10 OCTOBER 2006 -- ROBERTO OLIVO JURY CHARGE

THE COURT: Ladies and Gentlemen, it's now my duty to explain to you the law that applies in this case, and it's your duty to apply the law, as I explain it to you, to the facts, as you determine the facts to be.

And, in considering my explanation, it's important that you consider it in its entirety. In other words, don't pick and choose different parts of it to the exclusion of everything else. In order to apply the law accurately, you've got to consider my entire explanation in context.

Now, first of all, you've heard some testimony in this case about other individuals that may have been involved in the incident that's the subject of this case, Mr. Castillo for one, and there have been others who have been mentioned. And you shouldn't start wondering why they're not here as part of this trial. That shouldn't concern you.

Your job here is to determine whether the evidence presented proves that Mr. Olivo is guilty of the offenses with which he is charged, and if you start guessing as to why you think some of these other people aren't here, the chances are very good that you're going to guess incorrectly and that, as a result, you're going to make a decision that is not fair and is not going to be based on the evidence against this Defendant.

Now, the indictment in this case, as I think you already know, consists of two counts or charges. Count I charges the Defendant, Roberto Olivo, with conspiring to possess heroin with intent to distribute. And Count II charges him with possession of heroin with intent to distribute.

And, again, I think I mentioned this earlier, but since there are two separate counts, you should consider each of those counts individually. In other words, you shouldn't assume that just because you may find the Defendant guilty or not guilty of one of the counts, that, therefore, he must be guilty or not guilty of the other count.

You have to look at the-- at each of the two counts, the charges contained in each count, and the evidence that relates to that count and determine whether you're satisfied that the Defendant has been proven guilty of each of those charges or either one of those charges.

Now, I'm going to-- even though the first count is a conspiracy count, I'm going to discuss the possession with intent to distribute count first because I think it makes it a lot easier to understand. So I'll start with Count II, which I said is the charge of possession of heroin with intent to distribute it.

And, specifically, Count II charges that, on or

about May 27, 2006, the Defendant possessed 100 grams or more of a mixture or substance containing a detectable amount of heroin with intent to distribute it, in violation of a Federal Statute, which is Section 841(a)(1) of Title 21 of the United States Code.

And, alternatively, Count II charges that the Defendant aided and abetted others in possessing heroin with intent distribute it, and the aiding and abetting statute is a different statute, and I'll explain that to you a little bit later.

Let me start with the-- with Section 841(a)(1). I'll read to you the relevant portion of that Statute, and then I'll explain to you what it is the Government has to prove in order to convict the Defendant of violating that Statute.

Section 841(a)(1), the possession with intent to distribute Statute says, "It shall be unlawful for any person knowingly or intentionally to distribute or to possess with intent to distribute a controlled substance."

Now, in order to prove that the Defendant is guilty of violating that Statute of possessing, in this case, heroin with intent to distribute it, the Government has to show or prove three things or what the law refers to as elements.

First, the Government has to prove that Mr. Olivo

possessed a mixture or substance containing a detectable amount of heroin.

The second thing the Government has to prove is that Mr. Olivo possessed it with a specific intent to distribute it.

And, third, it has to prove that he acted knowingly and intentionally.

Now, let me explain some of these terms for you. I'm sure you probably have a good idea as to what most of them mean, but I don't want you to be guessing on this, so I'm going to explain what some of those terms mean in the eyes of the law.

And, first of all, let me just say that a mixture or substance containing heroin is a controlled substance within the meaning of the Statute.

Now, in determining whether the Government has proven that Mr. Olivo possessed a mixture or substance containing heroin, you should keep in mind that there are two kinds of possession that the law recognizes. There's what's called actual possession, and there is what's called constructive possession.

When a Defendant has direct and immediate control over a substance, like heroin, the Defendant may be found to be in actual possession of the heroin. Direct and immediate control may exist when the substance is on the Defendant's

person or it's within his reach.

When a Defendant has indirect control over a substance or indirect power over a substance, the Defendant may be found to have constructive possession of the substance. So, in other words, one can have-- can be in constructive possession of a substance even though he doesn't have the substance on his person or it isn't immediately within arm's reach.

