UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v. CR No. 08-053-ML

BRUCE G. LAPIERRE,
ALBERT R. MARTIN, and
LORRAINE A. MARTIN.

JURY INSTRUCTIONS

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PART I: GENERAL INSTRUCTIONS

1. INTRODUCTION

Members of the jury, we have now come to the end of this trial. This case, like all criminal cases, is a serious one. I say this because the defendants and the United States have a deep concern for your mature consideration of the evidence as presented and the law which I am about to give you.

Although you as the jury are the sole judges of the facts, you are duty bound to follow the law as I instruct you, and to apply that law to the facts as you find them to be from the evidence which has been presented during this trial. You are not to single out any one instruction as stating the law. Rather, you must consider these instructions in their entirety. You are not to be concerned with the wisdom of any rule of law, regardless of any opinion which you might have as to what the law ought to be. It would be a violation of your sworn duty to base your verdict upon any version of the law other than that which I am about to give to you.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "not guilty" pleas of the defendants. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the government are entitled to an impartial consideration of all the evidence. Moreover, the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

2. EVIDENCE RECEIVED IN THIS CASE

For the purpose of determining whether or not the government has sustained its burden of proof, you must evaluate all of the evidence. The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been "stipulated," that is to say, agreed to.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court, as well as any testimony ordered stricken by the Court, must be entirely disregarded. Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

A particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I have told you when that occurred, and instructed you on the purposes for which the item can and cannot be used.

3. STIPULATIONS – DEFINED

The evidence in this case includes facts to which the lawyers have agreed or stipulated. A

stipulation means simply that the government and a defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You may give this evidence whatever weight you choose.

4. INFERENCES – DEFINED

In determining whether the government has sustained its burden of proof, you are to consider only the evidence. But in your consideration of the evidence, you are not limited to the statements of witnesses, or solely to what you see and hear as the witnesses testify. You are permitted to draw, from the facts which you find have been proven, such reasonable inferences as seem justified in light of your experiences.

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

5. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

As I explained to you at the very beginning of trial, there are, generally speaking, two types of evidence. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, which is a chain of circumstances pointing to certain facts.

The law makes no distinction at all between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. In determining whether the government has sustained its burden of proof you can and should weigh all the evidence, both direct and circumstantial.

6. OBJECTIONS AND WEIGHT OF THE EVIDENCE

The fact that the Court may have admitted evidence over objection should not influence you in determining the weight that you will give such evidence. Nor should statements made by counsel, either for or against the admission of offered evidence, influence your determination of the weight that you will give the evidence if admitted. In other words, you should determine the weight that you will give such evidence on the basis of your own consideration of it and without regard to the statements of counsel concerning the admissibility of such evidence.

7. JURY'S RECOLLECTION CONTROLS

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.

8. PRESUMPTION OF INNOCENCE

In all criminal cases, there is a presumption of innocence. Every defendant under our system of law is presumed to be innocent of the accusation which is filed against him or her, and this presumption of innocence must remain with the defendant from the moment the charge is brought, throughout the trial, through the arguments of counsel, throughout the instructions of the Court, and throughout your deliberations when you retire to consider your verdict in the secrecy of the jury room.

The presumption of innocence remains unless and until you find that a defendant is guilty beyond a reasonable doubt of a charge as stated in the indictment. If you find, however, that a

defendant is guilty beyond a reasonable doubt of each and every element of a crime with which he or she is charged, the presumption of innocence disappears and is of no further avail to him or her.

9. BURDEN OF PROOF

In criminal cases, the law places the burden of proof upon the government. The government has the burden of proving each and every element of the offense as charged beyond a reasonable doubt.

What is meant by the term "beyond a reasonable doubt?" Obviously, the obligation resting upon the government to prove a defendant's guilt beyond a reasonable doubt does not mean that it must do so beyond all conceivable doubts. Nor does it require the government to prove a defendant's guilt to a mathematical or scientific certainty. Reasonable doubt means that the government must adduce evidence which, on examination, is found to be so convincing and compelling as to leave in your minds no reasonable doubt about a defendant's guilt. We know from experience what a doubt is, just as we know when something is reasonable or unreasonable. Reasonable doubt by definition means a doubt founded upon reason and not speculation, that is, a doubt for which you can give some sound reason.

If, therefore, after reviewing all of the evidence, there remains in your mind a doubt about a defendant's guilt, and this doubt appears in the light of the evidence to be reasonable, your duty is to find the defendant not guilty. If, however, at the end of your deliberations, you are convinced by the evidence beyond a reasonable doubt that a defendant is guilty, your duty would be to return a verdict against him or her.

