

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA)
)
 v.) Cr. No. 07-138-S
)
SOUVANH KEOSOUVANH)

JURY INSTRUCTIONS

Introduction

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

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

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

You should not worry about memorizing or writing down all of the instructions as I state them, because I will send into the jury room a written copy of my instructions. However, you must know that the law is as I will give it to you from the bench; the written copy is merely a guide to assist you.

Presumption of Innocence

As I told you at the beginning of the trial there are several important rules that apply in a criminal trial. The first of these is that the Defendant is presumed to be innocent of the accusations against him. This presumption of innocence remains with the Defendant unless and until the Government presents evidence satisfying you beyond a reasonable doubt that the Defendant is guilty.

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

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

Defendant's Constitutional Right Not to Testify

The second rule of a criminal case is that a Defendant is not obligated to present any evidence or prove his innocence, and a Defendant has a constitutional right not to testify. No inference of guilt, or of anything else, may be drawn from the fact that the Defendant did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

Proof of All Elements

I will shortly explain the offenses with which the Defendant is charged and the elements the Government must prove in order to establish that the Defendant is guilty of each offense.

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

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

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

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

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

Reasonable Doubt

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

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge.

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

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

that overcomes every possible doubt.

Concluding my instructions on the burden, then, I instruct you that what the Government must do to meet its heavy burden is to establish the truth of each part of each offense charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to a particular charge against the Defendant, you will return a verdict of guilty on that charge. If, on the other hand, you think there is a reasonable doubt about whether the Defendant is guilty of a particular offense, you must give the Defendant the benefit of the doubt and find the Defendant not guilty of that offense.

Indictment - Effect

You will have the Indictment with you in the jury room to help you remember the precise nature of the charges against each Defendant. The Defendant is not on trial for any conduct not specifically charged in the Indictment, and the guilt or innocence of any other person mentioned in the Indictment or in this case should not be part of your verdict.

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

Summary of the Charges

The Indictment in this case contains nine counts directed at the Defendant. Count I charges the Defendant with conspiring to possess with intent to distribute five kilograms or more of cocaine. Count II charges the Defendant with possessing a firearm in furtherance of a drug trafficking crime. Count III charges the Defendant with conspiring to interfere with commerce by way of robbery. Count IV charges the Defendant with possessing a firearm in furtherance of a crime of violence. Count V charges the Defendant with being a felon in possession of a firearm. Finally, Counts VI-IX charge the Defendant with distributing a controlled substance, namely, methylenedioxymethamphetamine or, as it is commonly known, ecstasy.

Now, each count of the Indictment is considered to be a separate offense charged against the Defendant. You are to consider and decide each count separately and on its own merits. The fact that you may find the Defendant guilty or not guilty as to one of the offenses charged should not control or have any bearing whatsoever on your finding as to any other offense charged in the Indictment.

Count I

(Conspiracy to Possess With Intent to Distribute Five Kilograms
or more of Cocaine)

In Count I, the Defendant is accused of conspiring to knowingly and intentionally possess with intent to distribute five kilograms or more of a mixture and substance containing a detectable amount of cocaine. It is against federal law to conspire with someone to commit this crime.

For you to find the Defendant guilty of conspiracy to distribute cocaine under Count I, you must be convinced that the Government has proven each of the following things beyond a reasonable doubt, as to the Defendant:

First, that the agreement charged in the Indictment, and not some other agreement or agreements, existed between at least two people (not including the Government agent), including the Defendant, to possess five kilograms or more of cocaine with intent to distribute; and

Second, that the Defendant willfully joined in that agreement.

Count I - Definition of Conspiracy

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details. But the Government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors. A conspiracy is complete upon the making of an agreement.

Count I - Definition of "Willfully"

To find a conspiracy, you must find that the Defendant willfully joined in the agreement. The term 'willfully' in this context means to act voluntarily and intelligently and with the specific intent that the underlying crime (here, possession of five kilograms or more of cocaine with intent to distribute) be committed; that is to say, it means to act with bad purpose, either to disobey or disregard the law – not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before the Defendant can be said to have willfully joined a conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Intent may be inferred from the surrounding circumstances.

