

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2010 APR 22 AM 9:08

UNITED STATES OF AMERICA :
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 v. :
 :
 WILLIAM B. WEEKS :
 _____ :

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File No. ~~109~~ CR 51 *KAC*

CHARGE TO THE JURY

Members of the Jury:

This is a criminal prosecution brought by the United States against defendant William Weeks. I remind you of the function of an information. An information is merely a formal way to accuse a defendant of a crime preliminary to trial.

The Information is not evidence. It does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the nature of the charges against the defendant.

The defendant has pleaded not guilty to the charges in the Information, placing the burden on the government to prove guilt. You have been chosen and sworn as jurors in this case to determine the facts that have been raised by the allegations of the information and the denial of the defendant when he pleaded not guilty.

Role of the Court, the Jury, and Counsel

Now that you have listened carefully to the testimony that has been presented to you, you must consider and decide the fact issues of this case. You are the sole and exclusive judge of the facts. You weigh the evidence, you determine the credibility of the witnesses, you resolve the conflicts as there may be in the evidence, and you draw such inferences as may be warranted by the facts as you find them. Shortly, I will define "evidence" for you and tell you how to weigh it, including how to evaluate the credibility, or to put it another way, the believability of the witnesses.

You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions I am about to give you.

Nothing I say in these instructions should be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; rather, that is your function.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should evaluate the

evidence deliberately and without the slightest trace of sympathy, bias, or prejudice for or against any party. All parties expect that you will carefully consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Presumption of Innocence and Reasonable Doubt

The law presumes a defendant to be innocent. Therefore, although accused, a defendant begins the trial with a "clean slate," that is, with no evidence against him. Furthermore, the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. So the presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of a defendant's guilt after careful and impartial consideration of the evidence in the case.

The government is not required to prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

You must remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even

obligated to produce any evidence by cross-examining the witnesses for the government.

So if, after careful and impartial consideration of all the evidence in this case, you have a reasonable doubt that the defendant is guilty of an offense charged in the Information, then you must acquit him of that offense. Unless the government proves, beyond a reasonable doubt, that the defendant has committed each and every element of an offense charged in the Information, you must find him not guilty of that offense.

As I have instructed you, the law presumes a defendant is innocent of the charges against him. The presumption of innocence lasts throughout the trial and ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must acquit him.

Government as a Party

You are to perform the duty of finding the facts without bias or prejudice as to any party and with complete fairness and impartiality.

The case is important to the government, for the enforcement of criminal laws is one of the government's duties. Equally, this case is important to the defendant, who is charged with serious crimes.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater or lesser consideration than that accorded any other party to a case. All parties, whether government or individual, stand as equals before the Court.

Consider Each Count Separately

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

You must consider each count of the Information separately and the defendant's involvement in the activities charged in that count. You must return a separate verdict for each count in which defendant is charged.

Unanimity

The Information charges Dr. Weeks with violations of federal law concerning his participation in government contracts in which he allegedly had a financial interest. The Government has alleged separate means or methods by which Dr. Weeks is accused of violating this law.

The Government is not required to prove all of the means or methods alleged in the Information.

You, the jury, need not unanimously agree on each means or method, but, in order to convict, you must unanimously agree upon at least one such means or method as one engaged in by Dr. Weeks.

Unless the government has proven the same means or method to each of you, beyond a reasonable doubt, you must acquit Dr. Weeks of the crime charged in that count of the Information.

Evidence

You have seen and heard the evidence presented in this trial, and it is the sole province of you the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been admitted, and any facts which may have been admitted or stipulated.

I would now like to call to your attention certain guidelines by which you are to evaluate the evidence. You may consider two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts or circumstances pointing to the existence or non-existence of certain facts.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

Evidence: "On or About" or "In or About" Explained

The Information charges that certain offenses charged were committed "on or about" a certain date or "in or about" a certain month. Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on dates reasonably near the date alleged in the Information, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

Evidence: Testimony and Arguments Excluded

I caution that you should entirely disregard any testimony which has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence.

Anything you have seen or heard outside the courtroom is not evidence -- you are to consider only the evidence in this case. But in your consideration of the evidence, you are not limited merely to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from proven facts, reasonable inferences you believe are justified in light of your experiences.

Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, since you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger toward the defendant or the government, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony.

The weight of the evidence is not determined by the number of witnesses testifying. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit this testimony. Two or more persons may hear or see things differently, or may have a

different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood.

You may find that a witness has made statements outside of this trial that are inconsistent with the statements made during the trial. You may consider the out-of-court statements, even if they were not made under oath, to determine whether a witness's testimony has been truthful. You may find that a prior inconsistent statement, or a change in a witness's testimony, detracts from the credibility of the testimony the witness has provided in court.

Witnesses: Expert Witness

You have heard testimony from an expert witness. An expert is allowed to express an opinion on those matters about which he or she has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts. In weighing the expert's testimony, you may consider his or her qualifications, opinions, and reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether to believe a witness's testimony. You may give the expert's testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept the expert's testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

Defendant's Testimony

The defendant did not testify in this case. Under our Constitution, he has no obligation to testify or to present any other evidence because it is the prosecution's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the prosecution throughout the entire trial and never shifts to the defendant. The defendant is never required to prove he is innocent.

You may not attach any significance to the fact that the defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this as evidence against the defendant in any way in your deliberations in the jury room.

False Exculpatory Statements

You have heard testimony that the defendant made certain statements outside the courtroom to law enforcement authorities in which the defendant claimed that his conduct was consistent with innocence and not with guilt. The government claims that these statements in which he exonerated or exculpated himself are false.

If you find that the defendant gave a false statement in order to divert suspicion from himself, you may, but are not required to infer that the defendant believed that he was guilty. You may not, however, infer on the basis of this alone, that the defendant is, in fact, guilty of the crime for which he is charged.

