

## Civil Jury – Preliminary Instructions

### **A. Introduction**

Ladies and gentlemen of the jury, will you please rise and raise your right hands to be sworn.

The answer to the oath is “I do.”

*[Oath administered by clerk of court.]*

Please be seated. Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

We operate on the following schedule:

- We try cases Monday through Thursday.
- We start at 10:00 a.m. in the morning and we adjourn at about 6:00 p.m. in the afternoon.
- We take a lunch break from about 1:00 p.m. to about 2:30 p.m.
- We take a coffee break mid-morning and mid-afternoon.
- All of these times are **approximate**. If it would break the flow of testimony for us to recess at a particular time, we will either delay or accelerate our recess in order to preserve the continuity of testimony.
- The clerk's office will provide coffee and pastries in the jury room each morning. They will also provide bottled water in the refrigerator in the jury room. I recommend that you not drink the water from the tap or the drinking fountains in the building as it has an unpleasant taste.
- There is also a microwave in the jury room for your use and a telephone. However, the telephone and your cell phones will be removed during jury deliberations. There is also a phone for use by the public in the district clerk’s office on the fifth floor.

- I recommend that you dress in layers including sweaters or jackets, because the temperature of the courtroom can vary drastically and without warning.

Your point of contact will be my case manager, Rhonda Konieczny. Her telephone number is listed on your handout.

## **B. Duty of the Jury**

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as the court will give it to you. You must follow that law whether you agree with it or not.

Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

## **C. Evidence**

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that the court may instruct you to find.

Certain things are **not evidence** and must not be considered by you. The following things are not evidence:

1. Statements, arguments and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence.

You should not be influenced by the objection or by the court's ruling on it.

- \* if the objection is **sustained**, ignore the question.

- \* if the objection is **overruled**, treat the answer like any other.
  - \* if you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.
3. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.
  4. Certain exhibits may be used as an illustration—a model, picture, or description to describe something involved in this trial. If your recollection of the evidence differs from the exhibit, rely on your recollection.
  5. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded.

You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence - direct and circumstantial.

- Direct evidence is direct proof of a fact, such as testimony of an eyewitness.
- Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist.

I will give you further instructions on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

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.

Certain testimony may be presented to you through a deposition. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness's testimony may be

presented under oath in the form of a deposition. Some time before this trial, attorneys representing the parties in this case questioned some of the witnesses under oath. A court reporter was present and recorded the testimony. [a videographer was also present and recorded the testimony on videotape. An edited version of the questions and answers may be played here in the courtroom.] [the questions and answers may be read to you here in the courtroom.] This deposition testimony is entitled to the same consideration and is to be judged by you as to credibility, and weighed and otherwise considered by you insofar as possible in the same way as if the witness had been present and had testified from the witness stand in court.

**D. Burden of Proof**

This is a civil case. The plaintiff(s) has/have the burden of proving his/her/its/their case by what is called the **preponderance of the evidence**. That means the plaintiff(s) has/have to produce evidence which, considered in the light of all the facts, leads you to believe that what the plaintiff(s) claim(s) is more likely true than not. To put it differently, if you were to put the plaintiff(s)' and the defendant(s)' evidence on opposite sides of the scales, the plaintiff(s) would have to make the scales tip somewhat on his/her/its/their side. If the plaintiff(s) fails to meet this burden, your verdict must be for the defendant(s).

[The defendant(s) has/have the burden of proof on his/her/its/their counterclaim by a preponderance of the evidence. That means the defendant(s) has/have to produce evidence which, considered in light of all the facts, leads you to believe that what the defendant(s) claim(s) is more likely true than not. If the defendant(s) fail(s) to meet this burden, your verdict must be for the plaintiff(s) on the defendant(s)' counterclaim.]

Those of you who have sat on criminal cases will have heard of proof **beyond a reasonable doubt**. That requirement **does not apply** to a civil case and you should therefore put it out of your mind.

**E. Conduct of the Jury**

Now, a few words about your conduct as jurors.

You have taken an oath which states you are going to decide this case based on the evidence and the evidence alone. Let me discuss this with you at this time.

First of all, do **not** decide which side you like the best and try to decide the case accordingly.

You should not have any contact with anybody related to the case. You may say “good morning” or “good afternoon” as you pass them in the hall - you may say **nothing** further. You will certainly not accept from nor extend to anybody related to the case any favors, however slight.

When you get home this evening, you will probably be asked by your family if you were selected to serve on a jury. Of course, you may tell them that you are serving on a jury, but you are **not** to tell them anything concerning the nature of the case because, if you do, they might make a comment which has no relevance whatsoever to this particular case but that could affect your thinking in this matter. You are not to discuss the case with anyone until after you have heard all of the evidence.