Proof that the Defendant willfully joined in the agreement must be based upon evidence of his own words and/or actions. You need not find that the Defendant agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that he participated in each act of the agreement or played a major role. But the government must prove beyond a reasonable doubt that he knew the essential features and general aims of the venture. Even if the Defendant was not part of the agreement at the very start, he can be found guilty of conspiracy if the government proves that he willfully joined the agreement

later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Definition of "Possession"

Throughout these instructions you will hear me use the terms "possession" and "possess" in reference to elements the government must prove beyond a reasonable doubt for certain crimes charged in the Indictment. These terms mean to exercise authority, dominion or control over something. It is not necessarily the same as legal ownership.

The law recognizes different kinds of possession. Possession includes both "actual" and "constructive" possession. A person who has direct control of something on or around his person is said to be in actual possession of it. A person who is not in actual possession, but who has both the power and intention to exercise control over something is in constructive possession. Briefness of contact with something alone does not preclude a finding of possession. Whenever I use the term "possession" or "possess" in these instructions, I mean actual as well as constructive possession.

Count I - Definition of "Intent"

As I have mentioned, a person's "intent" may be inferred from the surrounding circumstances. Intent to distribute may, for example, be inferred from a quantity of drugs larger than that needed for personal use. In other words, if you find that the Defendant conspired to possess a quantity of cocaine - more than that which would be needed for personal use - then you may infer that the Defendant intended to distribute. The law does not require you to draw such an inference, but it permits you to do so.

**Count I - Conspiracy - Success Immaterial; Impossibility not a
Defense**

The government does not have to prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime.

Also, it is no defense to a conspiracy charge that success was impossible because of circumstances that the Defendant did not know about. This means that you may find the Defendant guilty of conspiracy even if it was impossible for him to successfully complete the crime that he had agreed to commit.

Count I - Members of Conspiracy

A conspiracy as I've defined it for you must include at least two conspirators. The conspiracy charged in the Indictment in this case is among the Defendant, Mr. Nhim, Mr. Phommarath and Mr. Choummalaithong. Agent Chau is not a part of any conspiracy charged, and no conspiracy can exist if the Defendant only conspired with a government agent. If you find that the Defendant was not a member of any conspiracy charged in the Indictment, then you must find him not guilty of that charge, even if you find that he may have been a member of some other conspiracy not charged in this case.

Count I - Lesser Included Offense

**(Conspiracy to Possess With Intent to Distribute 500 Grams or
more of Cocaine)**

If you find that the government has failed to prove beyond a reasonable doubt that the Defendant conspired to possess with intent to distribute 5 kilograms or more of cocaine, you should then consider whether the government has proven beyond a reasonable doubt that the Defendant conspired to possess with intent to distribute 500 grams or more of cocaine.

For you to find the Defendant guilty of conspiracy to possess with intent to distribute 500 grams or more of a mixture and substance containing a detectable amount of cocaine, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that an agreement existed between at least two people to possess 500 grams or more of cocaine with intent to distribute; and

Second, that the Defendant willfully joined in that agreement.

Keep in mind that my prior instructions about what is required for a "conspiracy" and what it means to "willfully" join apply to this charge as well.

Count I - Lesser Included Offense

(Conspiracy to Possess With Intent to Distribute Cocaine)

If you find that the government has failed to prove beyond a reasonable doubt that the Defendant conspired to possess with intent to distribute 5 kilograms or more of cocaine, and failed to prove that the Defendant conspired to possess with intent to distribute 500 grams or more of cocaine, you should then consider whether the government has proven beyond a reasonable doubt that the Defendant conspired to possess with intent to distribute some lesser amount of cocaine.

For you to find the Defendant guilty of conspiracy to possess with intent to distribute a mixture and substance containing a detectable amount of cocaine, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that an agreement existed between at least two people to possess cocaine with intent to distribute; and

Second, that the Defendant willfully joined in that agreement.

Keep in mind that my prior instructions about what is required for a "conspiracy" and what it means to "willfully" join apply to this charge as well.

