UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
	:	
	:	Case no. 2:09-cr-121
v.	:	
	:	
PAUL H. MASON,	:	
	:	
Defendant.	:	

Jury Charge

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the defendant, Paul H. Mason. The Grand Jury's indictment charges the defendant in two counts. You will receive a copy of the indictment to take with you into the jury room.

Count One alleges that:

> From in or about October, 2000 until in or about December, 2004, in the District of Vermont, the defendant, Paul H. Mason, having devised or intended to devise a scheme to defraud or to obtain money or property by means of materially false or fraudulent pretenses, representations, or promises, transmitted and caused to be transmitted by means of wire communication in interstate commerce, facsimile transmissions and telephone calls for the purpose of executing such scheme or artifice, in violation of 18 U.S.C. § 1343.

Count Two alleges that:

> From in or about October, 2000 until in or about December, 2004, in the District of Vermont, the defendant, Paul H. Mason, did knowingly and willfully conspire with others, known and unknown to the Grand Jury, to commit the following offenses against the United States: to use wire communications in furtherance of a scheme and artifice to defraud and to obtain money by means of materially false and fraudulent pretenses and misrepresentations, in violation of 18 U.S.C. § 1343.

Paul H. Mason has pleaded not guilty to these charges.

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse the defendant of a crime prior to trial. An indictment is not evidence. The indictment 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.

Paul H. Mason has pleaded not guilty to the counts in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations of the indictment and the denial made by the defendant's not guilty plea. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The government must prove the defendant guilty beyond a reasonable doubt. The question naturally is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, 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. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt. 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.

If, after fair and impartial consideration of all the evidence you have a reasonable doubt, it is your duty to find the defendant not guilty. On the other hand, if after fair and impartial consideration of all the evidence you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

The law presumes that the 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 find the defendant not guilty.

EVIDENCE

You have seen and heard the evidence produced in this trial and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been received in evidence, and all the 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.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about

something she or he knows by virtue of her or his own senses -- something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is its present existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than 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.

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of witnesses, the stipulations made by the parties, and all the exhibits that have been received in evidence.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your consideration of the

evidence, you are not limited merely to the bald 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 facts which you find have been proved, such reasonable inferences as you feel are justified in light of your experiences.

STIPULATION OF FACTS

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

CREDIBILITY OF WITNESSES

You, as jurors, are the sole judges of the credibility of the 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, because you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, 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, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their

testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. 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 such testimony. Two or more persons may well hear or see things differently, or may have a different point of view regarding various occurrences. Innocent misrecollection or failure of recollection is not an uncommon experience. 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 should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

In this case you have heard testimony from a number of witnesses. I am now going to give you some guidelines for your

determinations regarding the testimony of the various types of witnesses presented in this case.

LAW ENFORCEMENT WITNESSES

You have heard the testimony of law enforcement officials in this case. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of law enforcement officials and to give to that testimony whatever weight, if any, you find it deserves.

ACCOMPLICES AND IMMUNIZED WITNESSES

You have also heard witnesses who testified that they were accomplices, that is, they said they participated with the defendant in the commission of a crime. The testimony of accomplices must be examined and weighed by the jury with greater care than the testimony of a witness who did not claim to have participated in the commission of that crime.

This is also true of accomplices or other witnesses who have received immunity. A witness receives immunity from the government when that witness is told his or her crimes will go unpunished in exchange for testimony, or that his or her testimony will not be used against him or her. A witness who has entered into such an agreement has an interest in this case different from any ordinary witness. A witness who realizes that he or she may be able to obtain his or her own freedom, or receive a lighter sentence by giving testimony favorable to the government has a motive to testify falsely. Therefore, you must examine his or her testimony with caution and weigh it with great care. You must determine whether the testimony of the accomplice has been affected by self-interest, or by an agreement he or she may have with the government, or by his or her own interest in the outcome of this case, or by any prejudice he or she may have against the defendant.

PRIOR INCONSISTENT STATEMENTS OF A NON-PARTY WITNESS

You may find that a witness has made statements outside of this trial that are inconsistent with the statements that the witness gave here. You may consider the out-of-court statements not made under oath only to determine the credibility of the witness and not as evidence of any facts contained in the statements. As to out-of-court statements that were made under oath, such as statements made in prior testimony, you may

consider them for all purposes, including for the truth of the facts contained therein.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

You may not consider the race, religion, national origin, sex, or age of the defendant or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.

GOVERNMENT AS A PARTY

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality.

