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UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA :  
v. : CRIM. NO. 1:95CR61-01  
FRANCIS ROBERT CURRY :  
\_\_\_\_\_ :

CHARGE TO THE JURY

Members of the Jury:

This is a criminal prosecution brought by the United States against defendant Francis Robert Curry. The indictment charges the defendant with four counts.

Count I charges the defendant with knowingly executing and attempting to execute a scheme to defraud Vermont National Bank in violation of 18 U.S.C. § 1344(a)(1). Count II charges the defendant with unlawfully transporting in interstate commerce \$5000 or more in United States currency, knowing that the money had been fraudulently obtained, in violation of 18 U.S.C. § 2314. Count III charges the defendant with obtaining money by means of false and fraudulent pretenses or representations and by means of wire communication in interstate commerce in violation of 18 U.S.C. §§ 1343 and 2. Lastly Count IV charges the defendant of having devised a scheme for obtaining \$5000 or more by means of false and fraudulent pretenses in violation of 18 U.S.C. §§ 2314 and 2.

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### Role of the Indictment

At this time, I remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse the defendant of a crime preliminary to trial. The indictment 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 all of the charges 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 denials made by the defendant when he pleaded not guilty. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

### Multiple Counts

A separate crime or offense is charged in each of the four counts of the indictment. Each charge against the defendant and the evidence pertaining to each charge should be considered separately. You must return separate verdicts on each count in which the defendant is charged. The fact that you may find the defendant not guilty or guilty as to one of the offenses charged should not control your verdict as to any other offense charged against the defendant.

### Reasonable Doubt

The law presumes a defendant to be innocent of a crime. 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 the defendant's guilt after careful and impartial consideration of all 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 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.

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. The 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 indictment, then you must acquit the defendant of that offense. Unless the government proves, beyond a reasonable doubt, that the defendant has committed each and every element of the offense charged in the indictment, you must find the defendant not guilty of that offense. Furthermore, if you view the evidence in the case as reasonably permitting either of two conclusions as to any count -- one of innocence, the other of guilt, you must, of course, adopt the conclusion of innocence and find the defendant not guilty of that count.

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 a defendant beyond a reasonable doubt, you must acquit that defendant.

### 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 admitted, 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. 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.

Note that you may convict a defendant on the basis of circumstantial evidence alone, but only if that evidence convinces you of the guilt of the defendant beyond a reasonable doubt.

### Tape Recordings and Transcripts

Tape recordings of conversations have been received in evidence. Typewritten transcripts of these tape recorded conversations have been furnished to you solely for your convenience in assisting you in following the conversation or in identifying the speakers.

The tapes themselves, however, are evidence in the case and the typewritten transcripts are not evidence. If you perceive any variation between the two, you should be guided solely by the tapes and not by the transcripts.

### Testimony and Arguments Excluded

I caution you 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 in the case. The evidence that you will consider in reaching your verdict consists only of the sworn testimony of witnesses, the stipulations made by the parties, and all exhibits that have been received in evidence.

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 the fact as proven.

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 this 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 proven, such reasonable inferences as you feel are justified in light of your experiences.



### Inference

During the trial you have heard the attorneys use the term "inference", and in their arguments they have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

### 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 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 large 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 also 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.

### Government as a Party

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

The 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 any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individual, stand as equals before the Court.

Race, Religion, National Origin, Sex or Age

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

### Expert Witnesses

You have heard testimony from an expert witness. An expert is allowed to express his or her opinion on those matters about which he or she has special knowledge or 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 the expert's qualifications, opinions, reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' 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 his or her 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 in a criminal case has an absolute right under our Constitution not to testify.

The fact that the defendant did not testify must not be discussed or considered by the jury in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

### Admissions

There has been evidence in this case of certain statements made by the defendant in conversations with individuals who have testified at this trial. These statements are known as admissions.

You are entitled to give weight to the defendant's admissions in this case made in any conversation with a witness who you believe has truthfully reported the conversation, and where you find the defendant made these admissions voluntarily and intentionally.



Prior Inconsistent Statements of a Non-Party Witness

You may find that a witness has made statements outside of this trial which are inconsistent with the statements that the witness made 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 statement. As to out-of-court statements 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.