Additionally, you are **not to discuss this case with other members of the jury until after you have heard all of the evidence, retire to the jury deliberation room and all of you are present under the instructions of the court to reach your verdict.**

After the case is over, you will be released from that instruction and then you will be free to discuss the case in as much or as little detail as you want to with anybody you wish, including the attorneys.

If there is **publicity about this trial**, you must ignore it. You must decide this case only from the evidence presented in the trial. Do not read anything or listen to any T.V. or radio programs about the case.

You are **not to make any private investigation** concerning this case. You are not to talk to your own doctor, your own lawyer, or anybody you think would have expert knowledge. Simply listen to the case as presented to you in court and make up your mind based upon the evidence and the evidence alone.

If you would like to take notes during the trial, you may do so. If you do take notes, be careful not to get so involved in note taking that you become distracted and miss part of the testimony. At the end of the day, please leave your notes in the jury room and do not take them home with you. Your notes are to be used only as aids to your memory, and if your memory should later be different from your notes, you should rely on your memory and not on your notes. If you do not take notes, rely on your own independent memory of the testimony. Do not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any greater weight than the recollection of each juror concerning the testimony.

#### **F. Court Reporter**

Even though the court reporter is digitally recording and making computer notes of which is said here in court, a typewritten copy of the testimony will **not** be available for your use during

deliberations. On the other hand, any exhibits which are admitted into evidence will be available to you during your deliberations.

**G. Bench Conferences and Recesses**

At times during the trial it may be necessary for me to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We meet because often during a trial something comes up that doesn't involve the jury.

You have been given a pamphlet with some written instructions which are a statement of your duties and responsibilities as jurors. You are to follow all of the instructions contained in that pamphlet just as you are to follow the oral instructions which I am now giving you. I suggest that you read this pamphlet on your lunch break today or this evening at home.

If you have any problems during the course of the trial, please let Rhonda know. Should you be delayed arriving at the courtroom in the morning for any reason whatsoever, you must give the court a call.

If at any time you cannot hear, please signal me by putting your hand to your ear or otherwise letting me know immediately so that I can correct that problem for you.

When you return from each break, you are to go to the jury room. Please do not come to the courtroom. The marshal will come to get you at the end of each break when the trial is ready to continue.

There is no smoking permitted in the building, the courtroom or the jury deliberation room. If you desire to smoke, you will be free to do so outside of the courthouse during your breaks.

**H. Course of the Trial**

The trial will now begin.

First, each side will make an opening statement. An opening statement is neither evidence nor argument; it is an outline of what that party intends to prove, offered to help you follow the evidence.

Next, the parties will present their evidence and witnesses, and the opponent may cross-examine them.

The court will then instruct you on the law.

Finally, the attorneys will make their closing arguments to summarize and interpret their views of the evidence for you.

The case then will be yours and you will retire to deliberate on your verdict.



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

PLAINTIFF,

*Plaintiff,*

v.

DEFENDANT

*Defendant.*

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CIVIL ACTION H-00-0000

**JURY INSTRUCTIONS**

**I. General Instructions**

**MEMBERS OF THE JURY:**

**A. Introduction**

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury are the judges of the facts. Do not consider any statement that I have made in the course of trial or make in these instructions as an indication that I have any opinion about the facts of this case.

After I instruct you on the law, the attorneys will have an opportunity to make their closing arguments. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

Do not let bias, prejudice or sympathy play any part in your deliberations. A corporation and all other persons are equal before the law and must be treated as equals in a court of justice.

Answer each question from the facts as you find them. Do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict must be unanimous.

## **B. Burden of Proof**

You must answer all questions from a preponderance of the evidence. By this is meant the greater weight and degree of credible evidence before you. In other words, a preponderance of the evidence just means the amount of evidence that persuades you that a claim is more likely so than not so. In determining whether any fact has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

## **C. Calling Witnesses**

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

## **D. Objections and Rulings of the Court**

During the course of the trial, you have heard counsel make objections to evidence. It is the duty of the attorneys on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not draw any inference against an attorney or the attorney's client because that attorney has made an objection.

If I overruled an objection and permitted evidence to be admitted over the objection, my ruling on any objection is not, and should not be considered by you to be, any indication of an opinion by

me regarding the weight, effect, or probative value of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of the evidence.

If I sustained an objection to a question or to the introduction of other evidence, you must disregard the question entirely and may draw no inference from the wording of the question, nor speculate regarding what the witness might have said if the witness had been permitted to answer or regarding the content of any document not admitted.

#### **E. Witness Testimony**

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely about some important fact, or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or simply an innocent lapse of memory; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

#### **F. Consideration of the Evidence**

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony, exhibits, stipulated facts, and judicially noticed facts 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 that have been established by the testimony and evidence in the case.

