UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

CR No. 011-147-ML

ROBERT O. ROBINSON

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 defendant 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" plea of the defendant. 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. 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.

3. PRESUMPTION OF INNOCENCE

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his or her guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the utmost importance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you has the benefit of that presumption throughout the trial, and you are not to convict the defendant of a particular charge unless you are unanimously persuaded of the defendant's guilt on that charge beyond a reasonable doubt.

This presumption was with the defendant when the trial began and remains with the defendant even now as I speak to you and will continue with the defendant into your deliberations unless and until you are convinced that the government has proven the defendant's guilt beyond a reasonable doubt.

4. BURDEN OF PROOF

As I have said, the burden is upon the government to prove beyond a reasonable doubt that the defendant is guilty of the charge made against him. It is a strict and heavy burden, but it does not

mean that the defendant's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning the 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 the 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 a 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.

I instruct you that what the government must do to meet its heavy burden is to establish the truth of each element 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.

5. DEFENDANT'S RIGHT NOT TO TESTIFY OR INTRODUCE EVIDENCE

A defendant does not have to testify or introduce any evidence at all. This principle is related to the fact that the burden of proof is upon the government and not on the defendant.

A defendant in a criminal case need not say anything. It is the right of every defendant not to testify. This right is guaranteed by the Constitution. If the defendant chooses not to testify, you may not draw any adverse inference from that fact. By that I mean you may not say, "Well, he must have something to hide, otherwise he would have testified," or, "He must be guilty because he did not get up on the stand and tell me that he was not guilty." It is absolutely prohibited for you to draw such inferences in this case.

PART II: THE OFFENSES CHARGED

6. INDICTMENT – DEFINED

This case, like most criminal cases, began with the filing of an indictment. You will have the indictment before you in the course of your deliberations in the jury room. The indictment was returned by a grand jury, which heard only the government's side of the case. The fact that the defendant has had an indictment filed against him is no evidence whatsoever of guilt. An indictment is nothing more than an accusation. An indictment is not evidence. It is a piece of paper filed with the Court to bring a criminal charge against a defendant. The indictment simply brings this matter before you for determination. Beyond that, it has no significance whatsoever. Here, the defendant has pleaded not guilty and has put in issue the charges alleged in the indictment. The government therefore has the burden of proving the allegations made against the defendant.

7. "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.

8. CHARGES CONTAINED IN THE INDICTMENT

The indictment in this case contains eleven counts or "charges." The defendant in this case is Robert Robinson.

Count One of the indictment charges that the defendant conspired to commit an offense against the United States in violation of 21 U.S.C. § 846. Specifically, Count One charges that from in or about February 2011 through in or about June 2011, the defendant Robert Robinson, together with Tonia J. Rawlinson, Jason Roman, Courtney S. Desrochers, Richard E. Marks and others known and unknown to the Grand Jury, did knowingly, intentionally and willfully combine, conspire, confederate and agree with each other, and aiding and abetting each other, to knowingly and intentionally distribute and possess with intent to distribute, 280 grams or more of a mixture and substance containing a detectable amount of cocaine base, a Schedule II Controlled Substance, in violation of title 21, section 841(a)(1) of the United States Code.

Counts 2, 9, 10, and 11 of the indictment charge that the defendant did knowingly and intentionally distribute and possess with intent to distribute a mixture and substance containing, with respect to each separate count, 28 grams or more of cocaine base.

Counts 3, 4, 5, 6, 7, and 8 of the indictment charge that the defendant did knowingly and intentionally distribute and possess with intent to distribute a mixture and substance containing a detectable amount of cocaine base.

I remind you that a separate crime is alleged against the defendant in each count of the indictment and you must consider each alleged offense, and any evidence pertaining to it, separately. The fact that you find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offenses charged against the defendant.

