

Jury Instructions

United States of America v. Doris Morel and Erika Tomasino

(Cr. No. 15-88 S)

Introduction

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

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

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

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

Presumption of Innocence

As I told you at the start of this trial, the Defendants are presumed to be innocent of the accusations against them. This presumption of innocence remains with the Defendants unless and until the government presents evidence satisfying you beyond a reasonable doubt that the Defendants 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 the Defendants' guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to them. However, until that time, the presumption remains with the Defendants.

Reasonable Doubt

As I have said, the burden is upon the government to prove beyond a reasonable doubt that each Defendant is guilty of the individual charges made against her. It is a strict and heavy burden, but it does not mean that each 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 charges.

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 of an offense as charged, the other that the Defendant is not guilty of that offense - you will find the Defendant not guilty of that offense.

It is not sufficient for the government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond reasonable doubt. On the other hand,

there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

Concluding my instructions on the burden, then, I instruct you that what the government must do to meet its heavy burden is to establish the truth of each part of the offenses 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 the Defendants, you will return a verdict of guilty on those charges. If, on the other hand, you think there is a reasonable doubt about whether the Defendants are guilty of the offenses, you must give the Defendants the benefit of the doubt and find the Defendants not guilty of those offenses.

Defendants' 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 the Defendants did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

Proof of All Elements

I will shortly explain the offenses with which the Defendants are charged and the elements the government must prove in order to establish that the Defendants are guilty of those offenses.

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

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

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

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

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

Indictment - Effect

You will have the indictment with you in the jury room to help you remember the precise nature of the charges against the Defendants. As you will see, the indictment includes counts and co-defendants not being tried before you. As I instructed you during trial, you are not to speculate about why any other person mentioned during the trial or whose name appears in the indictment as a defendant is not currently on trial before you. The fact that they are listed in the same indictment as the Defendants is not evidence of an association between these people and the Defendants, nor is it evidence of Defendants' guilt. The same is true for the other counts to which Defendants are not charged.

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

Definition of "On or About"

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

Multiple Counts - Multiple Defendants

A separate crime is alleged against each of the Defendants in each count of the indictment. Each alleged offense, and any evidence pertaining to it, should be considered separately by the jury. The fact that you find one Defendant guilty or not guilty of one of the offenses charged should not control your verdict as to any other offenses charged against that Defendant or against any other Defendant.

You must give separate and individual consideration to each charge against each Defendant.

Give Each Defendant Separate Consideration

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 Defendant leaving out of consideration entirely any evidence admitted solely against some other Defendant.

Each Defendant is entitled to have her case determined from evidence as to her own acts, statements, and conduct, and any other evidence in the case which may be applicable to her.

Apply Instructions to Each Defendant

Unless specifically directed otherwise, you must consider each instruction given by the Court to apply separately and individually to each of the Defendants on trial in this case.

Summary of the Charges

As I told you at the beginning of trial, the Indictment charges each Defendant with eleven counts. Some of the counts are the same for both Defendants, and some are different. I will now describe each count to you.

Ms. Morel and Ms. Tomasino are the only defendants on trial before you. You have heard the names Juan Vasquez, Belkis Vasquez and others throughout this trial. You do not need to concern yourself with counts in which Ms. Morel or Ms. Tomasino are not named. You should not speculate or concern yourself with anything other than the evidence in this trial.

Count One charges Ms. Morel and Ms. Tomasino with conspiracy to commit offenses against the United States. The offenses in question are theft of government property, mail fraud, money laundering, and aggravated identity theft. It is against federal law to conspire with someone to commit any of those crimes. I will describe each of those crimes in more detail later in these instructions.

Count Two charges Ms. Morel and Ms. Tomasino with Theft of Government property, to wit United States Treasury checks.

Ms. Tomasino is charged with mail fraud in Counts Eight, Nine, and Ten. Ms. Morel is charged with mail fraud in Count Twelve.

Ms. Tomasino is charged with money laundering in Count Fifteen, Nineteen, Twenty, and Twenty-Four. Ms. Morel is charged with money laundering in Count Sixteen, Twenty-One, Twenty-Two, and Twenty-Three.

Ms. Tomasino is charged with Aggravated Identity Theft in Counts Thirty-Nine and Forty. Ms. Morel is charged with Aggravated Identity Theft in Counts Forty-Two, Forty-Three, Forty-Four, and Forty-Five.

