

**STOCK JURY INSTRUCTIONS FOR CRIMINAL CASES  
FOR UNITED STATES DISTRICT JUDGE ROBERT C. BRACK**

Judge Brack has some initial instructions to the jury prior to beginning the opening statement, which are included here as Instructions A and B. When submitting requested proposed jury instructions, please fill in the appropriate blank places contained in Instruction A, as well as the elements of the offense charged. “Stock” Instructions #s 1-9 are given just before the closing arguments begin. The final instruction #10 is given immediately after closing argument and just before the jury retires to deliberate. Additionally, please prepare your proposed jury instructions in accordance with Judge Brack’s rules for trial.

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## **INSTRUCTION NO. A**

Members of the Jury:

You are now the jury in this case. I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions. At the end of the trial I will give you more detailed instructions. You must follow all of my instructions in doing your job as jurors.

This criminal case has been brought by the United States Government. I may sometimes refer to the Government as the prosecution. The Government is represented at this trial by \_\_\_\_\_. The Defendant, \_\_\_\_\_ is represented by attorney, \_\_\_\_\_.

The Defendant has been charged by the Government with a criminal violation of a federal law, that is \_\_\_\_\_. The charge against the Defendant is contained in the indictment. The indictment is simply the description of the charge made by the Government against the Defendant, but it is not evidence that the Defendant committed a crime. The Defendant pleaded not guilty to the charge. A Defendant is presumed innocent and may not be found guilty by you unless all twelve of you unanimously find that the Government has proved Defendant's guilt beyond a reasonable doubt.

The first step in the trial will be the opening statements. The Government in its opening statement will tell you about the evidence which it intends to put before you, so that you will have an idea of what the Government's case is going to be. Just as the indictment is not evidence, neither is the opening statement evidence. Its purpose is only to help you understand what the evidence will be and what the Government will try to prove.

After the Government's opening statement, the Defendant's attorney may make an opening statement. At this point in the trial, no evidence has been offered by either side.

Next, the Government will offer evidence that it claims will support the charges against the Defendant. The Government's evidence may consist of the testimony of witnesses as well as

documents and exhibits. Some of you have probably heard the terms “circumstantial evidence” and “direct evidence.” Do not be concerned with these terms. You are to consider all the evidence given in this trial.

After the Government’s evidence, the Defendant’s lawyer may make an opening statement and present evidence in the Defendant’s behalf, but the lawyer is not required to do so. I remind you that the Defendant is presumed innocent and that the Government must prove the guilt of the Defendant beyond a reasonable doubt. The Defendant does not have to prove his innocence. If the Defendant decides to present evidence, the Government may introduce rebuttal evidence.

After you have heard all the evidence on both sides, I will then instruct you about the rules of law which you are to use in reaching your verdict. After I give you these instructions, the Government and the defense will each be given time for their final arguments.

I just told you that the opening statements by the lawyers are not evidence. The same applies to closing arguments. They are not evidence either, but you should pay close attention to them. After hearing the arguments, you will leave the courtroom together to make your decision. Your deliberations will be secret. You will never have to explain your verdict to anyone. Now that I have described the trial itself, let me explain the jobs that you and I are to perform during the trial.

I will decide which rules of law apply to this case, in response to questions or objections raised by the attorneys as we go along, and also the final instructions given to you after the evidence and arguments are completed. You must follow the law as I explain it to you whether you agree with it or not.

You, and you alone, are judges of the facts. Therefore, you should give careful attention to the testimony and exhibits, because based upon this evidence you will decide whether the Government has proved, beyond a reasonable doubt, that the Defendant has committed the crime(s)

charged in the indictment. You must base that decision only on the evidence in the case and my instructions about the law. You will have the exhibits with you when you deliberate.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

The Defendant is charged with \_\_\_\_\_. I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence I will now give you a brief summary of the elements of the offense which the Government must prove to make its case.

**[LIST THE ELEMENTS OF THE OFFENSE HERE]**

During the course of the trial, do not talk with any witness, or with the Defendant, or with any of the lawyers in the case. Please do not talk with them about any subject at all. You may be unaware of the identity of everyone connected with the case. Therefore, in order to avoid even the appearance of impropriety, do not engage in any conversation with anyone in or about the courtroom or courthouse. It is best that you remain in the jury room during breaks in the trial and not linger in the halls. In addition, during the course of the trial do not talk about the trial with anyone else- not your family, not your friends, not the people with whom you work. Also, do not discuss this case among yourselves until I have instructed you on the law and you have gone to the jury room to make your decision at the end of the trial. Otherwise, without realizing it, you may start forming opinions before the trial is over. It is important that you wait until all the evidence is received and you have heard my instructions on rules of law before you deliberate among yourselves. Let me add that during the course of the trial you will receive all the evidence you properly may consider to decide the case. Because of this, do not attempt to gather any information on your own which you think

might be helpful. Do not engage in any outside reading on this case, do not attempt to visit any places mentioned in the case, and do not in any other way try to learn about the case outside the courtroom.

Now that the trial has begun, you must not read about it in the newspapers or watch or listen to television or radio reports of what is happening here. The reason for these rules, as I am certain you will understand, is that your decision in this case must be made solely on the evidence presented at the trial.

At times during the trial, a lawyer may make an objection to a question asked by another lawyer, or to an answer by a witness. This simply means that the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections or from my rulings on the objections. These relate only to the legal questions that I must determine and should not influence your thinking. If I sustain an objection to a question, the witness may not answer it. Do not attempt to guess what answer might have been given had I allowed the question to be answered. Similarly, if I tell you not to consider a particular statement, you should put that statement out of your mind, and you may not refer to that statement in your later deliberations. If an objection is overruled, treat the answer like any other.