And indirect control can exist when the substance is readily accessible to the Defendant and the Defendant has both the power and the intent to exercise control over it.

The law also recognizes that possession can be either sole or joint. And, by sole possession, I mean that the Defendant-- or sole possession exists when a Defendant by himself, alone, has possession of a substance.

Joint possession exists when the Defendant, acting in conjunction with one or more other persons, has possession of the substance.

So if one person alone has either actual or constructive possession of a substance, that person is said to be in sole possession.

And if one person, acting in conjunction with one or more other persons, has either-- well, it wouldn't be sole, but has possession of the substance, that person would be said to be in joint possession of the substance.

So, to summarize, a person doesn't have to have a substance on his person or within his immediate reach in order to be in possession of the substance. But the person does-- it is required that the Government show that the person have both the power and the intention to exercise control over the substance, either alone, by himself, or in concert or conjunction with others.

Evidence that a Defendant was present near a substance or that he associated with others who may have possessed the substance are certainly factors that you can consider, but they do not by themselves prove that the Defendant possessed the substance.

To find possession, as I said, you have to be satisfied that the Defendant knowingly had both the power and the intention to exercise control over the substance, either by himself or in conjunction with other persons.

In determining whether Mr. Olivo possessed the heroin with a specific intent to distribute it, you should understand that specific intent means an intent to distribute the substance knowing that it's heroin and knowing that it's unlawful to distribute it.

And the term distribute means to transfer possession of the substance or to deliver it to another person or persons.

The Government doesn't have to prove that Mr. Olivo

specifically knew that the substance was heroin, but it's-- it must show that the Defendant knew that it was a controlled substance and that he intended to violate the law by delivering it or distributing it to another person.

Intent to distribute a controlled substance can be inferred from the quantity of the substance that was possessed. If it's a large quantity, then you can infer that the Defendant possessed it not for his own use, but for the purpose of delivering it to someone else.

Also, keep mind that, in determining the intent with which the Defendant may have acted, you can-- nobody can look in to a person's mind and see exactly what they're thinking, but you can certainly ascertain an individual's intent by looking at what that person said, what that person did, and the circumstances under which that person acted. In other words, you can look at all of the evidence, and you can draw reasonable inferences from that evidence as to what it shows the person may have intended.

I also told you the Government has to show that the Defendant acted knowingly and-- acted knowingly, and to act knowingly means to act voluntarily with an awareness of the nature and likely consequences of the act that the person commits and not by reason of accident or mistake.

And the reason that the law requires proof that a Defendant acted knowingly is to make sure that nobody is

convicted for engaging in an act that the person didn't intend to commit or the nature of which the person did not understand. And, again, whether a Defendant acted knowingly or not may be inferred from what the Defendant said, what he did, and the circumstances under which the Defendant acted.

Now, I told you that, under Count II, Count II charges the Defendant not only with possessing heroin with intent to distribute it, but it also charges, in the alternative, that at least he aided and abetted someone else in possessing heroin with intent to distribute it.

And if that's the case, aiding and abetting is also an offense, it's a violation of Section 2 of Title 18 of the United States Code, and I'll read that section to you, or the relevant part of it.

That section says, "Whoever commits an offense against the United States or aids, abets, counsels, commands, et cetera, or procures its commission is punishable as a principal. Whoever willfully causes an act to be done, which, if directly performed by him or another, would be an offense against the United States, is punishable as a principal."

In other words, translated, that means basically that a person who aids and abets in the commission of a crime is just as guilty of the crime as the person who actually committed it. To put it another way, an individual

may be convicted of a crime if that person actually commits the crime or if that person aids and abets someone else in committing the crime.

In order to establish that the Defendant is guilty of aiding and abetting others in possessing heroin with intent to distribute it, as charged in the indictment, again, there are certain things, or elements, that the Government must prove. And it just so happens that the three elements are different from the elements that they have-- the Government has to prove in order to convict an individual of actually possessing heroin with intent to distribute.

In order to convict a Defendant of aiding and abetting possession of heroin with intent to distribute, what the Government has to prove is, first of all, that the particular crime in question, in this case, possession of heroin with intent to distribute, was committed by somebody. Now, you can't have-- you can't be guilty of aiding and abetting in the commission of an offense unless the offense was committed.