This case is important to the government, for the enforcement of criminal laws is a matter of prime concern to the community. 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 consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the Court.

DEFENDANT NOT TESTIFYING

You may have observed that the defendant did not testify in this case. In a criminal case a defendant has a constitutional

right not to testify, and the government may not call him as a witness. Whether or not he testifies is a matter of his own choosing. A defendant has no obligation to testify or to present evidence because it is the government's burden to prove a defendant guilty beyond a reasonable doubt. A defendant is never required to prove that he or she is innocent.

A defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. Therefore, in determining the defendant's guilt or innocence of the crimes charged, you are not to consider, in any manner, the fact that he did not testify. Do not even discuss it in your deliberations.

OTHER ACTS

You are only to determine whether the defendant is guilty or not guilty of the charges in the indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to these charges against the defendant.

MULTIPLE COUNTS

The indictment contains a total of two counts. Each count charges the defendant with a different crime. You must consider

each count separately and return a separate verdict of guilty or not guilty for each. Whether you find the defendant guilty or not guilty as to one offense should not affect your verdict as to any other offense charged.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that applies to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

COUNT ONE: WIRE FRAUD

The first count of the indictment charges that the defendant devised a scheme to defraud and in furtherance of that scheme knowingly caused the interstate wires to be used.

The relevant statute on this subject is section 1343 of

Title 18 of the United States Code. It provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be [guilty of a crime].

Elements of Wire Fraud

In order to sustain this charge, the government must prove each of the following elements beyond a reasonable doubt:

1) That there was a scheme or artifice to defraud or to obtain money or property by materially false and fraudulent pretenses, representations or promises, as alleged in the indictment;

2) That the defendant knowingly and willfully participated in the scheme or artifice to defraud, with knowledge of its fraudulent nature and with specific intent to defraud; and

3) That in execution of that scheme, the defendant used or caused the use of the interstate wires as specified in the indictment.

First Element: Existence of a Scheme or Artifice to Defraud

The first element the government must prove beyond a reasonable doubt is that there was a scheme or artifice to defraud his victims of money or property by means of false or

fraudulent pretenses, representations, or promises.

This element is almost self-explanatory.

A "scheme or artifice" is merely a design or plan for the accomplishment of some goal or objective.

A scheme to defraud is any plan, device, or course of action to deprive another person of money or property by means of false or fraudulent pretenses, representations, or promises reasonably calculated to deceive persons of average prudence.

"Fraud" is a general term which embraces all the various means which human ingenuity can devise and which are resorted to by an individual to gain an advantage over another by false representations, suggestions, or suppression of the truth, or deliberate disregard for the truth.

Thus, a "scheme to defraud" is merely a plan to deprive another of money or property by trick, deceit, deception, or swindle.

A statement is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made.

A representation or statement is fraudulent if it was falsely made with the intent to deceive.

Deceitful statements of half truths or the concealment of material facts may also constitute fraud under the statute. The expression of an opinion not honestly entertained may also

constitute false or fraudulent statements under the statute.

The deception need not be premised upon spoken or written words alone. The arrangement of the words, or the circumstances in which they are used may convey the false and deceptive appearance. If there is deception, the manner in which it is accomplished is immaterial.

The false or fraudulent representation or statement must relate to a material fact or matter. A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision about the subject to which it relates.

This means if you find a particular statement to have been false, you must determine whether that statement was one that a reasonable person might have considered important in making his or her decision. The same principle applies to fraudulent half truths or omissions of material facts.

It is not required that every misrepresentation charged in the indictment be proved. It is sufficient if the prosecution proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme to defraud.

In addition to proving that a statement was false or fraudulent and related to a material fact, in order to establish

a scheme to defraud the government must prove that the alleged scheme contemplated depriving another of money or property.

However, it is not necessary that the government prove that the defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss. It is only a scheme to defraud - and not the actual, completed fraud - which must be proved to sustain a conviction for wire fraud.

Nevertheless, the government does have the burden of proving that some actual harm or injury to someone was contemplated by the defendant. If you find the defendant made a false material statement in the expectation that it would be relied upon, that is enough to prove that harm was contemplated.

The government is not required to establish that the defendant realized any gain from the scheme, or that the intended victim actually suffered any loss. If you find that there existed such a scheme to defraud, it is not necessary for you to find anyone was defrauded or that the defendant profited. The issue is whether there was such a scheme.

A scheme to defraud need not be shown by direct evidence, but may be established by all the circumstances and facts in the case.