"On Or About"

The indictment in this case charges in each count that a particular offense was committed "on or about" a certain date. It is not necessary for the government to prove that the offense was committed precisely on the date charged; however, it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in each count. For instance, if the indictment charges that a specific crime occurred on December 4, 1992, and you find from the evidence beyond a reasonable doubt that the alleged crime occurred on December 3, 1992, a date reasonably near December 4, 1992, then you should return a verdict of guilty on that charge.

### Law Enforcement Witness

You have also heard the testimony of several law enforcement officials. 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 the law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

### INSTRUCTIONS OF LAW

Having told you the general guidelines by which you will evaluate the evidence in this case, 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 to you 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 find a verdict that is contrary to the law 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.

All the parties in this case have a right to expect you will carefully and impartially consider all the evidence in the case, you will follow the law as I state it to you, and you will reach a just verdict.

### Bank Fraud

In Count I of the indictment, defendant is charged with violation of section 1344(a)(1) of Title 18 of the United States Code. Section 1344 makes it a crime to knowingly execute or attempt to execute a scheme to defraud a financial institution.

In relevant part, Section 1344 provides:

Whoever knowingly executes, or attempts to execute, a scheme or artifice--

(1) to defraud a federally chartered or insured financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false pretenses, representations, or promises

shall be [guilty of an offense against the United States].

To prove defendant guilty of the crime charged, the government must establish beyond a reasonable doubt that:

1. There was a scheme to defraud Vermont National Bank as charged in the indictment;

2. The defendant executed or attempted to execute the scheme with the intent to defraud the bank; and

3. At the time of the execution of the scheme, the bank had its deposits insured by the Federal Deposit Insurance Corporation.

The first element the government must prove beyond a reasonable doubt is that there was a scheme or artifice to defraud the bank as described in the indictment. As used in these instructions, the phrase "scheme or artifice to defraud" means any deliberate plan of action or course of conduct by which someone

intends to deceive or to cheat another, or by which someone intends to deprive another of something of value.

Although it is not necessary for the government to prove an actual loss of funds by the bank, the government must prove beyond a reasonable doubt that by executing or attempting to execute the scheme alleged in the indictment, defendant placed the bank at a risk of loss and the bank did not knowingly accept such a risk.

The second element the government must prove beyond a reasonable doubt is that defendant executed or attempted to execute the scheme knowingly, willfully and with the specific intent to defraud the bank.

As used in these instructions, the term "knowingly" means that the defendant was conscious and aware of his action or omission, realized what he was doing or what was happening around him, and did not act or fail to act because of ignorance, mistake or accident.

The term "willfully," as used in these instructions, means that the defendant knowingly performed an act, or failed to perform an act, deliberately and intentionally, as contrasted with accidentally, carelessly, or unintentionally.

As used in these instructions, the term "to act with an intent to defraud" means to act knowingly and with the intention or the purpose to deceive or to cheat. An intent to defraud is accompanied, ordinarily, by a desire or a purpose to bring about some gain or benefit to oneself or some other person and by a desire or a purpose to cause some loss to some person.

Regarding this Count and all Counts of the indictment, whether the defendant acted knowingly, willfully, and with the requisite intent is a question of fact for you to determine. This question requires consideration of the defendant's state of mind.

Direct proof of knowledge and fraudulent intent is not required. Rather, the ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon such a person's outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and rational or logical inferences that may be drawn therefrom.

The third element the government must prove beyond a reasonable doubt is that Vermont National Bank was insured by the Federal Deposit Insurance Cooperation at the time of the execution of the alleged scheme to defraud.

It is not necessary for the government to prove defendant knew the identity of the particular financial institution or that defendant knew the institution was insured by the Federal Deposit Insurance Cooperation. It must prove, however, that defendant intended to defraud a financial institution.

### Interstate Transportation of Stolen Property

In Count II of the indictment, defendant is charged with violation section 2314 of Title 18 of the United States Code. Section 2314 makes it a crime to transport in interstate commerce \$5,000 or more with the knowledge that such monies were stolen or acquired by fraud.

In relevant part, section 2314 provides:

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud, shall [be guilty of an offense against the United States].

