

**United States of America v. Thomas Hammond  
(Cr. No. 17-125)**

**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.

**Jury Not To Consider Punishment**

If you find the Defendant guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that were presented during the trial, you should not guess about the punishment. It should not enter into your consideration or discussions at any time.

**Presumption of Innocence**

As I told you at the start of this trial, the Defendant, Thomas Hammond, is presumed to be innocent of the accusations against him. This presumption of innocence remains with Mr. Hammond unless and until the government presents evidence satisfying you beyond a reasonable doubt that Mr. Hammond is guilty.

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

If you find that the government has proven Mr. Hammond guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, until that time, the presumption remains with Mr. Hammond.

**Testimony by Defendant**

In this case, the Defendant decided to testify. You should examine and evaluate his testimony just as you would the testimony of any witness with an interest in the outcome of the case. You should not disregard or disbelieve his testimony simply because he is charged as a defendant in the case.

**Reasonable Doubt**

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 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 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 charge against the Defendant, you will return a verdict of guilty on those<sup>e</sup>~~se~~ charges<sup>f</sup>. If, on the other hand, you think there is a reasonable doubt about whether the Defendant is guilty of the offense, you must give the Defendant the benefit of the doubt and find him not guilty of that offense.

**Proof of All Elements**

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

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

If the government fails to prove 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 the Defendant has been charged have been proved, then you should find the Defendant guilty of that offense.

Bear in mind that the requirement that the government prove each and every element of the offense with which the Defendant is charged does not mean that the government is required to prove every statement contained in the Indictment.



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

**Indictment - Effect**

You will have the Indictment with you in the jury room to help you remember the precise nature of the charge against the Defendant. 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 bring this matter before you for determination. Beyond that, it has no significance whatsoever. It merely sets forth the elements of the offense which the government must prove beyond a reasonable doubt.

**Definition of "On or About"**

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

Summary of the Charge

As I told you at the beginning of trial, the Indictment in this case charges the Defendant with one count of using any facility or means of interstate and foreign commerce to knowingly attempt to persuade, induce, entice, and coerce an individual who had not attained the age of 18 to agree to engage in sexual activity for which any person can be charged with a criminal offense, in violation of 18 U.S.C. § 2422(b).

I am now going to instruct you as to the specific elements which the government must prove in order to prove the Defendant guilty.

**Proof May Be Conjunctive or Disjunctive**

The indictment charges certain acts in the conjunctive. For example, in Count One, the Defendant is charged with attempting to persuade, induce, entice, and coerce a person under the age of eighteen to agree to engage in unlawful sexual activity. In order to prove the Defendant guilty of a particular offense, the United States does not need to prove that the Defendant did all of those things, but only that he did one of those things. In the above example, the United States would need to prove, beyond a reasonable doubt, that the Defendant attempted to persuade or induce or entice or coerce.

Count One

In Count One of the Indictment, Mr. Hammond is charged with using a facility or means of interstate or foreign commerce to persuade, induce, entice, or coerce someone under age eighteen to engage in sexual activity for which a person can be charged with a criminal offense, or with attempting to do so. It is against federal law to engage in such conduct or to attempt to do so. For you to find Defendant guilty of this crime, you must be convinced that the government has proven each of these things beyond a reasonable doubt:

First, that on about the date charged, Defendant knowingly attempted to persuade, induce, entice, or coerce the person in question to agree to engage in sexual activity;

~~Second~~, that he did so by using a facility or means of ~~inter~~state or foreign commerce;

Third, that the person at the time was less than eighteen years old; and

Fourth, that the sexual activity was a criminal offense.

"Knowingly" means that the act was done voluntarily and intentionally and not because of mistake or accident.

**Criminal Sexual Activity Defined -  
First and Second Degree Child Molestation**

In order to find the Defendant guilty, the government must prove that if any sexual activity had occurred, any person could have been charged with a criminal offense under the law of Rhode Island.

Under Rhode Island law, it is a crime to engage in sexual penetration with a person fourteen (14) years of age or under. Rhode Island law defines sexual penetration as "sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genital or anal openings of another person's body, or the victim's own body upon the accused's instruction, but emission of semen is not required."

Under Rhode Island Law, it is also a crime to engage in sexual contact with another person fourteen (14) years of age or under. Rhode Island law defines sexual contact as "the intentional touching of the victim's or the accused's intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault."