The second thing the Government has to prove is that the Defendant assisted in the commission of the crime or caused the crime somehow to be committed.

And the third thing the Government has to prove is that the Defendant intended to assist in the commission of

the crime or to cause the crime to be committed.

So, as I said, one can't be guilty of aiding and abetting the commission of a crime unless the crime was committed. But if the crime was committed, the Government doesn't have to prove that the Defendant personally committed it, but it must prove that the-- that somebody committed it and that the Defendant willfully did something to help the person who committed the crime, to help cause the crime to be committed, or to cause the crime to be committed.

Assisting in or causing the commission of a crime is said to be willful if it was done knowingly and voluntarily and with the intent to see that the crime was committed or to facilitate the commission of the crime.

And, once again, the mere fact that a Defendant may have been present near where a crime was committed or that a Defendant may have known or associated with someone who committed a crime doesn't make the Defendant automatically guilty of aiding and abetting.

The Defendant must have done something to actually facilitate the commission of the crime, or, to put it another way, the Defendant must have been a participant and not merely a spectator.

So much for Count II. I tried to explain Count II, both theories, either the Defendant possessed heroin with

intent to distribute or he aided and abetted others in possessing heroin with intent to distribute.

I'm going to go back now to Count I, which is the conspiracy count. And Count I charges that, from-- or about May 26th of 2006, up to and including May 27 of 2006, the Defendant conspired or agreed with other individuals to possess a mixture or substance containing a detectable amount of heroin with intent to distribute it, in violation of another Statute, which is Section 846 of Title 21 of the United States Code. And, again, I'll read to you the relevant portion of the Statute, and then I'll explain to you what things the Government has to prove.

The Statute says, "Any person who conspires to commit any offense," defined in the laws dealing with drugs, "shall be guilty of the offense of conspiracy." And the law concerning drugs that the Defendant is charged with conspiring to violate is the law that prohibits possession of heroin with intent distribute, which is the subject of Count II. So what Count I charges is that the Defendant conspired to possess heroin with intent to distribute it.

Now, in order to establish that the Defendant is guilty of that charge of conspiring to possess heroin with intent to distribute it, the Government, again, has to prove three things, but, again, three different things.

The first thing the Government has to prove is that

there was a conspiracy by two or more persons to possess heroin with intent to distribute it.

The second thing it has to prove is that this Defendant participated in the conspiracy voluntarily.

And the third thing that it has to prove is that this Defendant intended that the offense of possession of heroin with intent to distribute it be committed.

Now, let me define some of these terms for you a little better.

First of all, the term conspiracy. Conspiracy is defined as a mutual agreement or understanding by or among two or more persons to do something unlawful, to either commit a crime or to do something else that violates the law. Conspiracy is sometimes referred to as a kind of a partnership for criminal purposes in which each member of the conspiracy becomes responsible for what the other members or partners do.

It's important to remember that a conspiracy to commit a crime and the actual commission of the crime are two different things. They're two separate and distinct offenses.

The gist of conspiracy is the agreement to perform the unlawful act. It doesn't matter whether the act is ever done or not, whether the crime is ever committed. The offense is the agreement to commit the crime.

So one can be guilty of conspiracy to commit, in this case, possession of heroin with intent to distribute it, even if nobody ever possesses the heroin with intent to distribute. And that makes it different from aiding and abetting, and I'll get back to that in a minute.

In order to establish that a conspiracy existed, there has to be proof that the alleged members of the conspiracy somehow reached a mutual agreement or understanding to try to see that this crime was committed or to commit this crime.

But that doesn't mean that the Government has to prove that they signed some document agreeing to commit the crime or that they even specifically verbally agreed to commit the crime. An informal or an unspoken agreement is sufficient.

What the Government has to prove is that the Defendant-- or that there was some form of mutual agreement or understanding to commit an unlawful act. And the fact that different persons may have engaged in similar conduct or associated with one another or-- or so forth are not by themselves sufficient to establish the existence of a conspiracy. There has to be some evidence that those persons had reached some agreement or understanding they were going to commit the crime.