To prove defendant guilty of the crime charged, the government must establish beyond a reasonable doubt that:

1. The property in question, in this case money, was taken by fraud;
2. The defendant transported, transmitted, or transferred the property in interstate commerce or caused it to be transported;
3. At the time of the transportation or transmission, the defendant knew the property was stolen; and
4. The value of the property was \$5,000 or more.

The first element the government must prove beyond a reasonable doubt is that the money was taken by fraud from Pamela Whitehill. The government need not prove that the defendant personally stole the property from Pamela Whitehill. However, you



must decide whether the defendant intentionally deprived the owner of this property or of the rights and benefits of ownership without the owner's consent. "Intentionally" means acting deliberately or purposely, as opposed to acting by mistake or carelessness.

Any illegal or dishonest misrepresentation or taking of property which deprives the owner of his or her property without consent is considered "stealing, conversion, or taking by fraud." The property does not have to be taken permanently; and the misrepresentation or taking does not have to result in monetary loss to the owner. You must decide whether, at the time the defendant acquired possession of the property, he intended to take it for his own use, and if so, whether he did so without permission of Pamela Whitehill.

The government satisfies its burden of proving the property was stolen, converted or taken by fraud if it proves beyond a reasonable doubt that defendant converted the property to his own use, against the owner's wishes, even if the defendant initially got the property lawfully.

In considering whether defendant's acquisition of the property was against the owner's wishes, you may take into account any friendship or business relationship between defendant and Pamela Whitehill.

The second element the government must prove beyond a reasonable doubt is whether the property was transported in interstate commerce. If you find the property was stolen or taken by fraud in one state and was in defendant's possession in another

state, then you may -- but need not -- infer that the property has travelled in interstate commerce.

The defendant need not have intended or known of the property's transport in interstate commerce. Nor is it required that defendant actually have physically transported the property across state lines. The government satisfies its burden of proving transportation in interstate commerce if it proves beyond a reasonable doubt that defendant willfully caused the property's transport across state lines, or performed a substantial step in furtherance of its journey.

The third element the government must prove beyond a reasonable doubt is whether the defendant knew the property was stolen or taken by fraud at the time it was transported between states. In deciding the question of knowledge, you must focus on defendant's actual knowledge at that time. Even if you find a prudent person would have known the property was stolen or taken by fraud at the time of its interstate transport, if you find defendant had no such knowledge, you cannot find him guilty.

The final element the government must prove beyond a reasonable doubt is whether the property had a value of \$5,000 or more. If the evidence shows, and you find beyond a reasonable doubt, that the property's total face, par, or market value was \$5,000 or more, this element of the offense is satisfied.

### Wire Fraud

In Count III of the indictment, defendant is charged with violation of section 1343 of Title 18 of the United States Code. Section 1343 makes it a crime to knowingly use interstate wire communication to further a scheme to defraud.

In relevant part, the statute provides:

Whoever, having devised or intended 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 an offense against the United States].

To prove defendant guilty of the crime charged, the government must establish beyond a reasonable doubt that:

1. There was a scheme or artifice to defraud or to obtain money or property by false and fraudulent pretenses, representations or promises, as alleged in the indictment;
2. 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; or that he knowingly and intentionally aided and abetted others in the scheme; and
3. That in the execution of that scheme, defendant used or caused the use of the interstate wires as specified in the indictment.

The first element the government must prove beyond a reasonable doubt is that there was a scheme or artifice to defraud

the victim of money or property by means of false or fraudulent pretenses, representations or promises.

The second element the government must prove beyond a reasonable doubt is defendant participated in the scheme to defraud knowingly, willfully and with specific intent to defraud. When considering the first and second elements of this count, you should refer to the definitions of "scheme or artifice to defraud" and of "knowingly" and "willfully" which I already have provided you.

The third element that the government must prove beyond a reasonable doubt is the use of an interstate wire communication such as telephone communication in furtherance of a scheme to defraud. To satisfy this element, the government must prove the wire communication passed between two or more states.

The use of the wires need not itself be a fraudulent representation. It must, however, further or assist the scheme to defraud.

Moreover, it is not necessary for the defendant to be directly or personally involved in the wire communication as long as the communication was reasonably foreseeable in the execution of the alleged scheme.