10. CONSIDER EACH DEFENDANT AND EACH COUNT SEPARATELY

It is your duty to give separate and personal consideration to the case of each defendant. When you do so, you should analyze what the evidence in the case shows with respect to that particular defendant, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants. The fact that you return a verdict of guilty or not guilty as to one defendant on any count of the indictment should not, in any way, affect your verdict regarding any other defendant.

You must consider each charge separately. The fact that you find a defendant guilty or not guilty on one count does not mean that you should find the same defendant guilty or not guilty on any other count.

PART II: THE OFFENSES CHARGED

11. AN INDICTMENT

As you know, this is a criminal trial upon an indictment returned by a federal grand jury for the District of Rhode Island against the defendants Bruce LaPierre, Albert Martin and Lorraine Martin.

An indictment is nothing more than an accusation. It is a piece of paper filed with the Court to bring a criminal charge against a defendant. Here, the defendants have pled not guilty and have put in issue the charges alleged in the indictment. The government therefore has the burden of proving the allegations made against each defendant.

The fact that an indictment has been filed in this case does not give rise to a presumption of guilt. It does not even lead to an inference of guilt. The indictment simply brings this matter before you for determination. Beyond that, it has no significance whatsoever.

12. "IN OR ABOUT" – DEFINED

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

13. AMOUNTS IN THE INDICTMENT

The indictment also alleges that certain amounts of money were involved in the crimes charged. It is not necessary for the government to prove the exact or precise amount of money alleged in each count.

14. CHARGES CONTAINED IN THE INDICTMENT

The indictment in this case contains seven (7) counts or "charges." You should consider each charge and the evidence pertaining to it separately.

15. COUNTS 2 THROUGH 5: TAX EVASION

Counts 2 through 5 of the indictment charge defendants LaPierre and Albert Martin with willfully attempting to evade and defeat federal income taxes for the calendar years 2002 and 2003, in violation of title 26, section 7201 of the United States Code.

Count 2: charges that during the calendar year 2002, defendant Lapierre had and received taxable income in the sum of approximately $81,061, upon which the defendant had a substantial tax due and owing.

Count 3: charges that during the calendar year 2003, defendant Lapierre had and received taxable income in the sum of approximately $80,422, upon which the defendant had a substantial tax due and owing.

Count 4: charges that during the calendar year 2002 defendant Albert Martin had

and received taxable income in the sum of approximately $74,911, upon which the defendant had a substantial tax due and owing.

Count 5: charges that during the calendar year 2003, defendant Albert Martin had and received taxable income in the sum of approximately $72,622 upon which the defendant had a substantial tax due and owing.

16. 26 U.S.C. § 7201

In Counts 2 through 5, defendants LaPierre and Albert Martin are charged with violating title 26, section 7201 of the United States Code, which provides, in part, that "[a]ny person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall" be guilty of an offense against the laws of the United States.

17. 26 U.S.C. § 7201 – ELEMENTS OF THE OFFENSE

As to each of the offenses charged in Counts 2 through 5 of the indictment, the government must prove three (3) essential elements beyond a reasonable doubt in order to sustain its burden of proof:

One: that the defendant had a substantial tax due and owing;

Two: that the defendant willfully attempted to evade or defeat this tax; and

Three: that the defendant committed an affirmative act in furtherance of this willful attempt to evade or defeat the tax.

18. "SUBSTANTIAL" – DEFINED

Whether the tax due and owing by a defendant is in fact substantial is a decision for you to make. The word "substantial," as applicable here, is necessarily a relative term and not susceptible to an exact meaning. The government, however, need not prove the precise amount of tax due and owing, only that the amount was substantial.

19. "WILLFULLY" – DEFINED

The term "willfully" means a voluntary, intentional violation of a known legal duty. In other words, the government must prove that the law imposed a duty on a defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty.

If a defendant acted in good faith, however, he did not act willfully. In other words, if a defendant had a good faith misunderstanding of the law or believed in good faith that he had done all that the law required, you may not find that he acted willfully and you must find him not guilty. A good faith belief is one which is honestly and genuinely held. The burden to prove a defendant's state of mind, as with all other elements of the crime, rests with the government. This is a subjective standard: what did a defendant actually believe, not what a reasonable person should have believed. You may consider the reasonableness of that belief, however, in deciding whether a defendant actually held the belief. Innocent mistakes caused by the complexity of the Internal Revenue Code or negligence, even gross negligence, are not enough to meet the "willfulness" requirement.

