

14 (Jury Present)

15 THE COURT: Mr. Foreman, I understand the jury
16 would like to go home and return tomorrow morning?

17 JURY FOREMAN: That's correct.

18 THE COURT: Now, the Clerk wanted to indicate
19 they want to return at 9:30. That's okay with me.
20 Anytime from 7:30 on would be all right, so if you
21 wanted to come earlier, we could do that.

22 JURY FOREMAN: Anyone like to come earlier?

23 (Jury Discussion)

24 JURY FOREMAN: Nine o'clock.

25 THE COURT: I just want to remind you, now you

1 should stop deliberating, and, again, don't get any
2 information about this case from any outside source,
3 and don't resume deliberating tomorrow until I've
4 brought you back into the courtroom, verified that
5 everyone is present, and then send you back.

6 One thing particularly you want to avoid, if one
7 of you arrives earlier than the others, you don't want
8 to start deliberating and thereby excluding the others
9 from those deliberations. So wait until I bring you
10 back in and I will tell you to resume your
11 deliberations.

12 See you tomorrow morning at 9:00.

13 (Jury Excused - 4:30 P.M.)

14 THE COURT: Court will be adjourned until
15 tomorrow morning.

16 (ADJOURNED 4:32 P.M.)

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