

**Jury Instructions**

**United States of America v. Richard Baccari and Churchill & Banks, LLC  
(13-cr-150-M)**

I intend to give you a copy of these instructions for use in the jury room, so feel free to simply listen and not worry about note taking.

**Introduction**

At this time, it is my duty to instruct you on the law applicable to this case. 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, and this is true whether you personally agree with the law 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.

**Presumption of Innocence**

As I told you at the start of this trial, Mr. Baccari and Churchill & Banks are presumed to be innocent of the accusations against them. This presumption of innocence remains with Mr. Baccari and Churchill & Banks unless and until the Government presents evidence satisfying you beyond a reasonable doubt that they are 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 proven Mr. Baccari and Churchill & Banks guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to

them. However, unless and until that time, the presumption remains with Mr. Baccari and Churchill & Banks.

**Defendant's Constitutional Right Not to Testify**

A defendant in a criminal trial has a constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that Mr. Baccari did not testify. For you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

**The Government as a Party**

The mere fact that this case is brought in the name of the United States does not entitle the prosecution to any greater consideration than that accorded to Mr. Baccari and Churchill & Banks. For the same reason, it does not mean that the prosecution is entitled to any less consideration. All parties, whether Government, individuals, or corporations, stand as equals at the bar of justice.

**Proof of All Elements**

Shortly, I will explain the offenses with which Mr. Baccari and Churchill & Banks are charged and the elements the Government must prove in order to establish that Mr. Baccari and/or Churchill & Banks are guilty of those offenses.

In order for the Government to prove Mr. Baccari and/or Churchill & Banks guilty of any 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, then you must find Mr. Baccari and/or Churchill & Banks not guilty.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of an offense with which Mr. Baccari and/or Churchill & Banks have been charged have been proven to you beyond a reasonable doubt, then you should find them guilty of that offense.

**Separate consideration of each Defendant and offense**

You will recall that I explained to you earlier that the Government has charged both Mr. Baccari and his company, Churchill & Banks Companies, LLC as Defendants. You must give separate consideration to the evidence about each Defendant. Each is entitled to your separate consideration. You must return a separate verdict for each Defendant.

Moreover, each Defendant has been charged with two crimes: conspiracy and bribery, which I will define for you in a moment. Each of these is a separate crime, and you should consider each crime and each Defendant separately.

**Burden of Proof – Beyond a Reasonable Doubt**

As I have said, the burden is upon the Government to prove beyond a reasonable doubt that Mr. Baccari and Churchill & Banks are guilty of the charges made against them. It is a strict and heavy burden, but it does not mean that Mr. Baccari and Churchill & Banks' guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning Mr. Baccari's and Churchill & Banks' 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, Mr. Baccari and Churchill & Banks are 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 Mr. Baccari and Churchill & Banks are guilty as charged, the other that Mr. Baccari and Churchill & Banks are not guilty — then you must find Mr. Baccari and Churchill & Banks 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 every 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 the charges against Mr. Baccari and Churchill & Banks, then you will return a verdict of guilty. If, on the other hand, you think there is a reasonable doubt about whether Mr. Baccari and Churchill & Banks are guilty of the charges, then you must give Mr. Baccari and Churchill & Banks the benefit of the doubt and find them not guilty.

#### **Overview of Charges**

Mr. Baccari and Churchill & Banks are each charged by the Government with two counts. Count One charges them with conspiring to pay and/or receive a bribe and Count Two charges them with actually paying the bribe. Count One is broken down into two parts, conspiring with Robert Ciresi and the North Providence Town Councilmen, John Zambarano, Ray Douglas, and/or Joseph Burchfield, to pay a bribe and conspiring with them to receive a bribe. The Defendants deny these charges and assert that any payment of money to Mr.