And the evidence doesn't have to be direct

evidence. You can prove a conspiracy by means of circumstantial evidence. And, again, I'll explain that a little more fully later. But basically what it means is you can prove the existence of a conspiracy by proving certain facts from which you can infer the existence of a conspiracy.

Proof of a conspiracy doesn't require evidence that everyone involved agreed on all of the steps to be taken in order to achieve the purpose of the conspiracy. It doesn't require even that all of the members of the conspiracy talked to one another.

It does require proof beyond a reasonable doubt that the members of the conspiracy, the alleged members of the conspiracy, somehow reached a mutual agreement or understanding to commit an unlawful act.

Also, in determining whether an individual is a member of a conspiracy, bear in mind that different members of a conspiracy may perform different roles. Some of them may be principal players in the conspiracy, they may have major roles. Others may have relatively minor roles. It doesn't matter because, if you're a member of the conspiracy, you're a member whether you have a major role or a minor role. But you must be a participant in the agreement to commit the unlawful act.

Now, as I told you-- we'll just get back to this

difference between conspiracy and aiding abetting. The two differences between aiding and abetting and conspiracy are, first of all, that proof of aiding and abetting requires proof that the offense that the-- that one is accused of aiding and abetting was committed. You can't be guilty of aiding and abetting unless the offense that you are charged with aiding and abetting was committed by somebody.

And, on the other hand, proof of a conspiracy does not require proof that the crime that was the object of the conspiracy was committed because, as I've said, the gist of the offense of conspiracy is the agreement to commit the unlawful act.

Now, if you-- so much for my explanation of what the Government has to show in order to convict the Defendant of conspiracy.

If you find that the Government has proven either that the Defendant-- that the Defendant is guilty of the charges contained in either count of this indictment; that is to say, that he's guilty of the conspiracy charge in Count I, or he is guilty under Count II of either possessing heroin with intent to distribute it or aiding and abetting in the possession of heroin with intent to distribute it, if you find he's guilty of either or both of those counts, then you need to tell us what the quantity of heroin was in connection with that count.

In other words, if it's the conspiracy count, how much heroin did the Defendant conspire to possess with intent to distribute? And if it's with respect to the possession with intent to distribute count, how much heroin did the Defendant possess with intent to distribute?

Now, that may not-- that's not quite as complicated a task as it may first seem. I see some of you sort of saying, oh, gee, how are we going to do that? You'll only be asked on the verdict form that goes with you in to the jury room, if you find the Defendant guilty of either of those counts, all we want to know is whether the quantity was 1,000 grams or more, whether it was more than-- 100 grams or more but less than 1,000 or whether it was less than 100.

And I'm sure, when you get in the jury room, you're going to recall that there has been evidence about the various quantities involved, and I believe that's in some of the exhibits. So that shouldn't be a-- you know, as complicated a task as it may first seem.

Now, I've told you what it is that the Government has to prove in order to establish that the Defendant is guilty of the charges in either count of the indictment. And, in order to prove the Defendant guilty, the Government has to prove each and every one of the elements that I have told you relates to that count or charge.

If the Government does not prove any one or more of the elements that I told you they must prove in connection with a particular charge, then you should find the Defendant not guilty of that charge.

On the other hand, if you determine that the Government has proven each and every element relating to that charge, then you should find the Defendant guilty of that charge.

And the Government has to prove these things beyond a reasonable doubt. Now, what does that mean? Well, I can't really give you a very definitive explana-- definition of what it means to prove something beyond a reasonable doubt. All I can tell you is that it doesn't mean that the Government has to prove these things beyond any conceivable shadow of a doubt.

It means only that the Government must prove these things beyond a reasonable doubt. And reasonable doubt is a doubt based upon reason and common sense. It may arise from the evidence that's been presented to you, or a lack of evidence.

And I can't really tell you much more than that, other than to say that you know what the word reasonable means, and you know what a doubt is, and you'll have to determine whether the Government has proven the things that it must prove beyond a reasonable doubt.

When you go in to the jury room, you will have with you the indictment, which I think I mentioned at the beginning of the case, is simply the accusation against the Defendant. It contains the allegations, what it is the Defendant is alleged to have done.