A philosophical disagreement with the law or a belief that the tax laws are invalid or

unconstitutional does not satisfy good faith and does not prevent a finding of willfulness. You must, therefore, disregard views such as those no matter how sincerely they are held. It is the duty of every person to obey the law.

20. WILLFULNESS – PROOF

Willfulness ordinarily may not be proved directly, because there is no way of knowing the inner workings of a defendant's mind. In determining what a defendant knew or intended, you may consider any statements he made or things he did and all other facts and circumstances in evidence that may aid in your determination of his state of mind. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done. It is entirely up to you, however, to decide what facts are proven by the evidence.

21. "AFFIRMATIVE ACT" – DEFINED

A defendant may not be convicted of attempting to evade or defeat federal income taxes on the basis of a willful omission alone; he must also have undertaken an affirmative act of evasion. An affirmative act of evasion is defined as any conduct, the likely effect of which would be to mislead or to conceal. Even an activity that would otherwise be lawful can constitute an affirmative act supporting a conviction for tax evasion, so long as it is carried out with the intent to evade income tax.

For example, the affirmative act requirement can be met by acts of concealment of

taxable income such as making false entries or alterations, or false invoices or documents, concealing assets or covering up sources of income, handling one's affairs so as to avoid making the records usual in transactions of the kind, and any other conduct, the likely effect of which would be to mislead the Internal Revenue Service or conceal income.

22. DUTY TO FILE

Individuals, including United States citizens residing and working in the United States, who have received income in excess of the minimum amount for any given tax year, as specified in the Internal Revenue Code, are required to file federal tax returns and pay taxes imposed.

Specifically, for the tax year 2002, the law of the United States required any married individual filing separately, having during the tax year a gross income of $3,000 or more, to make and file an income tax return, regardless of whether a tax was due for that year. For the same tax year of 2002, the law of the United States required any single individual, having during the tax year a gross income of $7,700 or more, to make and file an income tax return, regardless of whether a tax was due for that year.

For the tax year 2003, the law of the United States required any married individual filing separately, having during the tax year a gross income of $3,050 or more, to make and file an income tax return, regardless of whether a tax was due for that year. For the same tax year of 2003, the law of the United States required any single individual, having during the tax year a gross income of $7,800 or more, to make and file an income tax return, regardless of whether a tax was due for that year.

Alternatively, if an individual was self-employed and received a net profit from his business of $400 in each year from 1997 to 2003, such an individual was required by law to make and file a tax return at the time required by law.

23. "KNOWINGLY" – DEFINED

The term "knowingly," as used in these instructions to describe the alleged state of mind of a defendant, means that he was conscious and aware of his action, realized what he was doing or what was happening around him, and that he did not act because of ignorance, mistake, or accident.

24. WILLFUL BLINDNESS

In deciding whether a defendant knew of a duty, you may infer that he had knowledge of it if you find that he deliberately closed his eyes to something that otherwise would have been obvious to him. In order to infer knowledge, you must find that two things have been established. First, that a defendant was aware of a high probability that the duty existed. Second, that a defendant willfully made himself blind to the existence of the duty. It is entirely up to you to determine whether he deliberately closed his eyes to the duty and, if so, what inference, if any, should be drawn. Mere negligence or mistake in failing to learn of the duty is not sufficient. There must be a deliberate effort to remain ignorant of the duty. You may not find that a defendant acted willfully if you find that he actually believed that he had no duty and that his belief was not based on a philosophical disagreement with the tax laws or a belief that the tax

laws are invalid or unconstitutional.

25. COUNT I: CONSPIRACY

Count 1 of the indictment alleges that defendants Lapierre, Albert Martin and Lorraine Martin, in violation of 18 U.S.C. § 371, engaged in a conspiracy to commit a federal offense, specifically, that defendants Lapierre, Albert Martin and Lorraine Martin conspired to defraud the United States. The indictment alleges that:

> From in or about January 1997 and continuing to and including March 2004, both dates being approximate and inclusive, within the Judicial District of Rhode Island and elsewhere, the defendants, Bruce Lapierre, Albert Martin, and Lorraine Martin, together with others known and unknown to the Grand Jury, did unlawfully and knowingly combine, conspire, confederate, and agree to defraud the United States and an agency thereof, to wit the IRS of the United States Department of Treasury.
>
> . . .
>
> It was an object of the conspiracy that the defendants, Bruce Lapierre, Albert Martin, and Lorraine Martin, as well as others known and unknown to the Grand Jury, would and did conspire to defraud the United States of America and the IRS by impeding, impairing, defeating, and obstructing through deceitful and dishonest means the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment and collection of income taxes.