Count 1 - Conspiracy, 18 U.S.C. § 371

Ms. Morel and Ms. Tomasino are each accused in Count One of the Indictment of conspiring with each other and with Juan Vasquez and Belkis Vasquez to commit crimes against the United States. The specific crimes the government alleges they conspired to commit are (1) theft of government property, (2) mail fraud, (3) money laundering, and (4) aggravated identity theft. I will define each of those crimes to you in detail later in these instructions. It is against federal law to conspire with someone to commit one of these crimes.

For you to find a particular Defendant guilty of conspiracy, you must be convinced that the government has proven each of the following 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 crimes against the United States, namely, theft of government property, mail fraud, money laundering, or aggravated identity theft; and

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

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

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details. But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors. 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 Defendants 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 a Defendant willfully joined in the agreement must be based upon evidence of her own words and/or actions. You need not find that a Defendant agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that she participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that she knew the essential features and general aims of the venture. Even if the Defendant was not part of the agreement at the very start, she can be found guilty of conspiracy if the government proves that she 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. ✕

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 Defendant

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.

Multiple Objects of a Conspiracy

In this case, regarding the alleged conspiracy, the Indictment charges that the Defendants conspired to commit the offenses of theft of government property, mail fraud, money laundering, and aggravated identity theft. In other words, the Defendants are charged with conspiring to commit four separate substantive crimes.

The government does not have to prove that the Defendant willfully conspired to commit all four crimes. It is sufficient if the government proves beyond a reasonable doubt that the Defendant willfully conspired to commit one of those crimes. But to return a verdict of guilty, you must all agree on which of the crimes the Defendant conspired to commit.

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 each 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 each 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 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 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.

Count 2 - Theft of Government Money or Property, 18 U.S.C. § 641

Defendants Morel and Tomasino are each charged in Count 2 with theft of government property. You must consider the evidence against each Defendant separately. For you to find either Defendant guilty of this offense, you must be convinced that the government has proven each of these things beyond a reasonable doubt with respect to each defendant:

First, that the property described in the Indictment belonged to the United States and that the property had an economic value at the time charged;

Second, that the Defendant knowingly and willfully stole or converted the property to the Defendant's own use or the use of another person; and

Third, that the Defendant did so with the intent to deprive the United States of the use or benefit of the property.

It is not necessary for the United States to prove that the Defendant knew that the government owned the property at the time of the wrongful taking.

To "steal" or "convert" means to take money or property belonging to another with intent to deprive the owner of its use or benefit either temporarily or permanently.

If you find the Defendant guilty of this offense, you will also have to determine whether the Defendant stole property worth more than \$1,000 in total.

I instruct you as a matter of law that a United States Treasury Check removed from the mails is a thing of value in which the United States has a property interest.

Aid and Abet, 18 U.S.C. § 2(a)

The defendants are charged in Count 2 with violating the statute prohibiting theft of government property both as principals and as aiding and abetting each other and Juan Vasquez and Belkis Vasquez. To "aid and abet" means intentionally to help someone else commit the charged crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, that the crime of Theft of Government Property was actually committed by someone;

Second, that the particular defendant took an affirmative act to help or cause Theft of Government Property; and

Third, that the particular defendant intended to help or cause the commission of Theft of Government Property.

The second element, the "affirmative act" element, can be satisfied without proof that the particular defendant participated in each and every element of Theft of Government Property. It is enough if the particular defendant assisted in the commission of Theft of Government Property or caused Theft of Government Property to be committed.

~~The third element, the "intent" element, is satisfied if~~
the particular defendant had advance knowledge of the facts that

make the principal's conduct criminal. "Advance knowledge" means knowledge at a time the defendant can opt to walk away.

A general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of Theft of Government Property and knowledge that Theft of Government Property is being committed are also not sufficient to constitute aiding and abetting. But you may consider these things among other factors in determining whether the government has met its burden.

Counts 8-10, and 12 - Mail Fraud, 18 U.S.C. § 1341

Ms. Tomasino is charged with mail fraud in Counts Eight, Nine and Ten. Ms. Morel is charged with mail fraud in Count Twelve.

For you to find the Defendants guilty of mail fraud, you must be convinced that the government has proven each of the following things beyond a reasonable doubt, as to each Defendant:

First, that there was a scheme, substantially as charged in the indictment, to defraud or to obtain money or property by means of false or fraudulent pretenses;

Second, that the scheme to defraud involved the misrepresentation or concealment of a material fact or matter or the scheme to obtain money or property by means of false or fraudulent pretenses involved a false statement, assertion, half-truth, or knowing concealment concerning a material fact or matter;

Third, that the particular defendant charged in that count knowingly and willfully participated in this scheme with the intent to defraud; and

Fourth, that for the purpose of executing the scheme or in furtherance of the scheme, the particular Defendant caused the United States mail to be used, or it was reasonably foreseeable

that for the purpose of executing the scheme or in furtherance of the scheme, the United States mail would be used, on or about the date alleged.