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

There are two types of evidence that you may consider in properly finding the truth as to the facts in the case. One is direct evidence—such as testimony of an eyewitness. The other is indirect or circumstantial evidence—the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

#### **G. Juror Notes**

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

#### **H. Stipulations**

The parties have stipulated to the following facts. This means both sides agree these stipulations are true. You must therefore treat these facts as having been proved, even if no evidence may have been specifically offered regarding them.

[Insert if applicable]

## **I. Judicial Notice**

Additionally, although no evidence had been presented, I instruct you that you must accept as proved the following facts which I have judicially noticed:

[Insert if applicable]

## **II. Nature Of The Parties' Claims**

[Insert general law here]

### **A. Plaintiff's Claim**

[Insert law specific to any issues on which Plaintiff bears the burden of proof]

### **B. Defendant's Claim**

[Insert law specific to any issues on which Defendant bears the burden of proof]

## **III. Instructions on Damages**

### **A. Introduction**

[Insert law regarding the various types of damages sought]

### **B. Calculating Damages**

[Insert law regarding the calculations for the types of damages sought]

### **C. Cautionary Instruction on Damages**

You should not interpret the fact that I have given instructions about the plaintiff's damages as an indication in any way that I believe that the plaintiff should, or should not, win this case. It is your task first to decide whether the defendant is liable. I am instructing you on damages only so that you

will have guidance in the event you decide that the defendant is liable and that the plaintiff is entitled to recover money from the defendant.

#### **IV. Instructions on Deliberations**

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case.

Remember that in a very real way you are judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you retire to the jury room to deliberate on your verdict, you may take this charge with you as well as exhibits which the court has admitted into evidence. Select your Foreperson and conduct your deliberations. If you recess during your deliberations, follow all of the instructions that the court has given you regarding your conduct during the trial. After you have reached your unanimous verdict, your Foreperson is to fill in on the form your answers to the questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me. You must never disclose to anyone, not even to me, your numerical division on any question.

If you want to communicate with me at any time, please give a written message or question to the marshal, who will bring it to me. I will then respond as promptly as possible either in writing or by having you brought into the courtroom so that I can address you orally. I will always first disclose to the attorneys your question and my response before I answer your question.

After you have reached a verdict, you may, but are not required to, talk with anyone about the case unless the court orders otherwise.

You may now retire to the jury room to begin your deliberations.

## Criminal Jury – Preliminary Instructions

### **A. Introduction**

Ladies and gentlemen of the jury, will you please rise and raise your right hands to be sworn.

The answer to the oath is “I do.”

*[Oath administered by clerk of court.]*

Please be seated. Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

We operate on the following schedule:

- We try cases Monday through Thursday.
- We start at 10:00 a.m. in the morning, and we adjourn at about 6:00 p.m. in the afternoon.
- We take a lunch break from about 1:00 p.m. to about 2:30 p.m.
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- All of these times are **approximate**. If it would break the flow of testimony for us to recess at a particular time, we will either delay or accelerate our recess in order to preserve the continuity of testimony.
- The clerk's office will provide coffee and donuts in the jury room each morning. They will also provide bottled water in the refrigerator in the jury room. I recommend that you not drink the water from the tap or the drinking fountains in the building as it has an unpleasant taste.
- I recommend that you dress in layers including sweaters or jackets, because the temperature of the courtroom can vary drastically and without warning.
- There is also a microwave in the jury room for your use and a telephone. However, the telephone will be removed during jury deliberations. There is also a telephone for use by the public in the district clerk's office on the 5<sup>th</sup> floor.

Your point of contact will be my case manager, Rhonda. Her telephone number is listed on your handout.



**B. Duty of the Jury**

It will be your duty to find from the evidence what the facts are. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as the court will give it to you. You must follow that law whether you agree with it or not.

Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

**C. Evidence**

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to, or that the court may instruct you to find.

Certain things are **not evidence** and must not be considered by you. I will list them for you now.

1. Statements, arguments and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence.

You should not be influenced by the objection or by the court's ruling on it.

- \* if the objection is **sustained**, ignore the question.
- \* if the objection is **overruled**, treat the answer like any other.
- \* if you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence - direct and circumstantial.

- direct evidence is direct proof of a fact, such as testimony of an eyewitness.
- circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist.

I will give you further instructions on these as well as other matters at the end of the case, but have in mind that you may consider both kinds of evidence.

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.

#### **D. Rules for Criminal Cases**

As you know, this is a criminal case. There are three basic rules about a criminal case that you must 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.

**E. Summary of Applicable Law**

In this case, the defendant(s) is (are) charged with

**[Insert Counts Here]**

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(s) that the government must prove to make its case.

**[Insert Summary Here.]**

**F. Conduct of the Jury**

Now, a few words about your conduct as jurors.

You have taken an oath which states you are going to decide this case based on the evidence and the evidence alone. Let me discuss this with you at this time.