Count II

(Possession of a Firearm in Furtherance of a Drug Trafficking
Crime)

In Count II, the Defendant is charged with possession of a firearm in furtherance of a drug trafficking crime, in violation of Section 924(c) of Title 18 of the United States Code. In order for the Defendant to be found guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant committed the drug trafficking crime (involving cocaine) charged in Count I of the Indictment that I just described to you; and

Second, that the Defendant knowingly possessed a firearm; and

Third, that the Defendant possessed the firearm in furtherance of the drug trafficking crime.

Now, if you find that the Defendant is not guilty of the crime charged in Count I (conspiring to possess with intent to distribute cocaine), then you do not need to consider Count II because that means the government failed to prove the first element of Count II. Count II is only to be considered if you find the Defendant guilty of the drug trafficking crime in Count I.

Count II - Definition of "Knowingly"

The term "knowingly" under Count II and as that term has been or will be used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

Count II - Definition of "Firearm"

The term "firearm" in Count II and as it will be used in these instructions means any weapon which will or is designed to or may be readily converted to expel a projectile by the action of an explosive. The term "firearm" also includes the frame or receiver of any such weapon. A gun does not have to be operational, let alone loaded, to qualify as a firearm for purposes of this charge.

Count II - "In Furtherance of"

The government must prove as part of Count II that the Defendant possessed a firearm in furtherance of a drug trafficking crime. This means that the government must prove beyond a reasonable doubt that the Defendant possessed the firearm to advance or promote the commission of that crime. A Defendant possesses a firearm "in furtherance of" a crime if the firearm possession made the commission of the underlying crime easier, safer or faster, or in any other way helped the Defendant commit the crime. The government must illustrate through specific facts, which tie the Defendant to the firearm, some connection between the firearm and underlying crime. But, the government need not prove that the firearm was actively used during a crime.

Keep in mind that mere possession of a firearm is not enough to establish that it was possessed in furtherance of a drug trafficking crime; however, you are to consider all the circumstances surrounding possession of a firearm in determining whether it was possessed to advance or promote a crime, including whether it was loaded and accessible to the Defendant.

Count III

(Conspiracy to Interfere with Commerce by Robbery)

In Count III, the Defendant is accused of conspiring to commit a federal crime; namely, the crime of obstructing, delaying or affecting commerce by robbery in violation of Section 1951 of Title 18 of the United States Code. It is against federal law to conspire with someone to commit this crime.

For you to find the Defendant guilty of conspiracy to obstruct, delay or affect commerce by robbery under Count III, you must be convinced that the Government has proven each of the following things beyond a reasonable doubt, as to the Defendant:

First, that the agreement specified in the Indictment, and not some other agreement or agreements, existed between at least two people to obstruct, delay or affect commerce by robbery; and

Second, that the Defendant willfully joined in that agreement.

Keep in mind that my prior instructions about what is required for a "conspiracy" and what it means to "willfully" join apply to this charge as well.

Count III - Definition of "Robbery"

The term "robbery" means the unlawful taking or obtaining of personal property from the person or the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury to his person or property, or property in his custody or possession, or of anyone in his company at the time.

Count III - Definition of "Commerce" and "Affecting Commerce"

The term "commerce" means commerce between any point in a State and any point outside that State.

Conduct "affects" commerce if the conduct has a demonstrated connection or link with such commerce. The commerce affected need not be lawful. It is not necessary for you to find that the Defendant knew or intended that his actions would affect commerce, or that his actions ultimately did have such an effect. It is only necessary that the natural consequences of the conspiracy to commit robbery charged in Count III of the Indictment would have been to affect commerce in some way or degree. Moreover, the government must prove that if the robbery had occurred, commerce would have been affected, even if that effect would have been slight or minimal.

You are permitted to find that the government met its burden to prove the requisite effect on commerce if you find beyond a reasonable doubt that the Defendant intended to obtain cocaine and that the cocaine would have traveled into the State of Rhode Island from some point outside the State.

Number of Conspiracies

I want to remind you that in this case the Government has alleged that the Defendant committed two distinct conspiracies. To find the Defendant guilty of two separate conspiracies, you must find two separate agreements. For each of those two separate charged conspiracies, you must find a distinct agreement to commit the criminal act alleged. Each conspiracy must have a separate joint object agreed upon by the Defendant and his co-conspirators.

