

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR [NUMBER] LH

[DEFENDANT],

Defendant[s].

**[JUDGE C. LEROY HANSEN'S
STOCK CRIMINAL] JURY INSTRUCTIONS**

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 DETERMINE 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. I WILL THEN GIVE YOU SOME SPECIFIC RULES OF LAW ABOUT THIS PARTICULAR CASE. NEXT, I WILL AGAIN RETURN TO SOME GENERAL INSTRUCTIONS, FOR EXAMPLE, HOW TO JUDGE THE BELIEVABILITY OF WITNESSES. THESE INSTRUCTIONS WILL BE GIVEN TO YOU FOR USE IN THE JURY ROOM, SO YOU NEED NOT TAKE NOTES.

AFTER THESE INSTRUCTIONS ON THE LAW GOVERNING THE CASE, THE ATTORNEYS MAY MAKE CLOSING ARGUMENTS. THIS ALLOWS THE ATTORNEYS AN OPPORTUNITY TO POINT OUT THOSE THINGS THAT ARE MOST SIGNIFICANT OR MOST HELPFUL TO THEIR SIDE OF THE CASE, AND IN DOING SO TO CALL YOUR ATTENTION TO CERTAIN FACTS OR INFERENCES THAT MIGHT OTHERWISE ESCAPE YOUR NOTICE. REMEMBER THESE STATEMENTS ARE NOT EVIDENCE AND WHAT THE LAWYERS SAY IS NOT BINDING UPON YOU. IT IS YOUR OWN RECOLLECTION AND INTERPRETATION OF THE EVIDENCE THAT CONTROLS IN THIS CASE.

AFTER CLOSING ARGUMENTS, I WILL EXPLAIN TO YOU THE PROCEDURES YOU SHOULD FOLLOW IN YOUR DELIBERATIONS.

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.

5th Cir. Crim. Pattern Jury Instructions 1.04 (1997).

INSTRUCTION NO. 3

THE INDICTMENT OR FORMAL CHARGE AGAINST THE DEFENDANT[S] IS NOT EVIDENCE OF GUILT. INDEED, THE DEFENDANT[S] [IS/ARE] PRESUMED BY THE LAW TO BE INNOCENT. THE LAW DOES NOT REQUIRE THE DEFENDANT[S] TO PROVE [HIS/HER/THEIR] INNOCENCE OR PRODUCE ANY EVIDENCE AT ALL **AND NO INFERENCE WHATEVER MAY BE DRAWN FROM THE ELECTION OF A DEFENDANT NOT TO TESTIFY.** THE GOVERNMENT HAS THE BURDEN OF PROVING THE DEFENDANT[S] GUILTY BEYOND A REASONABLE DOUBT, AND IF IT FAILS TO DO SO, YOU MUST ACQUIT THE DEFENDANT[S].

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. IF YOU ARE CONVINCED THAT THE ACCUSED [HAS/HAVE] BEEN PROVED GUILTY BEYOND A REASONABLE DOUBT, SAY SO. IF YOU ARE NOT CONVINCED, SAY SO.

5th Cir. Crim. Pattern Jury Instructions 1.05 (1997)(mod.). [The bolded phrase is generally included only if the Defendant does not testify.]

INSTRUCTION NO. 4

BEFORE I READ THE INDICTMENT, I MUST CAUTION YOU THAT YOU ARE HERE ONLY TO DECIDE WHETHER THE GOVERNMENT HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT[S] [IS/ARE] GUILTY OF THE CRIME CHARGED IN THE INDICTMENT. THE DEFENDANT[S] [IS/ARE] NOT ON TRIAL FOR ANY OTHER ACT, CONDUCT OR OFFENSE. NEITHER ARE YOU CONCERNED WITH THE GUILT OF ANY OTHER PERSON OR PERSONS NOT ON TRIAL AS A DEFENDANT IN THIS CASE.

ALSO, IN DETERMINING WHETHER THE GOVERNMENT HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT[S] [IS/ARE] GUILTY OF THE CRIME CHARGED IN THE INDICTMENT, YOU SHOULD NOT BE CONCERNED WITH PUNISHMENT IN ANY WAY. SHOULD YOU FIND THE DEFENDANT[S] GUILTY, IT WILL BE MY DUTY TO DECIDE WHAT THE PUNISHMENT WILL BE, AND PUNISHMENT SHOULD NOT ENTER YOUR CONSIDERATION OR DISCUSSION.