It is not evidence in any way. The indictment doesn't prove anything. The indictment simply tells you what the charges are so that you can determine whether the Government has proven these things beyond a reasonable doubt.

I also told you earlier that the burden is on the Government to prove that the Defendant is guilty. It's not up to the Defendant to prove that he's not guilty. And I mentioned that, if the Defendant chose not to present evidence or not to testify, you should not penalize him for that. That's his right. And since he has no obligation to prove anything, he has no obligation to present any evidence or to testify.

So, in this case, you shouldn't draw any adverse inference from the fact that he has elected not to testify or present evidence. What you need to do is to focus on the evidence that has been presented and whether, in your judgment, that evidence proves that the Defendant is guilty beyond a reasonable doubt.

All right. Now you know what it is the Government

has to prove and the standard of proof that applies here, the beyond-a-reasonable-doubt standard. Now, the next question is: How do you go about determining whether the Government has proven these things beyond a reasonable doubt?

Well, as I've said, you have to base that decision solely on the evidence that's been presented to you during the course of the trial and not on anything else, not on what the lawyers have said, not on anything, other than the evidence.

The evidence in this case, as I've said earlier, consists of the testimony of the witnesses, what's in the exhibits that will go with you in to the jury room, and we did have a stipulation from the lawyers, an agreement, and that's in-- that's been entered as an exhibit, so you can examine that in the jury room.

Let's take those categories one at a time. First of all, with respect to the testimony of the witnesses, your principal task and the main reason you're here is to assess the credibility of the witnesses or, to put it another way, how much weight the testimony of those witnesses should receive.

And, in making that determination, there are a number of factors that you ought to consider. One is the opportunity, or lack of opportunity, the witness had to have

accurately observed the things that the witness related to you. In other words, was the witness in a good position to have accurately seen, heard or otherwise observed the things that the witness told you?

A second factor to consider is the witness' memory. These events happened some time ago, and even if the witness was in a good position to have accurately seen or heard what the witness told you, does it seem to you that the witness' memory was accurate and complete, or does it seem to you that the witness' memory was really not very reliable?

The third factor is the witness' appearance on the stand. And one reason that we generally require witnesses to come in and testify in person, rather than have somebody tell you what someone outside of the courtroom may have said, is that it gives you an opportunity to size up the witness and to draw some conclusions, based on your observations, as to how much weight this witness' testimony should receive.

The fourth factor is the probability, or improbability, of the witness' testimony. Just because a witness says something and nobody contradicts the witness, you don't have to accept the witness' testimony at face value if what the witness tells you seems to you to be implausible or impossible. You don't have to accept that testimony. You can disregard it. Witnesses sometimes make

mistakes, and you can-- you're free to disregard a witness' testimony.

Another factor is whether a witness had anything to gain or lose from the outcome of the case, and of course that doesn't mean that just because a witness may have a stake in the outcome, that you ought to automatically disregard or discount the witness' testimony. But it's a factor you can consider.

You've heard testimony in this case from several law enforcement officers or Government agents, and you should remember that, in deciding how much weight to give to a witness' testimony, your decision shouldn't be based on what position the witness may hold, but, rather, it should be based on your assessment of that witness as an individual.

You've heard from Mr. Falette, who acknowledged that he's provided information to the Government in exchange for pay and perhaps other favorable treatment. And it's perfectly proper for the Government to present testimony from such witnesses, but you should consider the testimony of such witnesses with greater care than you might consider the testimony of another witness, just to make sure that it isn't influenced in some way by an expectation of favorable treatment or some desire to falsely blame the Defendant or someone else. You need to look very carefully at the

testimony of such a witness.

Keep in mind, too, that it isn't the number of witnesses who testifies that should govern your determination, but, rather, it's the quality of the testimony.

You've heard evidence in this case about a statement that the Defendant is alleged to have made to Government agents, sort of confession of sorts, I guess you might call it, and it's up to you to decide, first of all, whether you believe that, that statement was made and, if so, whether it was voluntary. And the amount of weight that you give to that testimony should be based on those determinations, whether you believe the test-- the statement was made and whether it was voluntary.

And, in determining whether the statement was voluntary, you can consider things such as the age, the education, the physical and mental condition of the Defendant, the circumstances under which the statement may have been made.