If you do not find two separate agreements or you do not find two separate joint criminal objects, then you must acquit the Defendant as to whichever alleged conspiracy the government has not proven. Keep in mind the elements of the crime of conspiracy, which I have previously defined for you, in deciding whether the Government has met its burden with respect to one or both of the alleged conspiracies.

Count IV

(Possession of a Firearm in Furtherance of a Crime of Violence)

In Count IV, the Defendant is charged with possession of a firearm in furtherance of a crime of violence, in violation of Section 924(c) of Title 18 of the United States Code.

For you to find the Defendant guilty of possession of a firearm in furtherance of a crime of violence, the government must prove the following things beyond a reasonable doubt:

First, that the Defendant committed a crime of violence (Hobbs Act robbery) charged in Count III of the Indictment that I just described to you;

Second, that the Defendant knowingly possessed a firearm;
and

Third, that the Defendant possessed the firearm in furtherance of a crime of violence.

The term "robbery" as I previously described it to you with respect to Count III is a crime of violence. In addition, I have already given you definition of "firearm," and instructed you on what it means to knowingly possess a firearm in furtherance of another crime.

Now, just as with Count I, if you find that the Defendant is not guilty of the crime charged in Count III (conspiring to obstruct, delay and affect commerce by robbery), then you do not need to consider Count IV because that means the government failed to prove the first element of Count IV. Count IV is only to be considered if you find the Defendant guilty of the crime of violence in Count III.

Count V

(Felon in Possession of a Firearm)

In Count V, the Defendant is charged with being a felon in possession of a firearm, in violation of Section 922(g)(1) of Title 18 of the United States Code.

For you to find the Defendant guilty of being a felon in possession of a firearm, the government must prove the following things beyond a reasonable doubt:

First, that prior to April 26, 2007, the Defendant had been convicted of at least one crime punishable by imprisonment for a term exceeding one year, in any court. The Defendant and the government in this case have stipulated that the Defendant has been convicted of such a crime. You are to take that fact as proven.

Second, the government must prove that the Defendant knowingly possessed the firearm described in the Indictment; and

Third, that the firearm was connected to interstate commerce.

Now, in deciding these questions, you should use my previous instructions regarding the definition of the term "firearm."

With respect to the third question, the term "interstate commerce" under Count V means that the firearm, at any time after it was manufactured, moved from one state to another. The travel need not have been connected to the charges alleged in the Indictment in this case, and it need not have been in furtherance of any unlawful activity. It is not necessary that the Defendant be the one who transported the firearm in interstate commerce. If you find that the Defendant possessed the firearm in the State of Rhode Island, and that the firearm was manufactured outside of Rhode Island, that is sufficient for purposes of "interstate commerce" under Count V.

Also, I instruct you that evidence of an earlier conviction must never be considered by you as evidence of any kind of the guilt of the crimes for which the Defendant is now on trial. You are specifically forbidden to use this kind of evidence for that purpose.

Counts VI, VII, VIII, and IX

(Distribution of a Controlled Substance)

In Counts VI, VII, VIII, and IX the Defendant is charged with knowingly and intentionally distributing mixture and substance containing a detectable amount of methylenedioxymethamphetamine, or ecstasy, on or about March 21, 2007, March 28, 2007, April 2, 2007, and April 13, 2007, respectively. This is in violation of Sections 841(a)(1) and (b)(1)(c) of Title 21 of the United States Code. It is against federal law to distribute ecstasy to another person. Remember, you must consider each Count in the Indictment separately.

For you to find the Defendant guilty of the charges in Count VI, VII, VIII, or IX, the government must prove the following things beyond a reasonable doubt:

First, that on or about the date alleged in the particular Count, the Defendant transferred ecstasy to another person;

Second, that on or about the date alleged in the particular Count, the Defendant knew the substance he transferred was a controlled substance; and

Third, that on or about the date alleged in the particular Count, the Defendant acted intentionally; that is, it was his

conscious objective to transfer the controlled substance to another person.