If you find that the government has sustained its burden of proof that a scheme to defraud did exist, as charged, you next should consider the second element.

Second Element: Participation in Scheme with Intent

The second element that the government must establish beyond a reasonable doubt is that the defendant participated in the scheme to defraud knowingly, willfully, and with intent to defraud.

"Knowingly" means to act voluntarily and deliberately, rather than mistakenly or inadvertently.

"Willfully" means to act knowingly and purposely, with an intent to do something the law forbids, that is to say, with bad purpose either to disobey or to disregard the law.

"Intent to defraud" means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial or property loss to another.

The question of whether a person acted knowingly, willfully and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one's state of mind.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based

upon a person's outward manifestations, his words, his conduct, his acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime charged must be established beyond a reasonable doubt.

Since an essential element of the crime charged is intent to defraud, it follows that good faith on the part of a defendant is a complete defense to a charge of wire fraud. A defendant, however, has no burden to establish a defense of good faith. The burden is on the government to prove fraudulent intent and consequential lack of good faith beyond a reasonable doubt. Under the wire fraud statute, even false representations or statements or omissions of material facts do not amount to a fraud unless done with fraudulent intent. However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by a defendant is a good defense, however inaccurate the statements may turn out to be.

As a practical matter, then, in order to sustain the charges against the defendant, the government must establish beyond a reasonable doubt that the defendant knew that his conduct as a participant in the scheme was calculated to deceive and

nonetheless he associated himself with the alleged fraudulent scheme for the purpose of causing loss to another.

To conclude on this element, if you find that the defendant was not a knowing participant in the scheme or that he lacked the specific intent to deceive, you should acquit him. On the other hand, if you find the government has established beyond a reasonable doubt the existence of a scheme to defraud and that the defendant was a knowing participant who acted with specific intent to defraud; and also if the government establishes the third element, on which I am about to instruct you, then you have a sufficient basis upon which to convict the defendant.

Third Element: Use of the Wires

The third and final element of the wire fraud count is the use of interstate wires in furtherance of the scheme to defraud.

Wire communications include telephone calls and facsimile transmissions. An interstate wire communication is one which passes between two or more states as, for example, a telephone call or facsimile transmission between New York and New Jersey.

It is not necessary for the defendant to be directly or personally involved in any wire communication, as long as the communication is reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating.

In this regard, it is sufficient to establish this element

of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others; and this does not mean that the defendant himself must specifically have authorized others to make the telephone call (or send a facsimile). When one does an act with knowledge that the use of the wires will follow in the ordinary course of business or where such use of the wires can reasonably be foreseen, even though not actually intended, then he causes the wires to be used.

The use of the wires need not itself be fraudulent. There is no requirement that fraudulent representation or request for money be made in the interstate wire communication. It is sufficient if the wires were used to further or assist in carrying out the scheme to defraud.

In respect to the use of the wires, the government must establish beyond a reasonable doubt one or more of the particular uses charged in the indictment. The government does not have to prove that the wires were used on the exact dates charged in the indictment. It is sufficient if the evidence establishes beyond a reasonable doubt that the wires were used on a date reasonably near the dates alleged in the indictment. The government must prove beyond a reasonable doubt, however, at least one use of the wires in furtherance of the scheme after October 22, 2004.

COUNT TWO: CONSPIRACY

The second count of the indictment charges the defendant

with conspiring to commit wire fraud. The relevant statute on this subject is section 371 of Title 18 of the United States Code. It provides: "If two or more persons conspire . . . to commit any offense against the United States . . ., and one or more of such persons do any act to effect the object of the conspiracy, each [is guilty of an offense against the United States]."

Purpose of the Statute

In this case, the defendant is accused of having been a member of a conspiracy to violate federal laws prohibiting the use of the interstate wire communications facilities in furtherance of a scheme to defraud. A conspiracy is a kind of criminal partnership -- a combination or agreement of two or more persons to join together to accomplish some unlawful purpose.

The crime of conspiracy to violate a federal law is an independent offense. It is separate and distinct from the actual violation of any specific federal laws, which the law refers to as "substantive crimes."

Indeed, you may find the defendant guilty of the crime of conspiracy to commit an offense against the United States even though the substantive crimes which were the object of the conspiracy were not actually committed. Moreover, you may find the defendant guilty of conspiracy despite the fact that he himself was incapable of committing the substantive crime.

Congress has deemed it appropriate to make conspiracy, standing alone, a separate crime even if the conspiracy is not successful.