26. 18 U.S.C. § 371

Title 18, Section 371 provides, in pertinent part, that "[i]f two or more persons conspire . . . to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy," each is guilty of a violation of 18 U.S.C. § 371.

27. THE INTERNAL REVENUE SERVICE IS AN AGENCY OF THE UNITED STATES GOVERNMENT

I instruct you that the Internal Revenue Service of the Department of Treasury is an agency of the United States Government. Therefore, it is a violation of 18 U.S.C. § 371 to conspire to frustrate or obstruct the Internal Revenue Service in performing its lawful function of ascertaining, computing, assessing and collecting of federal income taxes due to the United States.

28. 18 U.S.C. § 371 – ELEMENTS OF THE OFFENSE

To sustain its burden of proof as to the offense charged in Count 1, the government must prove each of the following elements beyond a reasonable doubt:

First: That the agreement, as set forth in the indictment, and not some other agreement, existed between two or more persons;

Second: That the defendant knowingly and willfully joined in that agreement; and,

Third: That one of the conspirators committed at least one of the overt acts set forth in the indictment in an effort to further the purpose of the conspiracy.

29. CONSPIRACY – GENERALLY

A conspiracy is an agreement or combination of two or more persons to violate the law. It is a kind of partnership in which each member of the conspiracy, just by being a member of the conspiracy, becomes an agent of every other member of the conspiracy. What this means is that each conspirator not only acts for himself or herself, but also acts for the other conspirators. In other words, a conspiracy is a combination or an agreement to disobey or disregard the law to

achieve the unlawful purpose.

In this case, the indictment alleges that there was an agreement between defendants Lapierre, Albert Marin and Lorraine Martin and others to defraud the United States by impeding, impairing, defeating and obstructing through deceitful and dishonest means the lawful governmental function of the Internal Revenue Service in the ascertainment, evaluation, assessment and collection of federal income taxes. It is not necessary that the government prove that the unlawful purpose of the conspiracy actually was achieved in order to prove that the conspiracy existed. It must prove, however, that two or more persons in some way or manner, or through some means, came to a mutual understanding to accomplish their common unlawful purpose and that they did so knowingly, willfully, and intentionally.

30. CONSPIRACY – TIME PERIOD

The indictment charges that the conspiracy existed from in or about January 1997 to and including March of 2004. In determining whether a defendant conspired as charged, you need not find the precise time frame in which the conspiracy was in existence. Instead, it is sufficient that you find that a conspiracy was in existence for any period of time reasonably described by the period alleged in the indictment, and that a defendant was a member of that conspiracy during that period.

31. EXISTENCE OF THE CONSPIRACY

In your consideration of the conspiracy offense alleged in Count 1, you should first

determine, from all of the testimony and evidence in the case, whether or not a conspiracy existed as charged.

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. However, 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, in and of itself, establish proof of the existence of a conspiracy, but you may consider such factors.

Since a conspiracy, by its very nature, is often secret, neither the existence of the common agreement or scheme nor the fact of a defendant's participation in it need be proven by direct evidence. Both may be inferred from the circumstances of the case and course of dealings between defendants Lapierre, Albert Martin and Lorraine Martin.

32. MEMBERSHIP IN CONSPIRACY

In addition to proving that the conspiracy charged in the indictment existed, the government must also prove beyond a reasonable doubt that a defendant willfully joined in that agreement. You must consider each defendant separately in this regard. To act "willfully" in the context of the conspiracy charge means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed – that is to say, with bad purpose, either to disobey or disregard the law – not to act by ignorance, accident or mistake.

Proof that a defendant willfully joined in the agreement must be based upon evidence of the defendant's own words and/or actions. You need not find that a defendant agreed specifically to or knew about all of the details, or the scope, of the conspiracy, or that a defendant participated in each act of the agreement or played a major role. However, the government must prove beyond a reasonable doubt that a defendant knew the essential features and general aims of the venture. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Mere knowledge of or acquiescence in an unlawful plan, without participation in it, is not sufficient. More is required under the law. What is necessary is that a defendant participated with knowledge of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those objectives.

The extent of a defendant's participation in a conspiracy has no bearing on the issue of that defendant's guilt. A conspirator's liability is not measured by the extent or duration of that conspirator's participation. Each conspirator may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. Even a single act may be sufficient to draw a defendant within the ambit of a conspiracy if the act is done with the intention of agreeing to join the conspiracy and the intention of accomplishing the conspiracy's unlawful purpose.