A scheme includes any plan, pattern, or course of action. It is not necessary that the government prove all of the details alleged in the Indictment concerning the precise nature and purpose of the scheme or that the alleged scheme actually succeeded in defrauding anyone. But the government must prove beyond a reasonable doubt that the scheme was substantially as charged in the Indictment.

The term "defraud" means to deceive another in order to obtain money or property.

The term "false or fraudulent pretenses" means any false statements or assertions that were either known to be untrue when made or were made with reckless indifference to their truth and that were made with the intent to defraud. The term includes actual, direct false statements, as well as half-truths and the knowing concealment of facts.

A "material" fact or matter is one that has a natural tendency to influence or be capable of influencing the decision of the decision-maker to whom it was addressed.

The Defendant acted "knowingly" if she was conscious and aware of her actions, realized what she was doing or what was

happening around her and did not act because of ignorance, mistake, or accident.

An act or failure to act is "willful" if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. Thus, if the Defendant acted in good faith, she cannot be guilty of the crime. The burden to prove intent, as with all other elements of the crime, rests with the government.

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what each Defendant knew or intended at a particular time, you may consider any statements made or acts done or omitted by the Defendant and all other facts and circumstances received in evidence that may aid in your determination of the Defendant's knowledge or intent. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

The mailing does not itself have to be essential to the scheme, but it must have been made for the purpose of carrying it out. There is no requirement that Defendant herself was responsible for the mailing, that the mailing itself was fraudulent, or that the use of the mail was intended as the specific or exclusive means of accomplishing the alleged fraud. But the government must prove beyond a reasonable doubt that the Defendant knew, or could reasonably have foreseen, that use of the mail would follow in the course of the scheme in furtherance of the scheme or for the purpose of executing the scheme.

Counts 15, 16, and 19-24 - Money Laundering, Illegal
Concealment, 18 U.S.C. 1956(a) (1) (B) (i)

The Defendants are charged in several counts with violating that portion of the federal money laundering statute that prohibits concealment of the proceeds of certain unlawful activities. It is against federal law to engage in such concealment.

Ms. Tomasino is charged with money laundering in Counts Fifteen, Nineteen, Twenty, and Twenty-Four. Ms. Morel is charged with money laundering in Counts Sixteen, Twenty-One, Twenty-Two, and Twenty-Three. For the particular Defendant to be convicted of this crime, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that the Defendant entered into a financial transaction or transactions, on or about the date alleged, with a financial institution engaged in interstate commerce;

Second, that the transaction involved the use of proceeds of unlawful activities, specifically, proceeds of the theft of government property and/or the mail fraud scheme;

Third, that Defendant knew that these were the proceeds of some kind of crime that amounts to a state or federal felony; and

Fourth, that the Defendant knew that the transaction or transactions were designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of that specified unlawful activity.

A withdrawal, deposit, or transfer of funds from a bank is a financial transaction.

"Proceeds" means any receipts that someone acquires or retains as a result of the commission of the unlawful activity.

Knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what each of the Defendants knew or intended at a particular time, you may consider any statements made or acts done or omitted by the Defendant and all other facts and circumstances received in evidence that may aid in your determination of Defendant's knowledge or intent. You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

Counts 39, 40, and 42-45 - Aggravated Identity Theft,

18 U.S.C. § 1028A

Defendant Erika Tomasino is charged in Counts 39 and 40 with aggravated identity theft. Defendant Doris Morel is charged with aggravated identity theft in Counts 42, 43, 44, and 45. The elements for each of those counts are the same, but I remind you that you must consider each Defendant and each count separately in deciding whether the government has proven a particular count beyond a reasonable doubt.

It is against federal law to use someone else's identity in furtherance of certain crimes. For you to find the defendant guilty of this crime you must be convinced that the government has proven each of these things beyond a reasonable doubt:

First, that the particular defendant committed the felony violation of theft of government property or mail fraud;

Second, that during and in relation to the felony violation of theft of government property or mail fraud the Defendant knowingly used a means of identification, described in the Indictment, without lawful authority;

Third, that the means of identification actually belonged to another person; *and that person has to be a real person* and

Fourth, that the Defendant knew that the means of identification belonged to another *real* person.

Someone knows a fact if she has actual knowledge of it. Knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what each Defendant knew at a particular time, you may consider any statements made or acts done or omitted by that particular Defendant and all other facts and circumstances received in evidence that may aid in your determination of the Defendant's knowledge.