9. 21 U.S.C. § 841(a)(1)

In Counts 2 through 11, the defendant is charged with violating title 21, section 841(a)(1) of

the United States Code, which provides in part, that "it shall be unlawful for any person knowingly or intentionally . . . to distribute . . . or possess with intent to . . . distribute . . . a controlled substance . . . ."

10. COUNTS 2-11

DISTRIBUTION AND POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

Counts 2-11 of the indictment charge that on or about the dates set forth in the indictment, in the District of Rhode Island, the defendant, Robert Robinson, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectable amount of cocaine base.

11. 21 U.S.C. § 841(a)(1) – ELEMENTS OF THE OFFENSE (DISTRIBUTION)

As to the offense of distributing a controlled substance charged in Counts 2-11 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 transferred a mixture or substance containing a detectable amount of cocaine base to another person;

Two: That the defendant knew that the substance was a mixture or substance containing a detectable amount of cocaine base; and

Three: That the defendant acted intentionally, that is, that it was his conscious object to transfer the controlled substance to another person

It is not necessary that the defendant have benefitted in any way from the transfer.

12. 21 U.S.C. § 841(a)(1) – ELEMENTS OF THE OFFENSE

(POSSESSION WITH INTENT TO DISTRIBUTE)

As to the offense of possession with intent to distribute a controlled substance charged in Counts 2-11 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 possessed a mixture or substance containing a detectable amount of cocaine base;

Two: That the defendant's possession was knowing and intentional; and

Three: That the defendant possessed the controlled substance with the specific intent to distribute it.

13. PROOF MAY BE CONJUNCTIVE OR DISJUNCTIVE

In Counts Two through Eleven, the Defendant is charged in the conjunctive. In other words, those counts charge the Defendant with possession with intent to distribute cocaine base and distribution of cocaine base. In order to establish guilt on any of these counts, the Government need not prove that the Defendant both possessed with intent to distribute and distributed. Guilt is established if the Government, beyond a reasonable doubt, proves either that Defendant possessed with intent to distribute or that Defendant distributed, as long as you are unanimous as to which of the two has been proven beyond a reasonable doubt. Guilt, of course, is also established where you unanimously find that both possession with intent to distribute and distribution are proven beyond a reasonable doubt.

Therefore, I instruct you that in Counts Two through Eleven, it is not necessary for the Government to prove that the Defendant both possessed cocaine base with the intent to distribute and

distributed cocaine base. In order to establish guilt, it is sufficient for the Government to prove that Defendant either possessed with intent to distribute or distributed cocaine base.

14. COCAINE BASE ("CRACK"), A SCHEDULE II CONTROLLED SUBSTANCE

You are instructed that, as a matter of law, cocaine base ("crack") is a Schedule II Controlled Substance. For simplicity, whenever I refer to cocaine base ("crack") in these instructions, I am referring to a mixture or substance containing a detectable amount of cocaine base.

15. COCAINE BASE ("CRACK") – DEFINED

"Crack" is the street name for a form of cocaine base.

16. DISTRIBUTION - DEFINED

The term "distribute" means to deliver a controlled substance. The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance.

17. "POSSESSION" – DEFINED

The term "possession" means to exercise control or authority over something at a given time. There are several types of possession—actual and constructive, sole and joint.

Possession is considered to be "actual" possession when a person knowingly has direct physical control or authority over something. Possession is called "constructive" when a person does not have direct physical control over something, but can knowingly control it and intends to control

it, sometimes through another person.

Possession may be knowingly exercised by one person exclusively. This is called sole possession. Possession may also be knowingly exercised by two or more persons. This is called joint possession.

Whenever I use the term "possession" in these instructions, I mean actual as well as constructive possession, sole as well as joint possession. You may find that the element of possession is proved if you find beyond a reasonable doubt that the defendant knowingly had actual or constructive possession of a controlled substance either alone or with others. I caution you, however, that mere proximity to drugs or mere association with another person who exercises control over drugs is insufficient to support a finding of possession.