Elements of Conspiracy

In order to satisfy its burden of proof in the conspiracy charge, the government must establish each of the following four essential elements beyond a reasonable doubt:

1) That two or more persons entered into the unlawful agreement charged in the indictment;

2) That the defendant knowingly and willfully became a member of the conspiracy;

3) That one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the indictment; and

4) That the overt act which you find to have been committed was committed to further some objective of the conspiracy.

First Element: Existence of Conspiracy

The first element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more persons entered into the unlawful agreement charged in the indictment.

In order for the government to satisfy this element, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement. Similarly, you need not find that the alleged conspirators

stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act.

You may, of course, find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the circumstance of this case and the conduct of the parties involved.

In a very real sense, then, in the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those you find to be participants as proof that a common design existed on the part of the persons charged to act together to accomplish an unlawful purpose.

Second Element: Membership in the Conspiracy

The second element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy, is that the defendant knowingly, willfully, and voluntarily became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the indictment existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant was in fact a member of the conspiracy, you should consider whether the defendant knowingly and willfully joined the conspiracy. You should consider whether he participated in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objectives as an associate or worker.

In that regard, it has been said that in order for a defendant to be deemed a participant in a conspiracy, he must have had a stake in the venture or its outcome. You are instructed that proof of a financial interest in the outcome of a scheme is not essential. Nevertheless, if you find that the defendant has such an interest, that is a factor which you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the indictment.

As I mentioned a moment ago, before the defendant can be found to have been a conspirator, you must first find that he knowingly joined in the unlawful agreement or plan. The key question, therefore, is whether the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

It is important for you to note that the defendant's participation in the conspiracy must be established by

independent evidence of his own acts or statements, as well as those of the other alleged co-conspirators, and the reasonable inferences which may be drawn from them.

The defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to become a member of the conspiracy, the defendant need not have known the identities of each and every other member, nor need he have been apprised of all of their activities. Moreover, the defendant need not have been fully informed as to all of the details, or the scope, of the conspiracy in order to justify an inference of knowledge on his part. Furthermore, the defendant need not have joined in all of the conspiracy's unlawful objectives.

The extent of a defendant's participation has no bearing on the issue of a defendant's guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed, each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution you, however, that the defendant's mere presence at the scene of an alleged crime does not, by itself, make him a member of the conspiracy. Similarly, mere association

with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised, or assisted in it for the purpose of furthering the illegal undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement -- that is to say, a conspirator.

Third Element: Commission of Overt Act

The third element which the government must prove beyond a reasonable doubt, to establish the offense of conspiracy, is that at least one of the overt acts charged in the indictment was knowingly committed by at least one of the conspirators, at or about the time and place alleged.

The indictment, which will be submitted to you along with these instructions, charges that the overt acts were committed in the District of Vermont.

In order for the government to satisfy this element, it is not required that all of the overt acts alleged in the indictment be proven. Proof of one is sufficient.

Similarly, you need not find that the defendant himself committed any overt act. It is sufficient for the government to show that one of the conspirators knowingly committed an overt act in furtherance of the conspiracy, since such an act becomes, in the eyes of the law, the act of all the members of the conspiracy.

There is a statute of limitations that imposes a limit on how much time the government has to obtain an indictment. For you to find the defendant guilty of conspiracy, the government must prove beyond a reasonable doubt that at least one overt act in furtherance of the conspiracy was committed after October 22, 2004.

You must also find that the overt act occurred while the conspiracy was still in existence. Once a conspiracy is shown to exist, it continues to exist until consummated, abandoned, or otherwise terminated by some affirmative act. In this regard, even if you find that the main objective of the conspiratorial agreement in this case was to defraud the defendant's insurance company, if you find that the conspiratorial agreement, as charged in the indictment, included within its scope other objectives as well, the conspiracy continues until those other objectives are achieved.

Finally, in order for you to find that the government has established this element, you must find that either the agreement was formed in Vermont or that an overt act was committed in Vermont.

Fourth Element: Commission of Overt Act in Furtherance of the Conspiracy

The fourth and final element which the government must prove beyond a reasonable doubt is that the overt act was committed for the purpose of carrying out the unlawful agreement.

In order for the government to satisfy this element, it must prove beyond a reasonable doubt that at least one overt act was knowingly and willfully done, by at least one conspirator, in furtherance of some object or purpose of the conspiracy, as charged in the indictment. In this regard, you should bear in mind that the overt act, standing alone, may be an innocent,

lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding, or assisting the conspiratorial scheme. You are therefore instructed that the overt act does not have to be an act which, in and of itself, is criminal or constitutes an objective of the conspiracy. Indeed, in conspiracy cases, the list of overt acts commonly includes many things, innocent in themselves, comprised of speech-meetings, conversations, and communications.