Attempt

In order to prove the crime of attempt to use a facility or means of interstate or foreign commerce to persuade, induce, entice, or coerce someone under age eighteen to agree to engage in sexual activity, as charged in Count I of the Indictment, the government must prove the following two things beyond a reasonable doubt:

First, that Defendant intended to commit the crime of using a facility or means of interstate or foreign commerce to persuade, induce, entice, or coerce someone under age eighteen to agree to engage in sexual activity; and

Second, that Defendant engaged in a purposeful act that, under the circumstances as he believed them to be, amounted to a substantial step toward the commission of that crime and strongly corroborated his criminal intent.

A "substantial step" is an act in furtherance of the criminal scheme. A "substantial step" must be something more than mere preparation, but less than the last act necessary before the substantive crime is completed.

The "substantial step" may itself prove the intent to commit the crime, but only if it unequivocally demonstrates such an intent.



**Intent**

In order to prove the Defendant guilty of the crime charged, the Government must prove that he intended to achieve a mental state in the intended victim—the fictional minor—to agree to engage in sexual activity, regardless of whether the Defendant intended the actual consummation of the sexual activity.

**Fictional Minor**

You have heard evidence in this case that the alleged victim, a ten-year-old girl, was fictitious. The Government does not have to prove that the intended victim actually existed, but it must prove beyond a reasonable doubt that the Defendant believed that the intended victim existed and was a person younger than eighteen years old.

**Enticement Through an Adult Intermediary-**  
**Direct Communication with a Minor Is Not Necessary**

Further, it is not a defense to the charge that the Defendant did not directly communicate with a minor child. Direct communication with a child is not necessary. Here it is alleged that the Defendant communicated with an adult intermediary whom he believed had access to a child. The government must only prove beyond a reasonable doubt that the Defendant believed that he was communicating with someone who could arrange for the child to engage in unlawful sexual activity.

**Facility or Means of Interstate or Foreign Commerce Defined**

Using a facility or means of interstate or foreign commerce means employing or utilizing any method of communication capable of facilitating communication between one state and another state or a foreign country. Here the method of interstate commerce alleged is the internet, email, and a cell phone. Each of those is a facility or means of interstate commerce. Interstate communication is not required.

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.
  3. *Any stipulations agreed to by the attorneys.*
- 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.

Our system of justice depends on judges like me and jurors like you being able and willing to make careful and fair decisions. Scientific studies of the way our brains work have shown that, for all of us, our first responses are often like reflexes. Just like our knee reflexes, our mental responses are quick and automatic. Even though these quick responses may not be what we consciously think, they could influence how we judge people or even how we remember or evaluate the evidence. Studies have also taught us some ways to be more careful in our thinking that I ask you to use as you consider the evidence in this case.

Take the time you need to test what might be reflexive unconscious responses and to reflect carefully and consciously about the evidence.

Focus on individual facts, don't jump to conclusions that may have been influenced by unintended stereotypes or associations.

Try taking another perspective. Ask yourself if your opinion of the parties or witnesses or of the case would be different if the people participating looked different or if they belonged to a different group.

You must each reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours.

Working together will help achieve a fair result.

**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.

**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**

One of the things jurors must do is assess whether courtroom testimony is credible. This is a difficult task. For one thing, some time has passed between the events at issue and this trial. For another, witnesses' testimony is given in response to lawyers' questions, subject to our evidence rules, which is different from the conversations you might have with others in your daily life.

In considering the testimony, there are a number of factors you may consider, including:

- what the witness said and how he or she said it;
- what motives, biases, or interests the witness may have in giving this testimony;
- 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;
- whether the witness hopes for, expects, or received any benefit for giving this testimony or was under any pressure to give this testimony;

- whether testimony makes sense from the witness's perspective and after looking at all of the evidence in the case; and
- whether the witness's testimony is supported or contradicted by independent evidence

If the witness has made a prior statement about the facts in this case, consider what the witness said and whether the statement was recorded at the time; the circumstances of that statement; what information the witness may have been exposed to before making that statement; and what happened between that statement and the trial testimony.

Once you have decided whether a witness is accurate and believable, you may give his or her testimony whatever weight you think appropriate. You may believe everything a witness says, or only part of it, or none of it.

**Weighing the Testimony of an Expert Witness**

You have heard testimony from a person described as an expert. An expert witness has special knowledge or experience that allows the witness to give an opinion. In weighing the testimony, you should consider the factors that generally bear upon the credibility of a witness as well as the expert witness's education and experience, the soundness of the reasons given for the opinion and all other evidence in the case. Remember that you alone decide how much of a witness's testimony to believe, and how much weight it should be given.

**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.

**The Government as a Party**

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

**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. If any of your fellow jurors, during the course of your deliberations, appear to be expressing views that are biased in some way, each of you have a responsibility to speak up and confront this behavior.

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**

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 the Defendant unless your decision is unanimous.

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

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

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

**Selection of Foreperson and Duty to Deliberate**

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

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

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