Zambarano was not made “voluntarily” or “corruptly,” and was not done to obtain some ill-gotten gain. The Defendants assert that they were not corruptly bribing the Councilmen in an attempt to obtain something to which they were not entitled – but rather that any payment paid to Mr. Zambarano was to prevent these Councilmen from improperly voting against the zoning amendment that Churchill & Banks needed in order to proceed with the development proposal.

I will first instruct you on the law for Count One – conspiracy.

**Charge as to Count One - 18 U.S.C. § 371 – Conspiracy**

Mr. Baccari and Churchill & Banks Companies LLC are each accused in Count One of the Indictment of conspiring to commit the crime of bribery of an agent of a local Government.

The Defendants are accused of conspiring to commit two federal offenses under 18 U.S.C. § 666 (a)(2) and (a)(1)(B). Section 666 (a)(2) makes it a crime “to corruptly give, offer or agree to give anything of value to any person, with the intent to influence an agent in connection with any business, transaction or series of transactions of such Government or agency involving anything of value of \$5,000 or more when such State or local Government or agency received, in any one year period, benefits in excess of \$10,000 under any Federal program.”

Section 666 (a)(1)(B) makes it a violation of federal law for an agent of an organization “to corruptly accept or agree to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of the Government, involving anything of value of \$5,000 or more while being an agent of a State or local Government and when such Government or agency received, in any one year period, benefits in excess of \$10,000 under a Federal program.”

It is against federal law to conspire with someone to violate these statutes.

For you to find either Defendant guilty of conspiracy, you must be convinced that the

Government has proven each of the following three things beyond a reasonable doubt:

First, that the agreement specified in the indictment, and not some other agreement or agreements, existed between at least two people to commit bribery of an agent of a local Government; and

Second, that the Defendants willfully joined in that agreement; and

Third, that one of the conspirators committed an overt act in an effort to further the purpose of the conspiracy.

In order to find the Defendants guilty of Count One, every juror must unanimously agree that the Defendants, or either of them, conspired with John Zambarano, Raymond Douglas, Joseph Burchfield and/or Robert Ciresi to either (1) pay a bribe in violation of § 666 (a)(2), or (2) to corruptly solicit, demand, or accept a bribe in violation of § 666 (a)(1)(b) or both. It is not sufficient that some jurors believe that the Government proved beyond a reasonable doubt that the Defendants, or either of them, conspired with these other individuals to pay a bribe and other jurors believe that the Government proved beyond a reasonable doubt that the Defendants agreed to corruptly solicit or demand a bribe. You must all unanimously agree what section of 18 U.S.C. § 666, if any, the Defendants conspired to violate.

I will now explain some of these terms to you.

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. 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 conspirator or conspirators.

To act "willfully" 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. The Government must prove two types of intent beyond a reasonable doubt before the defendant can be said to have willfully joined the conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances.

Proof that the Defendants willfully joined in the agreement must be based upon evidence of their own words and/or actions. You need not find that Defendants agreed specifically to or knew about all the details of the crime, or knew every other coconspirator or that they participated in each act of the agreement or played a major role, but the Government must prove beyond a reasonable doubt that they knew the essential features and general aims of the venture. Even if the Defendants were not part of the agreement at the very start, they can be found guilty of conspiracy if the Government proves that they 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. Mere association with members of a conspiracy, the existence of an opportunity to join a conspiracy, or simple knowledge, approval of, or acquiescence in the object or purpose of the

conspiracy is not sufficient to make one a conspirator. Proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it.

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 Government is not required to prove that the Defendants personally committed or knew about the overt act. It is sufficient if one conspirator committed one overt act at some time during the period of the conspiracy. 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 and the commission of one overt act.

#### **Consideration of Acts and Statements of Co-Conspirators**

In deciding whether the Defendants were members of the conspiracy, you should first consider the evidence of the Defendants’ own acts and statements. You may also consider any other evidence in the case as it bears on the issue of the Defendants’ membership. Specifically, you may consider the acts and statements of the other alleged co-conspirators, even if the Defendants were 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 Defendants were members 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 the Defendants were not members 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 Defendants.