5th Cir. Crim. Pattern Jury Instructions 1.19 (1997)(mod.).

INSTRUCTION NO. 5

THE DEFENDANT[S] [IS/ARE] ON TRIAL BEFORE YOU UPON AN INDICTMENT
BROUGHT BY THE GRAND JURY CHARGING AS FOLLOWS:

INSTRUCTION NO. 6

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 CRIME WAS COMMITTED ON A DATE REASONABLY NEAR THE DATE STATED IN THE INDICTMENT.

5th Cir. Crim. Pattern Jury Instructions 1.18 (1997)(mod.).

INSTRUCTION NO. 7

[MULTIPLE DEFENDANTS, MULTIPLE COUNTS]

A SEPARATE CRIME IS CHARGED AGAINST ONE OR MORE OF THE DEFENDANTS IN EACH COUNT OF THE INDICTMENT. EACH COUNT, AND THE EVIDENCE PERTAINING TO IT, SHOULD BE CONSIDERED SEPARATELY AND INDIVIDUALLY. THE FACT THAT YOU MAY FIND ONE OR MORE OF THE ACCUSED GUILTY OR NOT GUILTY OF ANY OF THE CRIMES CHARGED SHOULD NOT CONTROL YOUR VERDICT AS TO ANY OTHER CRIME OR ANY OTHER DEFENDANT. YOU MUST GIVE SEPARATE CONSIDERATION TO THE EVIDENCE AS TO EACH DEFENDANT.

5th Cir. Crim. Pattern Jury Instructions 1.23 (1997)(mod.).

INSTRUCTION NO. 8

[SUBSTANTIVE INSTRUCTIONS HERE]

INSTRUCTION NO. 9

THE WORD “KNOWINGLY,” AS THAT TERM HAS BEEN USED FROM TIME TO TIME IN THESE INSTRUCTIONS, MEANS THAT THE ACT WAS DONE VOLUNTARILY AND INTENTIONALLY, NOT BECAUSE OF MISTAKE OR ACCIDENT.

5th Cir. Crim. Pattern Jury Instructions 1.37 (1997).

INSTRUCTION NO. 10

[AIDING AND ABETTING]

THE GUILT OF A DEFENDANT IN A CRIMINAL CASE MAY BE ESTABLISHED WITHOUT PROOF THAT A DEFENDANT PERSONALLY DID EVERY ACT CONSTITUTING THE OFFENSE ALLEGED. THE LAW RECOGNIZES THAT, ORDINARILY, ANYTHING A PERSON CAN DO FOR HIMSELF MAY ALSO BE ACCOMPLISHED BY THAT PERSON THROUGH THE DIRECTION OF ANOTHER PERSON AS HIS OR HER AGENT, OR BY ACTING IN CONCERT WITH, OR UNDER THE DIRECTION OF, ANOTHER PERSON OR PERSONS IN A JOINT EFFORT OR ENTERPRISE.

SO, IF ANOTHER PERSON IS ACTING UNDER THE DIRECTION OF A DEFENDANT OR IF A DEFENDANT JOINS ANOTHER PERSON AND PERFORMS ACTS WITH THE INTENT TO COMMIT A CRIME, THEN THE LAW HOLDS THE DEFENDANT RESPONSIBLE FOR THE ACTS AND CONDUCT OF SUCH OTHER PERSONS JUST AS THOUGH THE DEFENDANT HAD COMMITTED THE ACTS OR ENGAGED IN SUCH CONDUCT.

NOTICE, HOWEVER, THAT BEFORE ANY DEFENDANT MAY BE HELD CRIMINALLY RESPONSIBLE FOR THE ACTS OF OTHERS IT IS NECESSARY THAT THE ACCUSED DELIBERATELY ASSOCIATE HIMSELF IN SOME WAY WITH THE CRIME AND PARTICIPATE IN IT WITH THE INTENT TO BRING ABOUT THE CRIME.