18. "WITH INTENT TO DISTRIBUTE" – DEFINED

The phrase "with intent to distribute" means to have in mind or to plan in some way to deliver or to transfer possession or control over a thing to someone else. In this context, the phrase refers to the specific intent to actually or constructively transfer, or to attempt to transfer, the controlled substances described in the indictment.

In attempting to determine the intent of any person you may take into your consideration all the facts and circumstances shown by the evidence received in the case concerning that person.

In determining a person's "intent to distribute" a controlled substance, you may consider, among other things, the quantity of the controlled substance, the presence or absence of packaging materials, scales, cutting agents, and large amounts of cash. The law does not require you to draw the inference of intent from this evidence, but you may do so.

19. COUNT I: CONSPIRACY

Count I charges that from in or about February 2011 through in or about June 2011, in the District of Rhode Island, the defendant Robert Robinson did knowingly, intentionally and willfully combine, conspire, confederate and agree with Tonia J. Rawlinson, Jason Roman, Courtney S. Desrochers, Richard E. Marks, and others known and unknown to the Grand Jury, and aiding and abetting each other, to knowingly and intentionally distribute and possess with intent to distribute, 280 grams or more of a mixture and substance containing a detectable amount of cocaine base, a Schedule II Controlled Substance, in violation of title 21, section 841(a)(1) and of the United States Code and in violation of title 21, section 846..

20. 21 U.S.C. § 846 – ELEMENTS OF THE OFFENSE

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

First: That in or about the period described in the indictment, there existed an agreement to distribute and to possess with the intent to distribute 280 grams or more of cocaine base; and

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

21. 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, 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 conspiracy alleged is an agreement to distribute and to possess with intent to distribute 280 grams or more of cocaine base. 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 the members 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.

22. CONSPIRACY – TIME PERIOD

The indictment charges that the conspiracy existed from in or about February 2011 through in or about June 2011. In determining whether the 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 the defendant was a member of that conspiracy during that period.

23. EXISTENCE OF THE CONSPIRACY

In your consideration of the conspiracy offense alleged in Count I, 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 the defendant and the other people named in the indictment

24. 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 the defendant willfully joined in that agreement. To act "willfully" means to act voluntarily and intelligently, and with the specific intention that the underlying crime–here, to distribute and possess with intent to distribute, 280 grams or more of a mixture and substance containing a detectable amount of cocaine base - be committed. In other words, to act willfully means to act with bad purpose, either to disobey or disregard the law–not to act by ignorance, accident, or mistake.

Proof that the 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 the defendant agreed specifically to or knew about all of the details, or the scope, of the conspiracy, or knew every other co-conspirator or that the defendant participated in each act of the agreement or played a major role. However, the

government must prove beyond a reasonable doubt that the 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.

25. INTENT

To establish that the defendant willfully joined in a conspiracy, 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, distribution and possession with intent to distribute 280 grams or more of cocaine base, be committed. The government need not prove that the defendant agreed to commit the underlying offense personally. It is sufficient that the defendant intended that the offense be committed, if not by himself, then by a co-conspirator. An individual's intent may be inferred from all of the surrounding circumstances.

26. CONSIDERATION OF ACTS AND STATEMENTS OF CO-CONSPIRATORS

In deciding whether the defendant was a member of the conspiracy, you should first consider the evidence of the defendant's own acts and statements. You may also consider any other evidence in the case as it bears on the issue of the defendant's membership. Specifically, you may consider the acts and statements of the other alleged co-conspirators, even if the defendant was not present at the time the acts were done or the statements were made. However, you may do so 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 the 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 and not against the defendant. You are instructed that in this case the following persons are alleged to have entered into the agreement described in the indictment: the defendant Robert Robinson, Tonia Rawlinson, Jason Roman, Courtney Desrochers, Richard Marks, and others.