First of all, do not decide which side you like the best and try to decide the case accordingly.

You should not have any contact with anybody related to the case. You may say “good morning” or “good afternoon” as you pass them in the hall - you may say **nothing** further. You will certainly not accept from nor extend to anybody related to the case any favors, however slight.

When you get home this evening, you will probably be asked by your family if you were selected to serve on a jury. Of course, you may tell them that you are serving on a jury, but you are **not** to tell them anything concerning the nature of the case because, if you do, they might make a comment which has no relevance whatsoever to this particular case but that could affect your thinking in this matter. You are not to discuss the case with anyone until after you have heard all of the evidence.

Additionally, you are **not to discuss this case with other members of the jury until after you have heard all of the evidence, retire to the jury deliberation room and all of you are present under the instructions of the court to reach your verdict.**

After the case is over, you will be released from that instruction and then you will be free to discuss the case in as much or as little detail as you want to with anybody you wish, including the attorneys.

You are **not to make any private investigation** concerning this case. You are not to talk to your own doctor, your own lawyer, or anybody you think would have expert knowledge. Simply listen to the case as presented to you in court and make up your mind based upon the evidence and the evidence alone.

If you wish, you may take notes, but if you do, please leave them in the jury room when you leave at night. And remember they are for your personal use. If you do take notes, be careful not to get so involved in note taking that you become distracted and miss part of the testimony. Your notes

are to be used only as aids to your memory, and if your memory should later be different from your notes, you should rely on your memory and not on your notes. If you do not take notes, rely on your own independent memory of the testimony. Do not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any greater weight than the recollection of each juror concerning the testimony.

You have been given a pamphlet with some written instructions which are a statement of your duties and responsibilities as jurors. You are to follow all of the instructions contained in that pamphlet just as you are to follow the oral instructions which I am now giving you. I suggest that you read this pamphlet on your lunch break today or this evening at home.

If you have any problems during the course of the trial, please let Rhonda know. Should you be delayed arriving at the courtroom in the morning for any reason whatsoever, you must give the court a call.

If at any time you cannot hear, please signal me by putting your hand to your ear or otherwise letting me know immediately so that I can correct that problem for you.

When you return from each break, you are to go to the jury room next to the courtroom. One of the staff will come to get you at the end of each break when the trial is ready to continue.

There is no smoking permitted in the building, the courtroom or the jury deliberation room. If you desire to smoke, you will be free to do so outside of the courthouse during your breaks.

**G. Course of the Trial**

The trial will now begin.

First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in.

Next, the defendant's attorney may, but does not have to, make an opening statement.

Opening statements are neither evidence nor arguments.

After opening statements, the government will present its evidence and witnesses and the defendant's attorney may cross examine the government's witnesses.

Then the defendant's attorney may, but does not have to, present evidence and witnesses. The government may cross examine the defendant's witnesses. As I have already explained, the defendant may testify but is not **required** to testify and you must not draw any conclusions if the defendant exercises his constitutionally guaranteed right **not** to testify.

If the defendant chooses to present evidence and call witnesses, the government may then call rebuttal witnesses or put on rebuttal evidence at the close of the defendant's case.

The court will then instruct you on the law and the government and the defendant's attorney will make their closing arguments. The case will then be yours and you will retire to deliberate on your verdict.

Ladies and gentlemen of the jury, I hope that you will enjoy your jury service with us. We are going to try this case as quickly as possible, consistent with justice.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

DEFENDANT(S)

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CRIMINAL ACTION H-00-0000

**JURY INSTRUCTIONS**

**I. General**

**A. Introduction**

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.

**B. Duty to Follow Instructions**

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.

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

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 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 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.



**D. Evidence - Excluding What Is Not Evidence**

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 question 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 this case. Except for these 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.

**E. Evidence - Inferences - Direct and Circumstantial**

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.

#### **F. Credibility of Witnesses**

I remind you that it is your job to decide whether the government has proved the guilt of the defendant 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'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 all or any part of 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 or she 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.

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.

## **II. Specific Instructions**

### **A.**

[Insert any specific instructions contained in the Fifth Circuit Pattern Jury Instructions for Criminal Cases §§ 1.09-.45]

## **III. Elements of the Offense**

### **A. Count 1 - [Offense] - [Statute]**

[Insert Law regarding Count 1 contained in the Fifth Circuit Pattern Jury Instructions for Criminal Cases §§ 2.01-.99]

### **B. Count 2 - [Offense] - [Statute]**

[Insert Law regarding Count 2 contained in the Fifth Circuit Pattern Jury Instructions for Criminal Cases §§ 2.01-.99]

### **C. [Insert for Each Count]**

## **IV. Concluding Instructions**

### **A. Duty to Deliberate - Verdict Form**

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 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 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 to guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience.

**{The Judge will explain the verdict form}**

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.