OF COURSE, MERE PRESENCE AT THE SCENE OF A CRIME AND KNOWLEDGE THAT A CRIME IS BEING COMMITTED ARE NOT SUFFICIENT TO ESTABLISH THAT A DEFENDANT EITHER DIRECTED OR AIDED AND ABETTED THE CRIME UNLESS YOU FIND BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS A PARTICIPANT

AND NOT MERELY A KNOWING SPECTATOR.

IN OTHER WORDS, YOU MAY NOT FIND ANY DEFENDANT GUILTY UNLESS YOU FIND BEYOND A REASONABLE DOUBT THAT EVERY ELEMENT OF THE OFFENSE AS DEFINED IN THESE INSTRUCTIONS WAS COMMITTED BY SOME PERSON OR PERSONS, AND THAT THE DEFENDANT VOLUNTARILY PARTICIPATED IN ITS COMMISSION WITH THE INTENT TO VIOLATE THE LAW.

5th Cir. Crim. Pattern Jury Instructions 2.06 (1997)(mod.).

[POSSESSION]

POSSESSION AS THAT TERM IS USED IN THIS CASE, MAY BE OF TWO KINDS: ACTUAL POSSESSION AND CONSTRUCTIVE POSSESSION. A PERSON WHO KNOWINGLY HAS DIRECT PHYSICAL CONTROL OVER A THING, AT A GIVEN TIME, IS THEN IN ACTUAL POSSESSION OF IT.

A PERSON WHO, ALTHOUGH NOT IN ACTUAL POSSESSION, KNOWINGLY HAS BOTH THE POWER AND THE INTENTION, AT A GIVEN TIME, TO EXERCISE DOMINION OR CONTROL OVER A THING, EITHER DIRECTLY OR THROUGH ANOTHER PERSON OR PERSONS, IS THEN IN CONSTRUCTIVE POSSESSION OF IT.

POSSESSION MAY BE SOLE OR JOINT. IF ONE PERSON ALONE HAS ACTUAL OR CONSTRUCTIVE POSSESSION OF A THING, POSSESSION IS SOLE. IF TWO OR MORE PERSONS SHARE ACTUAL OR CONSTRUCTIVE POSSESSION OF A THING, POSSESSION IS JOINT.

YOU MAY FIND THAT THE ELEMENT OF POSSESSION, AS THAT TERM IS USED IN THESE INSTRUCTIONS, IS PRESENT IF YOU FIND BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD ACTUAL OR CONSTRUCTIVE POSSESSION, EITHER ALONE OR JOINTLY WITH OTHERS.

5th Cir. Crim. Pattern Jury Instructions 1.31 (1997).

INSTRUCTION NO. 12

[INTERVIEW]

AN ATTORNEY HAS THE RIGHT TO INTERVIEW A WITNESS FOR THE PURPOSE OF LEARNING WHAT TESTIMONY THE WITNESS WILL GIVE. THE FACT THAT THE WITNESS HAS TALKED TO AN ATTORNEY DOES NOT REFLECT ADVERSELY ON THE TRUTH OF SUCH TESTIMONY.

INSTRUCTION NO. 13

[OUT OF COURT STATEMENT]

IN DETERMINING WHETHER ANY STATEMENT, CLAIMED TO HAVE BEEN MADE BY A DEFENDANT OUTSIDE OF COURT AND AFTER AN ALLEGED CRIME HAS BEEN COMMITTED, WAS KNOWINGLY AND VOLUNTARILY MADE, YOU SHOULD CONSIDER THE EVIDENCE CONCERNING SUCH A STATEMENT WITH CAUTION AND GREAT CARE, AND SHOULD GIVE SUCH WEIGHT TO THE STATEMENT AS YOU FEEL IT DESERVES UNDER ALL THE CIRCUMSTANCES.

YOU MAY CONSIDER IN THAT REGARD SUCH FACTORS AS THE AGE, SEX, TRAINING, EDUCATION, OCCUPATION, AND PHYSICAL AND MENTAL CONDITION OF THE DEFENDANT, HIS OR HER TREATMENT WHILE UNDER INTERROGATION, AND ALL THE OTHER CIRCUMSTANCES IN EVIDENCE SURROUNDING THE MAKING OF THE STATEMENT.

5th Cir. Crim. Pattern Jury Instructions 1.27 (1997)(mod.).

INSTRUCTION NO. 14

[IMPEACHMENT]

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.