33. INTENT

To establish that a defendant willfully joined in the conspiracy charged in the indictment, the government must prove two types of intent beyond a reasonable doubt: (1) an intent to agree; and (2) an intent that the underlying crime, in this case, defrauding the United States of America and the Internal Revenue Service by impeding, impairing, defeating, and obstructing through deceitful and dishonest means the lawful governmental functions of the Internal Revenue Service in the ascertainment, evaluation, assessment and collection of income taxes, be committed. The government need not prove that a defendant agreed to commit the underlying offense personally. It is sufficient that a defendant intended that the offense be committed, if not by himself or herself, then by a co-conspirator.

34. CONSIDERATION OF ACTS AND STATEMENTS OF CO-CONSPIRATORS

In deciding whether a defendant was a member of the conspiracy, you should first consider the evidence of a defendant's own acts and statements. You may also consider any other evidence in the case as it bears on the issue of a defendant's membership. Specifically, you may consider the acts and statements of the other alleged co-conspirators, even if a defendant was not present at the time the acts were done or the statements were made. However, you may do so only if you find that a defendant was a member of the conspiracy at the time the acts were done or the statements made, and only if you find that the acts were done and the statements were made by a person whom you find to be a member of the conspiracy during the conspiracy's existence and in furtherance of one of its purposes. If the acts were performed or the statements

were made at a time when a defendant was not a member of the conspiracy, or were performed or made by someone whom you do not find to have been a member of the conspiracy, or if they were not done or said in furtherance of the conspiracy, then they may be considered as evidence only against the conspiracy member who did or said them.

35. "OVERT ACT" REQUIREMENT

In order to prove a conspiracy, the government must prove that, after the conspiracy was entered, one of the members of the conspiracy committed an overt act in an effort to accomplish some purpose of the conspiracy. In this case, paragraphs 26 through 74 of the indictment set forth the overt acts alleged to have been committed in furtherance of the conspiracy charged. An "overt act" is any act knowingly committed by one or more of the conspirators in an effort to accomplish some purpose of the conspiracy. Only one overt act has to be proven. The overt act need not itself be a crime. The government is not required to prove that a defendant personally committed or knew about an overt act. It is sufficient if one conspirator committed one overt act at some time during the period of the conspiracy. You must unanimously agree as to which overt act alleged in the indictment has been proven beyond a reasonable doubt.

36. CONSPIRACY – SUCCESS IMMATERIAL

The government does not have to prove that the conspiracy succeeded or that its object was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime and the commission of one overt act.

37. COUNTS 6 AND 7: AIDING AND ABETTING

Counts 6 and 7 of the indictment charge defendant Lorraine Martin with violations of 18 U.S.C. § 2, that is aiding and abetting the crime of willfully attempting to evade and defeat the federal income taxes of Albert Martin for the tax years 2002 and 2003, respectively.

38. 18 U.S.C. § 2

Section 2 of Title 18 of the United States Code provides that:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

39. 18 U.S.C. § 2 – AIDING AND ABETTING – ELEMENTS OF THE OFFENSE

To "aid and abet" means to intentionally help someone else commit a crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, that someone else committed the charged crime, here willfully attempting to evade and defeat the federal income taxes of Albert Martin for tax years 2002 and 2003;

Second, that defendant Lorraine Martin consciously shared Albert Martin's knowledge of the charged crime, that she intended to help Albert Martin, and that she willfully took part in the endeavor, seeking to make it succeed.

An act is done "willfully" if done voluntarily and intentionally with the intent that something the law forbids is done – that is to say with bad purpose, either to disobey or disregard the law.

Defendant Lorraine Martin need not perform the charged crime, be present when it is performed, or be aware of the details of its execution to be guilty of aiding and abetting. A general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of the charged crime and knowledge that the charged crime is being committed are also not sufficient to establish aiding and abetting. In order for the government to sustain its burden on the charge that defendant Lorraine Martin aided and abetted the crime of willfully attempting to evade and defeat the federal income taxes of Albert Martin, for the years 2002 and 2003, the government must prove beyond a reasonable doubt that Albert Martin committed the charged crime and that defendant Lorraine Martin consciously shared Albert Martin's knowledge of the charged crime and that she intended to help Albert Martin, and that she willfully took part in the endeavor, seeking to make it succeed.