The second category of evidence is the exhibits. And, as I've said, you will have those with you in the jury room. You can examine them to whatever degree you feel is sufficient. But keep in mind that the exhibits, like the testimony of the witnesses, are simply tools to be used by you in determining the facts in the case.

In other words, just because something's been admitted as an exhibit doesn't mean that you are required to accept it at face value. You should evaluate it in the light of all of the evidence that's been presented during the trial.

Now, I've told you that you have to base your decision entirely on the evidence that's been presented during the trial, but that doesn't mean that you are strictly limited to the literal testimony of the witnesses and the contents of the exhibits. You can draw from the evidence from those two sources whatever inferences or conclusions may seem warranted.

In other words, there are two ways prove a fact in any case. One is to prove it by direct evidence; that is to say, by the testimony of a person who claims to have actually observed the fact, or by the presentation of an exhibit that shows the thing itself.

The other way to prove something is by what's called circumstantial evidence. And proving something by circumstantial evidence means proving a series of two or more facts from which you can reasonably infer the existence or nonexistence of a third fact.

Let me give you an example that may be a little clearer than what I've tried to explain to you in words. Suppose, on some winter night before you go to bed, you look

out of the window and the ground is bare. The next morning you wake up, and there's a foot of snow on the ground. If someone asks you whether it snowed last night, your answer would probably be yes.

But if you had to come in to court and prove that it snowed, how would you go about doing it? Well, one you way you could do it would be to find someone who was awake when the snowflakes were falling, and that person could testify that they actually saw the snowflakes falling from the sky. That would be an example of proving that it snowed by means of direct evidence, the direct observation of someone who actually saw the snowflakes falling.

But if you couldn't find someone who was awake when the snowflakes were falling, you could testify that-- as to two facts. Number one, before you went to bed, the ground was bare. When you woke up, a foot of snow on the ground. That's direct evidence based on your direct observation of the two facts. And from those two facts, it is certainly reasonable to infer that it snowed last night.

Now, a word of caution here, and that is that there's a difference between proving something by circumstantial evidence and guessing or speculating, and the difference is-- there are actually two differences. One is that, in order to prove something by circumstantial evidence, the facts from which the inference is drawn must

be established by the direct evidence. And the second-- and, in this case, the two facts, that the ground was bare and the next morning there was a foot of snow on the ground.

The second thing to keep in mind is that the inference to be drawn must be a reasonable inference. So it would not be reasonable to infer from the two facts that I have mentioned that it's going to snow next Wednesday night. That would not be a reasonable inference to draw from those two facts.

And the law doesn't recognize any distinction between proof by direct evidence or proof by circumstantial evidence. Both are valid methods of proof, but the law does require, in a criminal case, that any fact that must be proven in order to find the Defendant guilty must be proven beyond a reasonable doubt, whether it's proven by direct evidence or circumstantial evidence.

Now, I've told that you that it's up to you to decide the facts in the case. That's not my role. And if, during the course of the trial, you think that I have said or done anything that expresses an opinion on my part as to what the facts are, I can tell you right now that you are mistaken, and you should not be concerned with what you might think my opinion may be as to the facts. That's entirely up to you to decide.

There have been times, not many, during this trial

when counsel have objected. And that, the fact that counsel may have objected, shouldn't play any role in your decision. If evidence was admitted, you're free to consider it for whatever value you think it has. You shouldn't discount it because someone may have objected to it. And certainly you should not penalize either party because an attorney may have found it necessary to object to evidence that, that attorney thought was improper.

This case is brought in the name of the United States of America, as you may know, but that doesn't mean anything either, as far as your decision is concerned because any-- all parties who come in to this Court come in here as equals. They're entitled to the same consideration, no matter who they are, so that should not be a factor in your decision.

Now, I'm going to ask the lawyers to approach the sidebar here for a moment to tell me if they think I have forgotten to tell you anything I should have told you or if I have misstated anything that I did tell you. Counsel?

(Discussion at sidebar)

MS. BECKNER: I just wanted to clarify, Your Honor, the verdict form, they're going to be asked separately for each count?