I REMIND YOU THAT THE DEFENDANT[S] [HAS/HAVE] THE RIGHT NOT TO TESTIFY. WHEN THE DEFENDANT[S] [DO/DOES] TESTIFY, HOWEVER, THE DEFENDANT'S['] TESTIMONY SHOULD BE WEIGHED AND THE DEFENDANT'S['] CREDIBILITY EVALUATED IN THE SAME WAY AS THAT OF ANY OTHER WITNESS.

5th Cir. Crim. Pattern Jury Instructions 1.10 (1997)(mod.). [The bolded phrase is generally included only if the Defendant does testify.]

INSTRUCTION NO. 15

[SIMILAR ACTS]

YOU HAVE HEARD EVIDENCE OF ACTS OF THE DEFENDANT[S] WHICH MAY BE SIMILAR TO THOSE CHARGED IN THE INDICTMENT, BUT WHICH WERE COMMITTED ON OTHER OCCASIONS. YOU MUST NOT CONSIDER ANY OF THIS EVIDENCE IN DECIDING IF THE DEFENDANT[S] COMMITTED THE ACTS CHARGED IN THE INDICTMENT. HOWEVER, YOU MAY CONSIDER THIS EVIDENCE FOR OTHER, VERY LIMITED, PURPOSES.

IF YOU FIND BEYOND A REASONABLE DOUBT FROM OTHER EVIDENCE IN THIS CASE THAT THE DEFENDANT[S] DID COMMIT THE ACTS CHARGED IN THE INDICTMENT, THEN YOU MAY CONSIDER EVIDENCE OF THE SIMILAR ACTS ALLEGEDLY COMMITTED ON OTHER OCCASIONS TO DETERMINE:

WHETHER THE DEFENDANT[S] HAD THE STATE OF MIND OR INTENT NECESSARY TO COMMIT THE CRIME CHARGED IN THE INDICTMENT; OR

WHETHER THE DEFENDANT[S] HAD A MOTIVE OR THE OPPORTUNITY TO COMMIT THE ACTS CHARGED IN THE INDICTMENT; OR

WHETHER THE DEFENDANT[S] ACTED ACCORDING TO A PLAN OR IN PREPARATION FOR COMMISSION OF A CRIME; OR

WHETHER THE DEFENDANT[S] COMMITTED THE ACTS FOR WHICH HE IS ON TRIAL BY ACCIDENT OR MISTAKE.

THESE ARE THE LIMITED PURPOSES FOR WHICH ANY EVIDENCE OF OTHER SIMILAR ACTS MAY BE CONSIDERED.

5th Cir. Crim. Pattern Jury Instructions 1.30 (1997)(mod.).

INSTRUCTION NO. 16

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 I HAVE ADMITTED, AND ANY FACTS I HAVE INSTRUCTED YOU TO ACCEPT AS TRUE. REMEMBER THAT ANY STATEMENTS, OBJECTIONS OR ARGUMENTS MADE BY THE LAWYERS ARE NOT EVIDENCE AND ARE NOT BINDING UPON YOU. IN THE FINAL ANALYSIS IT IS YOUR OWN RECOLLECTION AND INTERPRETATION OF THE EVIDENCE THAT CONTROLS IN THIS CASE.

THE PRODUCTION OF EVIDENCE IN COURT IS GOVERNED BY RULES OF LAW. FROM TIME TO TIME IT HAS BEEN MY DUTY, AS JUDGE, TO RULE ON THE ADMISSIBILITY OF EVIDENCE. YOU MUST NOT CONCERN YOURSELVES WITH THE REASONS FOR THESE RULINGS. YOU SHOULD NOT CONSIDER WHAT WOULD OR WOULD NOT HAVE BEEN THE ANSWERS TO THE QUESTIONS WHICH THE COURT RULED COULD NOT BE ANSWERED.

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 THIS 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.

INSTRUCTION NO. 17

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.

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 FACTS AND CIRCUMSTANCES INDICATING THAT THE DEFENDANT[S] [IS/ARE] EITHER GUILTY OR NOT GUILTY. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT YOU MAY GIVE TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE.

5th Cir. Crim. Pattern Jury Instructions 1.07 (1997)(mod.).