**Charge as to Count Two – 18 U.S.C. § 666(a)(2) - Bribery**

Now the Court will instruct you on the law for Count Two – the bribery charge. Count Two of the Indictment charges that, on or about February 10, 2009, the Defendants committed federal program bribery in violation of Title 18, United States Code, Section 666(a)(2).

A violation of section 666(a)(2) occurs when a defendant, “corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of ... a local ... Government ... in connection with any business, transaction, or series of transactions of such ... Government ... involving anything of value of \$5,000 or more,” and the local Government “receives, in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.”

**Bribery – Elements of the Offense**

To prove a violation of 18 U.S.C. § 666 (a)(2), the Government must prove each and every one of the following elements beyond a reasonable doubt:

First, that the Defendants offered, gave, or agreed to give something of value to an agent of local Government;

Second, that John Zambarano, Joseph Burchfield and/or Raymond Douglas were agents of a local Government or of an agency of a local Government;

Third, that the Defendants acted corruptly with the intent to influence or reward John Zambarano, Joseph Burchfield and/or Raymond Douglas with respect to a transaction of the Town Council of the Town of North Providence;

Fourth, that this business, transaction or series of transactions involved anything of a value of \$5,000 or more; and

Fifth, that the local Government, in a one year period, received benefits of more than \$10,000 under any Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other assistance. The one year period must begin no more than 12 months before the defendant committed these acts and must end no more than 12 months afterward.

**“Agent” Defined**

The second element the Government must prove beyond a reasonable doubt is that, at the time alleged in the indictment, John Zambarano, Joseph Burchfield, and/or Raymond Douglas were agents of the Town of North Providence. Elected officials are agents of the Government to which they were elected to serve.

**Mens Rea Element of Acting “Corruptly”**

The third element the Government must prove beyond a reasonable doubt is that either or both Defendants acted “corruptly,” in connection with the application by Churchill & Banks for a zoning change before the North Providence Town Council. To “act corruptly” means to act voluntarily and intentionally, with an improper motive or purpose, to influence or reward the actions of a public official. To find that the Defendants acted corruptly you must find that the Defendants were involved in conscious wrongdoing, or as sometimes has been expressed, that they acted with a bad or evil state of mind.

While economic coercion is not a defense to bribery under 18 U.S.C. § 666, in determining whether either or both of the Defendants acted voluntarily and intentionally with an improper motive or purpose to bribe John Zambarano, Joseph Burchfield, and/or Raymond Douglas, you may consider whether Town Council members exerted such threats of serious economic pressure or loss upon the Defendants such that the Defendants did not act “corruptly.” You may also consider whether any payments demanded from or paid by the Defendants were paid to secure more favorable treatment than they deserved, or to bring about something other than a fair result.

The mere fact that the public official may have initiated a request for payment is not a defense to the charge of bribery.

In considering this element, remember that it is the Defendants’ intent to influence the recipient’s action that is important, not the subsequent actions of the recipient or organization or Government. Thus, the Government does not have to prove that any of the Town Council Members accepted the bribe offer or that the bribe actually influenced the final decision of Government.

If, based upon your consideration of all of the evidence, you have a reasonable doubt as to whether the Defendants acted with a corrupt purpose, then the Defendants are entitled to a verdict of not guilty.

#### **Value of Transaction**

The fourth element the Government must prove beyond a reasonable doubt is that the value of the transaction to which the alleged payment related was at least \$5,000.

In Exhibit # 27, the Government and the Defendant have agreed that the “application for Amendment to Zoning Map and Ordinance” filed on or about October 2, 2008 on behalf of

Churchill & Banks Companies, which was voted on by the North Providence Town Council on or about February 10, 2009, involved business, a transaction, or a series of transactions involving \$5,000 or more.