VARIANCE IN DATES

While we are on the subject of the elements, I should draw your attention to the fact that it does not matter if the indictment charges that a specific act occurred on or about a certain date, and the evidence indicates that, in fact, it was on another date. The law only requires a substantial similarity, between the dates alleged in the indictment and the date established by testimony or exhibits.

STATUTE OF LIMITATIONS DEFENSE FOR COUNTS ONE AND TWO

Count One of the indictment charges that from in or about October 2000 until in or about December 2004, in the District of Vermont, Paul H. Mason devised a scheme to defraud and in furtherance of that scheme knowingly caused the interstate wires to be used. Count One indicates that "Defendant's scheme was that he would conduct a phony theft of Defendant's freightliner

truck (the truck) so that Defendant's insurance company would pay off the lien on the truck and relieve defendant from having to repay the loan."

Count Two alleges that from in or about October 2000 until in or about December 2004, in the District of Vermont, Paul H. Mason conspired with others to commit wire fraud. Count Two indicates that "[i]t was the object of the conspiracy that the Defendant and other conspirators would pretend that the Truck had been stolen so that Defendant's insurance company would pay off the lien on the truck and relieve defendant from having to repay the loan."

The statute of limitations is a law, passed by Congress and signed by the President which you are required to follow. The statute of limitations limits the exposure of a defendant to a criminal prosecution to a certain fixed period of time following the occurrence of those acts that Congress has decided to punish. The government must prove beyond a reasonable doubt that it initiated the prosecution against the defendant within the period set forth in the statute of limitations.

The statute of limitations for the crimes alleged in both Count One and Count Two is five years. In this case, the government obtained the indictment against the defendant on October 22, 2009. The government alleges that the indictment was brought within five years of the commission of the crimes alleged

in the indictment because the phone calls made by the defendant on or around November 1, 2004 constituted a continuation both of the alleged scheme to defraud and of the alleged conspiracy to commit wire fraud.

It is the defendant's theory that the crimes alleged in Counts One and Two were completed in December 2000. With regard to Count One the defendant contends that the telephone calls he made to Ford Motor Credit on or about November 1, 2004 were not made in furtherance of the alleged scheme to defraud. With regard to Count Two, the defendant contends that the November 2004 telephone calls did not constitute an overt act in furtherance of the alleged conspiracy to commit wire fraud.

If you find beyond a reasonable doubt that the November 2004 telephone calls were made in furtherance of the alleged scheme to defraud, then the defendant's statute of limitations defense to Count One fails. If, on the other hand, you find that the November 2004 telephone calls were not made in furtherance of the alleged scheme to defraud, you must find the defendant not guilty of Count One.

If you find beyond a reasonable doubt that the November 2004 telephone calls constituted an overt act in furtherance of the alleged conspiracy to commit wire fraud, then the defendant's statute of limitations defense to Count Two fails. If, on the other hand, you find that the November 2004 telephone calls did

not constitute an overt act in furtherance of the alleged conspiracy to commit wire fraud, you must find the defendant not guilty of Count Two.

Finally, the fact that the defendant has raised the statute of limitations defense does not relieve the government of its burden of proving beyond a reasonable doubt all of the elements of the offenses charged in the indictment.

CONCLUSION

I caution you, members of the jury, that you are here to determine the guilt or innocence of the defendant before you today solely from the evidence in this case. I remind you that the mere fact that the defendant has been indicted is not evidence against him. Also, he is not on trial for any act or conduct or offense not alleged in the indictment.

You should know that the punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the judge, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the defendant.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your other jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong.

Do not, however, surrender your honest convictions about the case solely because of the opinion of your other jurors, or for the mere purpose of returning a verdict.

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. After you have reached agreement as to the first two counts contained in the indictment, you will have your foreperson record a verdict of guilty or not guilty as to each count. Your foreperson will then sign and date the verdict form and you will then return to the courtroom.

If, during your deliberations you should desire to communicate with the Court, please put your message or question in writing signed by the foreperson, and pass the note to the marshall who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

Also, a copy of this charge will go with you into the jury room for your use.

I appoint Monica Weeber as your foreperson.

Dated at Burlington, Vermont this 20th day of October, 2010.

William K. Sessions III
Chief Judge, U.S. District Court