During the course of the trial I may ask a question of a witness. If I do, that does not indicate that I have any opinion about the facts in the case. Nothing I say or do should lead you to believe that I have any opinion about the facts, nor be taken as indicating what your verdict should be.

During the trial I may have to interrupt the proceedings to confer with the attorneys about rules of law which should apply here. Sometimes we will talk here, at the bench. Some of these conferences may take time. So, as a convenience to you, I will excuse you from the courtroom. I

will try to avoid such interruptions as much as possible and will try to keep them short, but please be patient, even if the trial seems to be moving slowly. Conferences outside your presence are sometimes unavoidable.

Finally, there are three basic rules about a criminal case which you should keep in mind.

First, the Defendant is presumed innocent until proven guilty. The indictment against the Defendant brought by the Government is only an accusation, nothing more. It is not proof of guilt or anything else. The Defendant therefore starts out with a clean slate.

Second, the burden of proof is on the Government until the very end of the case. The Defendant has no burden to prove his innocence, or to present any evidence, or to testify. Since the defendant has the right to remain silent, the law prohibits you in arriving at your verdict from considering that the defendant may not have testified.

Third, the Government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that in this respect a criminal case is different from a civil case.

**RB STOCK**  
**Fifth Circuit Pattern Jury Instructions**  
**1.01 Preliminary Instructions**

## **INSTRUCTION NO. B**

If you would like to take notes during the trial, you may do so. On the other hand, you are not required to take notes if you prefer not to do so. Each of you should make your own decision about this.

If you do decide to take notes, be careful not to get so involved in the note taking that you become distracted from the ongoing proceedings. Your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you do not take notes, you should rely upon your own independent recollection of the proceedings and you should not be unduly influenced by the notes of other jurors.

Notes are not entitled to any greater weight than the memory or impression of each juror as to what the testimony may have been. Whether you take notes or not, each of you must form and express your own opinion as to the facts of the case.

You will note that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

## **INSTRUCTION NO. 1**

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case; for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case and, finally, I will explain to you the procedures you should follow in your deliberations.

**RB STOCK**  
**Fifth Circuit Pattern Jury Instructions**  
**1.03 Introduction to Final Instructions**

## **INSTRUCTION NO. 2**

You, as jurors, are the judges of the facts. But, in determining what actually happened -that is, in reaching your decision as to the facts - it is your sworn duty to follow all of the rules of law as I explain them to you. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

### **INSTRUCTION NO. 3**

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all. The government has the burden of proving the defendant guilty beyond a reasonable doubt and, if it fails to do so, you must acquit the defendant.

While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

**RB STOCK**

**Fifth Circuit Pattern Jury Instructions**

**1.05 Presumption of Innocence, Burden of Proof, Reasonable Doubt.**

#### **INSTRUCTION NO. 4**

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses and the exhibits. Remember that any statements, objections, or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case and, in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the questions or as to the contents of an exhibit. Also, certain testimony or other evidence has been ordered stricken from the record and you have been instructed to disregard this evidence. Do not consider any testimony or other evidence which has been stricken in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in the case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

**RB STOCK**  
**Fifth Circuit Pattern Jury Instructions**  
**1.06 Evidence-Excluding What is Not Evidence**

### **INSTRUCTION NO. 5**

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

In considering the evidence, you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of events and circumstances indicating that something is or is not a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

**RB STOCK**

**Fifth Circuit Pattern Jury Instructions**

**1.07 (Alternative B) Evidence-Inferences-Direct and Circumstantial**

## **INSTRUCTION NO. 6**

I remind you that it is your job to decide whether the government has proved the guilt of the Defendants beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given the witness' testimony. An important part of your job will be making judgments about the testimony of the witnesses [including the Defendants] who testified in this case. You should decide whether you believe what each person had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness' testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

[The testimony of the Defendants should be weighed and their credibility evaluated in the same way as that of any other witness.]

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side

on that point.

**RB STOCK**  
**Fifth Circuit Pattern Jury Instructions**  
**1.08 Credibility of Witnesses**

### **INSTRUCTION NO. 7**

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that, at some other time, the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial. Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

**INSTRUCTION NO. 8**

You will note that the indictment charges that the offense was committed on or about a specified date. The government does not have to prove that the crime was committed on that exact date, so long as the government proves beyond a reasonable doubt that the defendant committed the crime on a date reasonably near \_\_\_\_\_, the date stated in the indictment.

**RB STOCK**  
**Fifth Circuit Pattern Jury Instructions**  
**1.18 On or About**

**INSTRUCTION NO. 9**

You are here to decide whether the Government has proved beyond a reasonable doubt that the Defendant is guilty of the crime charged. The Defendant is not on trial for any act, conduct, or offense not alleged in the Indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a defendant in this case except as you are otherwise instructed.

**RB STOCK**  
**Fifth Circuit Pattern Jury Instructions**  
**1.19 Caution-Consider Only Crime Charged**

### **INSTRUCTION NO. 10**

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the Indictment. Your deliberations will be secret. You will never have to explain your verdict to anyone. It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors.

During your deliberations, do not hesitate to re-examine your own opinions and change your mind if convinced that you were wrong. But, do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Remember, at all times, you are judges -- judges of the facts. Your duty is to decide whether the government has proved the defendant guilty beyond a reasonable doubt. When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience.

The foreperson will write the unanimous answer of the jury in the space provided for each count of the Indictment, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict. If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the marshal. I will either reply in writing or bring you back into the court to answer your message.

Bear in mind that you are never to reveal to any person, not even to the Court, how the jury stands, numerically or otherwise, on any count of the indictment until after you have reached a unanimous verdict.

**RB STOCK**  
**Fifth Circuit Pattern Jury Instructions**  
**1.24 Duty to Deliberate-Verdict**