**Organization or Government Received Federal Funds**

The fifth element that the Government must prove to you beyond a reasonable doubt is that the Town of North Providence, in a one year period, received benefits of more than \$10,000 under any Federal program involving a grant, contract, subsidy, loan guarantee, insurance or other assistance. In Exhibit # 27, the Government and the Defendant have agreed that the Town of North Providence received at least \$10,000 per year from the federal Government during each year at issue.

**Proving Knowledge and Intent**

Often a person's state of mind – whether he acted with intent, knowledge, willfulness, or corruptly - cannot be proven directly, because one cannot read another person's mind and tell what he was thinking. However, a defendant's state of mind can be proved indirectly from the surrounding circumstances. Thus, to determine the Defendants' state of mind, or what the Defendants intended or knew at a particular time, you may consider evidence about what the Defendants said, what the Defendants did or failed to do, how the Defendants acted or reacted, and all the other facts and circumstances shown by the evidence that may prove what was in the Defendants' mind at the time. You may infer, but you are not required to infer, that a person intended the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you to decide what the evidence presented during this trial proves, or fails to prove, about the Defendants' state of mind.

**Extortion – Explained**

You have heard the word “extortion” used in the context of Government statements from other cases. I instruct you that as a matter of law, extortion and bribery are not mutually exclusive. In other words, a defendant can be guilty of bribery of a public official even if the public official is guilty of extortion, as long as you are satisfied that the Government has proven each element of the offense of bribery beyond a reasonable doubt.

**Corporate Criminal Liability**

Defendant Churchill & Banks Companies, LLC is a corporation. A corporation is a legal entity that may act only through its agents. The agents of a corporation are those officers, directors, employees, agents, and other persons authorized or employed by the corporation to act on its behalf. A corporation may be found guilty or not guilty of an offense charged just as an individual personal defendant may be.

To sustain its burden of proof on all charges in the Indictment against Churchill & Banks Companies LLC, the Government must prove the following things beyond a reasonable doubt as to each of the essential elements of the two offenses charged, which I will shortly describe to you:

First, the act was committed by an officer, director, employee, or agent of Churchill & Banks Companies, LLC;

Second, in acting, the officer, director, employee, or agent of Churchill & Banks were within the course and scope of their employment. Or, in other words, their actions involved some performance or duty that was generally entrusted to them as a corporate agent or employee. It is not necessary for the Government to prove that some particular act by a Churchill & Banks

agent or employee was authorized or directed by Churchill & Banks; however, each of the acts must be of the type that the individual was authorized by Churchill & Banks to perform.

Third, in acting, the officer, director, employee, or agent of Churchill & Banks acted on behalf of and, at least in part, to benefit Churchill & Banks. If you find that an agent or employee was acting within the scope of his authority or employment in accordance with those requirements that I've just laid out for you, you may find Churchill & Banks criminally liable for that individual's actions or omissions even if they are illegal, contrary to company instruction, or against company policy.

Now I want to instruct you on three pieces of evidence or proof that came up during trial.

**The Indictment Admitted as Government's Exhibit 83**

The Court admitted Government's Exhibit No. 83 – which is the Indictment that was brought against Robert Ciresi, and Town Councilmen John Zambarano, Raymond Douglas, Joseph Burchfield. I admitted that Indictment for the sole and limited purpose of providing the jury with evidence of what these individuals had previously been charged with, what the Councilmen pled guilty to, and what Mr. Ciresi was found guilty of at his trial.

It is not admitted for any other purpose. You are not to consider any of the allegations in that Indictment – and in particular, any language or statements that may relate to this case – as proof of anything. You are not to draw any conclusions from the fact that these individuals pled guilty to the charges made in that Indictment. You may not rely in any way on anything contained in that Indictment in reaching your verdict in this case.

**The Governments' Proof of the Defendants' Economic Circumstances**

The Court has allowed the Government to offer certain proof with respect to the Defendants' economic circumstances during the relevant time period of mid-2008 to mid-2009.