27. NATURE OF CONTROLLED SUBSTANCE AND AMOUNT MUST BE PROVEN BEYOND A REASONABLE DOUBT

To sustain its burden of proof as to Counts 1 through 11, the government must prove beyond a reasonable doubt that the controlled substance involved here was cocaine base. With respect to Counts 2, 9, 10, and 11, the government must also prove, beyond a reasonable doubt, that the amount of cocaine base for each of those counts was 28 grams or more. As to Count I, the government must

prove beyond a reasonable doubt that the amount of cocaine base was 280 grams or more

28. 18 U.S.C. § 2 - AIDING AND ABETTING

The defendant is also charged with violating Title 18, Section 2 of the United States Code in Counts 1 through 11.

Title 18, Section 2 of the United States Code provides that "[w]hoever commits an offense against the United States or aids, abets . . . its commission, is punishable as a principal."

29. AIDING AND ABETTING (ELEMENTS)

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, and

Second, that the defendant willfully associated himself in some way with the crime and willfully participated in it as he would in something he wished to bring about.

This means that the government must prove that the defendant consciously shared the other person's knowledge of the underlying criminal act and intended to help him. The defendant need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its execution to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed are also not sufficient to establish aiding and abetting.

PART III: CONSIDERATION OF THE EVIDENCE

30. 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, and all exhibits received in evidence.

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.

31. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness that the witness saw or heard something. Circumstantial evidence is indirect evidence, that is, proof of a fact or facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

32. 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.

33. EXHIBITS

Exhibits 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 by the Court as a full exhibit. If it has not been admitted as a full exhibit, you may not consider it. If it 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.

34. 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 deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case. You may not, however, draw an inference from another inference.

35. 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 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.

36. 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 you must not consider it.

37. TESTIMONY OF WITNESSES

The law does not require you to accept or credit the evidence 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 deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe everything a witness says or only part of it or none of it.

In deciding what to believe, you may consider a number of factors, including the following: (1) the witness's ability to see or hear or know the things the witness testifies to; (2) the quality of the witness's memory; (3) the witness's manner while testifying; (4) whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice; (5) whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence; and (6) how reasonable the witness's testimony is when considered in light of other evidence which you believe.

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.

38. OPINION EVIDENCE – EXPERT WITNESS

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or

conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Such witnesses, who have special training or experience in a technical field, may state an opinion concerning that technical matter may also state the reasons for their opinion.

Merely because an expert witness has expressed an opinion, of course, does not mean that you must accept it. As with any other witness, you should consider the testimony and give it such weight as you think it deserves.

39. CAUTION AS TO COOPERATING WITNESS/ACCOMPLICE/PAID INFORMANT

You have heard the testimony of Linneth O'Neill, Jason Roman, and Tonia Rawlinson. Each of these individuals provided evidence under agreements with the government.

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

40. STATEMENTS BY THE DEFENDANT

You have heard evidence that the defendant made a statement in which the government claims he admitted certain facts. It is for you to decide

(1) whether the defendant made the statement; and

(2) if so, how much weight to give it.

In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the statement may have been made and any facts or circumstances tending to corroborate or contradict the version of events described in the statement.

41. USE OF AN INFORMANT

You have heard testimony that an informant of the Bureau of Alcohol, Tobacco, Firearms and Explosives worked undercover during this investigation. There is nothing illegal or improper with the government employing this technique. Whether or not you approve of the use of an informant to detect criminal acts is not to enter into your deliberation in any way. If you are satisfied beyond a reasonable doubt that the defendant committed the offenses charged in the Indictment, the circumstance that the government made use of an informant is irrelevant to your determination.

PART IV: THE DELIBERATIONS AND VERDICT

42. 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 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 all of the evidence in this case through maturity and common sense.

Of course, you should not permit prejudice, sympathy, or compassion 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 as I have instructed you to that evidence.

43. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

During your deliberations, if you need further instruction or assistance by the Court in any way, I ask that, through your foreperson, you reduce such requests or questions as you may have to writing. 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 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.