Whether or not the evidence as to a defendant's statements shows that the defendant believed that he was guilty, and the significance, if any, to be attached to any such evidence, are matters for you, the jury, to decide.

Instructions of Law

Having told you the general guidelines by which you will consider the evidence, I will now instruct you on the law that is applicable to your determinations in this case. It is your duty as jurors to follow the law as stated in these instructions and to apply the rules of law to the facts you find from the evidence.

You will not be faithful to your oath as jurors if you return a verdict that is contrary to the law stated in these instructions. It is the sole province of you, the jury, however, to determine the facts in this case. Through these instructions I do not intend to persuade you in any way in your role of determining the facts.

The parties in this case have a right to expect you will carefully and impartially consider all the evidence in the case, follow the law in these instructions and reach a just verdict.

The Information

The Information charges Defendant with five counts of conflict of interest by a federal government employee, in violation of 18 U.S.C. § 208. Section 208(a) generally prohibits a covered federal employee from personally and substantially participating in a matter in which the employee knows he has a personal financial interest. The Information's five counts arise from the Defendant's participation in five contracts between the U.S. Veterans Administration and Dartmouth College in which he allegedly had a financial interest or an imputed financial interest. I will discuss § 208 in greater detail in a moment.

The first eleven paragraphs of the Information are common to each of the five charges.

The five charges each involve a separate federal contract, and allege the defendant participated personally and substantially in those contracts, knowing that he had a financial interest in them.

The Statute Defining the Offense

The Information charges the Defendant with conflict of interest violations under Section 208 of Title 18, United States Code. Section 208, entitled "Acts affecting a personal financial interest," provides in pertinent part:

[W]hoever, being an . . . employee of the executive branch of the United States Government . . . participates personally and substantially as a Government . . . employee . . . in a . . . contract . . . or other particular matter in which, to his knowledge, he [or] his spouse [or] . . . organization in which he is serving as . . . employee . . . , has a financial interest [violates the law].

18 U.S.C. § 208(a).

Elements of the Offense

I now will charge you on the law of conflicts, the crime charged in all five counts of the Information. There are three essential elements of the crime. Those elements are:

First, the defendant was an officer or employee of the executive branch of the United States Government.

Second, the defendant, in his capacity as officer or employee, participated personally and substantially in a matter.

Third, the defendant knew that he (and/or his spouse) personally had a financial interest in that matter.

If you find from your consideration of all the evidence that each of these elements have been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these elements has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Officer or Employee of Federal Agency

The first element which the government must prove beyond a reasonable doubt to establish a § 208 violation is that the defendant was an officer or employee of the executive branch of the United States Government. The Department of Veterans Affairs is within the executive branch of the United States Government, for purposes of § 208.

Dr. Weeks does not dispute that he was an employee of the executive branch of the United States Government.

Personal and Substantial Participation

The second element that the government must prove beyond a reasonable doubt is that the defendant, in his capacity as an employee or officer of a federal agency, participated personally and substantially in the matter at issue, in this case, five contracts.

Dr. Weeks does not dispute that, in his capacity as an employee of the executive branch of government, he participated "personally and substantially" in five government contracts from 2003-2005.

Knowledge of Financial Interest

The third and final element that the government must prove beyond a reasonable doubt is that the defendant knew that he had a financial interest in the matters at issue, here the contracts in the case.

Dr. Weeks is charged with participating in government contracts in which, to his knowledge, he had a financial interest. The government must prove both that he did have a financial interest and that he knew he had such an interest in each of the contracts.

The term financial interest means the potential for gain or loss.

The particular matter in which an individual participated, however, must have a direct and predictable effect on the individual's financial interest.

A particular matter, such as each contract at issue here, will have a direct effect on an individual's financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of

events that are speculative or that are independent of, and unrelated to, the matter, in this case, the contracts.

The contracts will have a predictable effect on a financial interest if there is a real, as opposed to a speculative possibility that they will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

An individual also has a financial interest in a matter in which he knows an organization in which he is serving as an employee has a financial interest or in a matter in which he knows his spouse has a financial interest. Such an interest is imputed to the individual.

The government must prove Dr. Weeks knew about his financial interest and knew his participation in the contract at issue would have a direct and predictable effect on that interest.

If the Government fails to prove Dr. Weeks had a personal or imputed financial interest and he knew he had such an interest in each of the government contracts at issue, i.e., for each count in the Information, then you must find Dr. Weeks not guilty.

"Knowingly" Defined

You have been instructed that in order to sustain its burden of proof, the government must prove the defendant acted knowingly. A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. You may consider evidence of the defendant's words, acts, or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

CONCLUSION

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant solely from the evidence presented in court. Again, merely because the defendant has been charged is not evidence against him. Also, the defendant is not on trial for any act or conduct or offense not alleged in the Information.

In the event the defendant is found guilty, his sentence is the responsibility of the judge and should never be considered by you in any way in arriving at an impartial verdict as to his guilt or innocence.

It is your duty to consult with one another and to deliberate in a calm and civil manner. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you are wrong. But also do not surrender your honest convictions solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

To return a verdict, it is necessary that every juror agree to the verdict -- it must be unanimous on every element of the charges.

I appoint _____ as your foreperson.

Upon retiring to the jury room, your foreperson will preside over your deliberations and be your spokesperson in court. When you have reached a verdict, the foreperson will record the verdict, sign and date the verdict form, and bring it to the courtroom where it will be read.

If during your deliberations you wish to communicate with me, the foreperson should do so in writing, place it in an envelope and give it to the court security officer who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I may speak with you. I caution you, however, with regard to any message or question you might send, that you should never reveal your numerical division, if any.

Copies of this charge will go with you into the jury room for your use.