The Government's position is that this information is relevant to the Defendants' defense that they were the victims of extortion and economic coercion. As I have instructed you, it is up to you, and you alone, to decide what consideration or weight, if any, to give such proof.

However, it is critically important that this proof not be used for any improper purpose such as creating any prejudice against the Defendants. One of the most important and defining features of our system of justice is - that whatever anyone's economic status - they must be considered and treated equally in the eyes of the law.

It is your duty and obligation to fairly and dispassionately decide the issues in this case on the facts presented, and you must not allow any issue to prejudice your consideration and fair treatment of the Defendants in any way.

#### **Jury Instructions from Another Case**

I admitted jury instructions from the trial that Judge Lisi conducted in Mr. Ciresi's case as Exhibits RR, QQ, and 98. I instruct you now that the law in the instructions that I give you in this case are the only instructions you should follow.

#### **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; and
2. The exhibits that I have admitted into evidence.

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. Documents, photographs or other items which may have been referred to but have not been admitted into evidence; or
3. 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.

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 witness 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 - Number - Weight of Testimony**

In evaluating the testimonial 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 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.

Mr. Baccari and Churchill & Banks are under no obligation to present any witnesses because the burden of proof is on the government and it rests with the government until the end of the case.

### **Impeachment of Witness' Testimony by Prior Convictions**

You have heard evidence that John Zambarano, Raymond Douglas, and Joseph Burchfield all pled guilty, and that a jury found Robert Ciresi guilty of various charges. You may consider this evidence for several purposes. First, you may consider the evidence in deciding the credibility and weight, if any, that you will give to any statements attributed to Mr. Zambarano, Mr. Douglas, Mr. Burchfield, or Mr. Ciresi. Second, you may consider whether such proof shows a propensity on behalf of these North Providence Councilmen and/or Mr.

Ciresi to engage in similar activities in this case. Third, you may consider whether such proof shows a *modus operandi* by these North Providence Councilmen – that is, whether such evidence shows motive, opportunity, intent, preparation, plan, or knowledge by these individuals.

### **Government Agents**

The fact that a witness may be employed by a 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.

### **Character/Reputation Evidence**

Mr. Baccari presented evidence to show that he enjoys a reputation for honesty and integrity in his community. Such evidence may indicate to you that it is improbable that a person of such character would commit the crimes charged, and, therefore, cause you to have a reasonable doubt as to his guilt. You should consider any evidence of Mr. Baccari's good character along with all the other evidence in the case and give it such weight as you believe it deserves. If, when considered with all the other evidence presented during this trial, the evidence of Mr. Baccari's good character creates a reasonable doubt in your mind as to his guilt, you should find him not guilty.

### **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 that 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.

### **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 that 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 that 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. (Example: rain on the pavement.)

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.

### **Stipulations**

The evidence in this case includes facts to which the parties have agreed or stipulated. A stipulation means simply that the Government and the Defendants 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 must accept the stipulation as fact to be given whatever weight you choose.

### **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 the 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.

### **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.

**Use of Notes**

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. Thus, when you return to the jury room to discuss the case, do not assume simply because something appears in somebody's notes that it necessarily took place in court. You should not be overly influenced by your notes or those of your fellow jurors. Instead, it is your collective memory that must control as you deliberate upon the verdict.

**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 Mr. Baccari and Churchill & Banks unless your decision is unanimous, meaning that you all agree.

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.

**Foreperson And Duty to Deliberate**

Juror # \_\_\_\_\_, \_\_\_\_\_, will be the foreperson. She will preside over the deliberations and speak for you here in court.

You will discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous, meaning all of you must agree. 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 you 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.

**Other Communications Prohibited**

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case.

**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 it and date it, and let the Court Security Officer know that you are ready to return to the courtroom.

**Copy of Instructions**

I have instructed you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions.

**Exhibits**

Several exhibits were admitted during the trial. The clerk will gather those exhibits and bring them to the jury room shortly.