PART III: CONSIDERATION OF THE EVIDENCE

40. EXHIBITS

Exhibits that are admitted into evidence by the Court are properly before you, and will be available to you during your deliberations. An exhibit marked by the Court for identification is not evidence in the case unless or until it was admitted as a full exhibit. If it has not been admitted as a full exhibit, you may not consider it. If an exhibit was admitted, however, it is just as much a part of the evidence in the case as the testimony which you have heard from the witness stand.

41. REMARKS OF COUNSEL

Remarks, statements, or questions by counsel are not evidence and are not to be considered by you as evidence during your deliberations. Neither should you permit objections by counsel to the admission of evidence, or the rulings of the Court, to create any bias or prejudice toward counsel or the party whom he or she represents. It is the duty of counsel for both sides to represent their clients vigorously and to defend their client's rights and interests. In the performance of that duty, counsel freely may make objection to the admission of offered evidence, or to any other ruling of the Court, and should not be penalized for doing so.

42. CONDUCT OF COURT AND COUNSEL

If during trial, or in instructing you, I have said or done anything that has caused you to believe that I was indicating an opinion as to what the facts are in this case, you should put that

belief out of your mind. I did not intend to indicate any such opinion. In fact, I try not to have an opinion about the case because you are the sole and exclusive judges of the facts.

In determining the facts, you are to consider only that evidence which has properly been placed before you. It is the Court's duty to pass upon the admissibility of offered evidence, that is, to decide whether or not offered evidence should be considered by you. Evidence admitted by the Court is properly before you for your consideration; evidence which the Court has refused to admit, or may have stricken from the record after you heard it, is not a proper subject for your deliberations and is not to be considered by you.

43. CHARTS AND SUMMARIES – ADMITTED INTO EVIDENCE

Charts and summaries that have been admitted into evidence and have been shown to you during the trial for the purpose of summarizing facts that are allegedly contained in books, records, or other documents which are also in evidence in the case. You may consider the charts and summaries to assist you in your deliberations and give them such weight or importance, if any, as you feel they deserve.

44. A DEFENDANT'S RIGHT TO REMAIN SILENT

A defendant has a constitutional right not to testify. No presumption of guilt may be raised and no inference of any kind may be drawn from the fact that a defendant did not testify.

Further, the law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence.

45. TESTIMONY OF WITNESSES

The law does not require you to accept or credit the evidence I have admitted. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses, and the weight you choose to give to his or her testimony.

In evaluating the testimony of witnesses you may consider several facts – the opportunity of the witnesses to have acquired knowledge of that to which they testified; their conduct and demeanor while testifying; their interest or lack of interest, if any, in the outcome of the case; their intelligence or lack thereof; the probability or improbability of the truth of their testimony.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

From these circumstances, and from all of the other facts and circumstances proved at the trial, you may determine whether or not the government has sustained its burden of proof.

PART IV: DELIBERATIONS AND VERDICT

46. UNANIMOUS VERDICT – JURY CONDUCT

To render a verdict, all twelve of you must agree, that is, your verdict must be unanimous. Therefore, during your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your view simply because a majority holds to the contrary view, but in pursuing your deliberations, you should keep your minds reasonably open with respect to any point in dispute so that you will not be prevented from achieving a unanimous verdict due to mere stubbornness. It is your right, however, to maintain your individual view. The vote of each juror is as important as the vote of any other juror, and you need not give up your view, sincerely held, simply because a majority holds to the contrary view.

Do not approach your consideration of the case in an intellectual vacuum. You are not required to disregard your experiences and observations in the ordinary everyday affairs of life. Indeed, your experiences and observations are essential to your exercise of sound judgment and discretion, and it is your right and duty to consider the evidence in light of such experiences and observations. It is hoped and anticipated that you will sift through all of the evidence in this case with maturity and common sense.

Of course, prejudice, sympathy, or compassion should not be permitted to influence you. All that any party is entitled to, or expects, is a verdict based upon your fair, scrupulous, and conscientious examination of the evidence and an application of the law to the evidence as I have

instructed you.

47. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the Court, you may send a note signed by your foreperson, or by one or more members of the jury. The foreperson may then hand such written request or question to the marshal in whose charge you will be placed. The marshal will bring any written questions or requests to me. I will have you brought into the courtroom and will attempt to fulfill your request or answer your question. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Bear in mind also that you are never to reveal to any person – not even to the Court – how the jury stands, numerically or otherwise, on the question of whether the accused is guilty or not guilty, until after you have reached a unanimous verdict.