INSTRUCTION NO. 18

I REMIND YOU THAT IT IS YOUR JOB TO DECIDE WHETHER THE GOVERNMENT HAS PROVED THE GUILT OF THE DEFENDANT[S] 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 TO THE WITNESS’S TESTIMONY. AN IMPORTANT PART OF YOUR JOB WILL BE MAKING JUDGMENTS ABOUT THE TESTIMONY OF THE WITNESSES 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’S 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.

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. 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.

5th Cir. Crim. Pattern Jury Instructions 1.08 (1997)(mod.).

INSTRUCTION NO. 19

NOW THAT YOU HAVE HEARD THE ATTORNEYS' CLOSING ARGUMENTS, I WILL GIVE YOU SOME FINAL INSTRUCTIONS.

THE JURY ACTS AS A BODY. TO REACH A VERDICT, ALL OF YOU MUST AGREE. YOUR VERDICT MUST BE UNANIMOUS. YOUR DELIBERATIONS WILL BE SECRET AND 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 ALL OF THE EVIDENCE WITH YOUR FELLOW JURORS. DURING YOUR DELIBERATIONS, DO NOT HESITATE TO REEXAMINE 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 SOLE INTEREST IS TO SEEK THE TRUTH FROM THE EVIDENCE IN THE CASE, TO DECIDE WHETHER THE GOVERNMENT HAS PROVED THE DEFENDANT[S] GUILTY BEYOND A REASONABLE DOUBT.

UPON RETIRING TO THE JURY ROOM, YOU SHOULD FIRST SELECT ONE OF YOUR NUMBER TO ACT AS YOUR FOREPERSON WHO WILL PRESIDE OVER YOUR DELIBERATIONS AND WILL BE YOUR SPOKESPERSON HERE IN COURT. IN THIS

CASE, [A] FORM[S] OF VERDICT, [HAS/HAVE] BEEN PREPARED FOR YOUR CONVENIENCE.

[READ THE VERDICT FORM[S]]

THE COURT'S INSTRUCTIONS, THE VERDICT FORM[S], AND THE ADMITTED EXHIBITS WILL BE BROUGHT TO THE JURY ROOM AFTER YOU RETIRE. WHEN ALL OF YOU HAVE REACHED AGREEMENT ON THE VERDICT, YOUR FOREPERSON WILL WRITE THE UNANIMOUS ANSWER[S] OF THE JURY IN THE SPACE[S] PROVIDED IN THE VERDICT FORM[S]. AT THE CONCLUSION OF YOUR DELIBERATIONS, THE FOREPERSON MUST SIGN AND DATE THE VERDICT FORM[S] AND NOTIFY THE COURT THAT YOU HAVE REACHED YOUR VERDICT.

IF, DURING YOUR DELIBERATIONS, YOU SHOULD DESIRE TO COMMUNICATE WITH THE COURT, THE FOREPERSON SHOULD WRITE THE MESSAGE ON THE STATIONERY PROVIDED TO YOU IN THE JURY ROOM AND PASS THE FOLDED NOTE TO THE MARSHAL WHO WILL BRING IT TO MY ATTENTION. I WILL RESPOND AS PROMPTLY AS POSSIBLE, EITHER IN WRITING OR BY HAVING YOU RETURNED TO THE COURTROOM SO THAT I CAN ADDRESS YOU ORALLY. I CAUTION YOU, HOWEVER, WITH REGARD TO ANY MESSAGE OR QUESTION YOU MIGHT SEND, THAT YOU SHOULD NEVER REVEAL HOW THE JURY STANDS, NUMERICALLY OR OTHERWISE, AT THE TIME. AS IT IS YOUR RECOLLECTION AND INTERPRETATION OF THE EVIDENCE THAT CONTROLS, YOU WILL NOT BE GIVEN A COPY OF THE COURT REPORTER'S STENOGRAPHIC NOTES AT ANY TIME.

FAITHFUL PERFORMANCE BY YOU OF YOUR DUTIES IS VITAL TO THE ADMINISTRATION OF JUSTICE.

5th Cir. Crim. Pattern Jury Instructions 1.24 (1997)(mod.).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR [NUMBER] LH

[DEFENDANT],

Defendant.

VERDICT

WE, THE JURY, find the Defendant, [DEFENDANT],

_____ of [CHARGE], as charged in the indictment.
(guilty or not guilty)

DATED this ____ day of _____, 19__.

FOREPERSON