Now, you do not need to find that the Defendant benefitted in any way from the transfer. Also, I instruct you as a matter of law that ecstasy is a Schedule I controlled substance.

Counts VI, VII, VIII, and IX

(Knowledge of Controlled Substance)

For Counts VI, VII, VIII and IX, you must find as to each beyond a reasonable doubt that the Defendant knowingly distributed a controlled substance. However, it is not necessary that the Defendant had knowledge of which particular controlled substance it was.

Method of Assessing Evidence

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

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

The evidence that is properly before you consists of:

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

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

The evidence that is properly before you does not include:

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

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

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

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each. Whether the government has sustained its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented. You do not have to accept the testimony of any witness if you find the witness not credible. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

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

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witnesses testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.
3. The witness's appearance on the stand. Did the witness

appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.

4. The probability or improbability of the witness's testimony. Did what the witness had to say sound reasonable or plausible or did it appear to be highly unlikely or impossible.
5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

Witnesses - Credibility - Government Agents

You have heard testimony in this case from an agent of the Bureau of Alcohol, Tobacco, Firearms and Explosives who worked undercover during this investigation. There is nothing illegal or improper with the government employing an undercover investigation. Whether or not you approve of the use of an undercover agent to detect criminal acts is irrelevant to whether the Defendant committed any crime charged in this case, and it may not factor into your deliberations.

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

Witnesses - Specialized Knowledge

During this trial, you have heard testimony from witnesses who claim to have specialized knowledge in a particular field. Because of their specialized knowledge, they are permitted to express opinions which may be helpful to you in determining the facts.

Since they do have specialized knowledge, the opinions of these witnesses, whether expressed personally or in documents which have been admitted into evidence, should not be disregarded lightly.

On the other hand, merely because a witness with specialized knowledge has expressed an opinion does not mean that you as jurors must accept this opinion. As jurors, you are the ultimate finders of the facts, but you are free to consider testimony from these witnesses if it assists you in making your decisions.

In determining what weight to give to each opinion expressed by someone with specialized knowledge, you should apply the same tests of credibility that apply to the testimony of any other witness. That is to say, you should consider such things as the witness':

- opportunity to have observed the facts about which he testified; and
- apparent candor or lack of candor.

In addition, you should take into account the witness':

- qualifications, education, and experience, especially in comparison to witnesses who may have expressed contrary opinions; and
- the accuracy of the facts upon which the witness's opinions were based.

In short, you should carefully consider the opinions of these witnesses, but they are not necessarily conclusive. It is up to you to decide whether you believe the testimony of a witness and choose to rely upon it. If you decide that the opinion of a witness is not sound or if you feel it is outweighed by other evidence, you may disregard it in part or disregard it completely.

Statements by the Defendant

In the course of this trial you heard the Defendant make certain statements about prior conduct that is not the subject of this Indictment. This evidence may be considered for purposes of determining the Defendant's motive or intent. It may not otherwise be considered by you in reaching your verdict on the charges in this case.

Witnesses - Number - Weight of Testimony

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

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

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

Similarly, just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater

number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Exhibits

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

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

Use of Recordings & Transcripts

Throughout trial, you have heard conversations that were recorded. As I've told you, this is proper evidence for you to consider. To assist you, I have allowed you to have a transcript to read along as the recording is played. I will also allow you to take one set of the transcripts into the jury room with you for your deliberations. That transcript, however, is merely a guide to help you understand what is said on the recording. If you believe at any point that the transcript says something different from what you hear or heard on the recording, remember it is the CD or DVD that is the evidence, not the transcript. If there is ever a time when you recognize a variation between a recording and the transcript, you must be guided solely by what you hear on the actual recording, and not by what you see in the transcript.

Circumstantial Evidence

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

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

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

Such evidence is sometimes called circumstantial evidence.

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

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

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

Conduct of Court - General

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

Objections by Counsel

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

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

The Government as a Party

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

Bias and Prejudice

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

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

Verdict - Unanimity Required

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

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

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

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

Selection of Foreperson and Duty to Deliberate

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

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

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

Communications with the Court

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

Jury Recollection Controls - Rehearing Testimony

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

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

Return of Verdict

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

Copy of Instructions

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