Willful Blindness

In deciding whether each Defendant acted knowingly, you may infer that the Defendant had knowledge of a fact if you find that she deliberately closed her eyes to a fact that otherwise would have been obvious to her. In order to infer knowledge, you must find that two things have been established:

First, that the particular Defendant was aware of a high probability of the fact in question; and

Second, that the Defendant consciously and deliberately avoided learning of that fact. That is to say, the Defendant willfully made herself blind to that fact.

It is entirely up to you to determine whether she deliberately closed her eyes to the fact and, if so, what inference, if any, should be drawn. However, it is important to bear in mind that mere negligence, recklessness, or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant of the fact.

Pinkerton Liability

There is another method by which you may evaluate whether to find either Defendant guilty of each particular substantive charge in the Indictment.

If, in light of my instructions, you find beyond a reasonable doubt that the particular Defendant was guilty on the conspiracy count (Count One), then you may also, but you are not required to, find her guilty of the substantive crime charged in each of the Counts against that particular Defendant provided you find beyond a reasonable doubt each of the following elements:

First, that someone committed the substantive crime charged in the particular Count;

Second, that the person you find actually committed the substantive crime was a member of the conspiracy of which you found the particular Defendant was a member;

Third, that this co-conspirator committed the substantive crime in furtherance of the conspiracy;

Fourth, that the Defendant was a member of this conspiracy at the time the substantive crime was committed and had not withdrawn from it; and

Fifth, that the Defendant could reasonably have foreseen that one or more of her co-conspirators might commit the substantive crime.

If you find all five of these elements to exist beyond a reasonable doubt, then you may find the particular Defendant guilty of the substantive crime charged, even though she did not personally participate in the acts constituting the crime or did not have actual knowledge of them.

If, however, you are not satisfied as to the existence of any one of these five elements, then you may not find the particular Defendant guilty of the particular substantive crime unless the government proves beyond a reasonable doubt that the Defendant personally committed that substantive crime, or aided and abetted its commission.

Uncalled Witness Equally Available

There are several persons whose names you have heard during the course of the trial but who did not appear here to testify. I instruct you that each party had an equal opportunity or lack of opportunity to call any of these witnesses. Therefore, you should not draw any inferences or reach any conclusions as to what they would have testified to had they been called. Their absence should not affect your judgment in any way.

You should, however, remember my instruction that the law does not impose on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Summary Charts

The government has presented exhibits in the form of charts and summaries. I decided to admit these charts and summaries in place of the underlying documents that they represent in order to save time and avoid unnecessary inconvenience. You should consider these charts and summaries as you would any other evidence.

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

have been read or shown to you during the course of the trial; and

4. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this 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 which you find have been proven, such reasonable inferences as seem justified in the light of your experience.

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

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

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

~~The law makes no distinction between the weight to be given~~
to direct and circumstantial evidence. However, it does require

that any fact required to convict the Defendant be proven beyond a reasonable doubt.

**Cautionary and Limiting Instructions as to Particular Kinds of
Evidence**

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.

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 or she is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence.

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

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 witnesses testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.
3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.
4. The probability or improbability of the witness's testimony. Did what the witness have to say sound

reasonable or plausible or did it appear to be highly unlikely or impossible.

5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

Witnesses - Credibility - Government Agents

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.

Statements by Defendants

You have heard evidence that Defendants Erika Tomasino and Doris Morel made certain statements in which the government claims they admitted certain facts.

You heard testimony that Defendant Morel was interviewed by U.S. Secret Service agents first at her home and then at their office. Testimony regarding unrecorded statements, particularly in circumstances where recording equipment is available, must be viewed with caution. It is for you to decide (1) whether the Defendants made the statement they are alleged to have made, and (2) if so, how much weight to give them. In making those decisions, you should consider all of the evidence about the statements, including the circumstances under which the statements may have been made and any facts or circumstances tending to corroborate or contradict the version of events described in the alleged statements.

The Government as a Party

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

Exhibits

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

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

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 or her client, for objecting. It is the attorney's right and duty to protect a client's interests by objecting to what the attorney may believe is evidence that does not satisfy the requirements of the rules of evidence.

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

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.

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.

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 against a Defendant unless your decision is unanimous.

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

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

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

Selection of Foreperson and Duty to Deliberate

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

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

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that 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.

Jury Recollection Controls - Rehearing Testimony

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

Occasionally, juries want to rehear testimony. If you feel that you need to rehear testimony, I will consider your request. However keep in mind that this is a time-consuming and difficult process, so if you think you need this, consider your request carefully and be as specific as possible.

Return of Verdict

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