THE COURT: Look that over. Do we have copies? We'll make copies.

Do you have any objection to that?

MR. CICILLINE: No.

(End of discussion at sidebar)

THE COURT: Ms. Cruiser and Mr. Carpenter, you both have been alternates in this case, your job was to be prepared to fill in if any of the regular jurors were unable to continue.

And, fortunately, all the regular jurors are able to continue, but I want to thank you very much for your attention. And it's tough to be an alternate sometimes because you're like a back-up quarterback, you never know when you're going to be called upon, but you have to be ready. So I thank you very much for being ready. You're excused.

I'd ask the remaining Ladies and Gentlemen, in order to reach a verdict in this case, all 12 of you must agree as to what that verdict ought to be. So you cannot return a verdict either of guilty or not guilty with respect to either count in the indictment unless you are unanimous.

And there are a couple of things you need to keep in mind when you go in to that jury room, a couple of principles. And the first one is that you need to approach the deliberations with an open mind. You need to listen to what the other jurors have to say, if they disagree with you, or if you disagree with them. And you need to be

humble enough to change your opinion if, after listening, you become convinced that you were incorrect and the other jurors are correct.

The other principle, which is equally important, is that you have to keep mind that you each have an independent responsibility to vote for the verdict that you believe is the correct verdict based on the evidence, as you understand it, and the law, as I have explained it to you.

And you need to have the courage to stick to your convictions if, after listening with an open mind to what the other jurors have to say, you remain convinced that you are correct and they're incorrect. And that's true even if you're the only one, even if all of the 11 other jurors disagree with you.

Now, I know those principles are somewhat in conflict with one another, but I've found in my experience that, in the vast majority of cases, the jurors are able to reach unanimous verdicts without doing violence to either of those principles, and I'm confident that you will be able to do the same. But if you can't, well, we'll cross that bridge when we get to it.

As far as your-- as far as some of the other details are concerned, when you get in to the jury room, the first thing you need to do is to select a foreman or forelady. That person will have three basic

responsibilities. One, to act as moderator of your deliberations and to ensure that they're conducted in an orderly manner and that anyone who wants a chance to speak has a fair opportunity to do that.

The second responsibility will be to complete and sign the verdict form when the jury has reached a unanimous decision. The verdict form is a fairly simple form. It just involves checking the applicable blank. There are two counts, and it asks you to check whether you find the Defendant guilty or not guilty of each of the two counts and, if guilty, asks you to tell us the quantity of heroin involved, whether it was 1,000 grams or more, 100 grams or more but less than 1,000 or less than 100.

And the third responsibility, which you may not have to exercise, is that, if it becomes necessary for you to communicate with me for any reason, the communication should be in the form of a brief note from the foreman or forelady just telling me what it is, your question or problem is, and that should be given to the Security Officer who will be outside the door. He'll deliver it to me, I'll discuss it with the lawyers, and I will try to respond as quickly and helpfully as I properly can, and I emphasize the word properly because there are some things that I cannot properly do to help you.

For example, I've told you that you're the ones

that have to decide what the facts in the case are, and I can't participate in that, I can't help you in deciding what the facts are. But if there's anything else that I can do, please don't hesitate to ask.

Just be careful in your note not to tell us anything other than what your immediate question or problem is. We don't want to know what the status of your deliberations is, whether you're 8-4 for this or for that. All we want to know is what your problem is.

As far as your hours are concerned, they're pretty much whatever you want them to be. Our normal adjournment time is 4:30, but if you wish to stay late-- I'll tell you, you don't have much time to deliberate. I don't know if you'll be able to reach a verdict by 4:30.

If you want to stay late, just tell me, just give me a little advanced notice so that I can arrange the staff in the building if you want to stay after normal closing hours, or if you don't reach a verdict on any particular day, today or whatever, you can come back tomorrow and resume your deliberations then. We'll provide you with lunch tomorrow if you're here then.

I can't think of anything else that I need to tell you. You'll have a tape in the jury room of-- an audiotape of my explanation of the law, so that if you need to refresh your memories, you can do that. Just remember what I said

earlier, that you need to consider the entire charge. Don't pick out little pieces of it and forget about everything else. But you will have a tape available to you.