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. This does not mean that the defendant must specifically have authorized others to make a call. When one acts with knowledge that the use of the wires will follow in the ordinary course of business or where such use of the wires

can be reasonably foreseen, although not actually intended, then he causes the wires to be used.

While the government must establish beyond a reasonable doubt the particular use of interstate wires charged in the indictment, it does not have to prove the wires were used on the exact day charged. It is sufficient if the government establish beyond reasonable doubt that the wires were used on a date substantially similar to the dates charged in the indictment.

Inducing Interstate Travel to Obtain Property by Fraud

In Count IV of the indictment, defendant is charged with violation of section 2314 of Title 18 of the United States Code. Section 2314 makes it a crime to induce a person to travel in interstate commerce in order to execute a scheme or artifice to defraud that person of money or property having a value of \$5,000 or more.

In relevant part, the section 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, transports or causes to be transported, or induces any person to travel in, interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of \$5,000 or more [shall be guilty of an offense against the United States].

To prove defendant guilty of the crime charged, the government must establish beyond a reasonable doubt that:

1. The defendant devised a scheme or artifice to defraud, or to obtain money by false or fraudulent pretenses, representations or promises;
2. The defendant knowingly and willfully participated in the scheme or artifice to defraud;
3. The defendant caused or induced the victim, Brian Bernadet, to travel in interstate commerce; and
4. The value of the money or property involved in the scheme was \$5,000 or more.

The first element the government must prove beyond a reasonable doubt is the existence of a scheme or artifice to defraud, or to obtain money or property by false or fraudulent pretenses, representations or promises. In considering this element, you should refer to the definition of "scheme or artifice" which I have already provided you.

The phrase "false or fraudulent pretenses, representations or promises" means any trick, device or deceit intended to deprive a person of his money or property. You must determine whether defendant devised a plan or engaged in a course of action, to obtain money or property fraudulently from its rightful owner. Any false statement or deceptive or misleading representation which is calculated to deceive or mislead a person of ordinary caution is fraudulent. A deceptive or misleading representation is a representation which the defendant knows is untrue, or which the defendant made in reckless disregard for the truth.

In deciding whether a deception occurred, you do not have to find that a scheme to obtain money or property actually succeeded. You also do not have to consider defendant's spoken or written words or statements alone. You may look at the arrangements of words and the circumstances in which they were used to determine if they conveyed a false or deceptive message.

It is not necessary that the government prove each and every misrepresentation alleged in the indictment. It is sufficient if the government proves beyond a reasonable doubt that at least one pretense, misrepresentation, or concealment of a material fact was

made in furtherance of a scheme to defraud. However, you must all agree that at least one particular misrepresentation of material fact was made by defendant in order to convict him. That is, you cannot find the defendant guilty if some of you think he made misrepresentation "A" and the rest think he only made misrepresentation "B".

The second element the government must prove beyond a reasonable doubt is whether defendant knowingly and willfully participated in a scheme to defraud. Again, when considering this element, you should refer to the definitions of "knowingly" and "willfully" which I have already provided you.

The third element the government must prove beyond a reasonable doubt is whether defendant, knowingly and willfully participating in a scheme to defraud a person, in this case, Brian Bernadet, induced that person to travel interstate, or caused someone else to induce such travel.

The phrase "induces any person to travel in interstate commerce" means to cause a person to travel from one state to another, or to persuade or influence a person to do so. The defendant need not have intended or known that a person would be induced to travel interstate. Likewise, the defendant need not have personally transported him across state lines or induced him to so travel. The government satisfies its burden if it proves, beyond a reasonable doubt, that defendant knowingly participated in a scheme which, by its nature, involved interstate travel and that such travel actually occurred.



The fourth element the government must prove beyond a reasonable doubt is that the property had a value of \$5,000 or more. Regarding this element you should apply my instructions on value relating to the charge of interstate transportation of stolen property.

### Aiding and Abetting

Counts III and IV of the indictment charge defendant with aiding and abetting the commission of those crimes.

The aiding and abetting statute, section 2(a) of Title 18 of the United States Code provides:

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself in some way with the crime charged and participated in it with the intent to commit the crime. You may not infer, however, that the defendant was guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing.

Thus, in order to be found guilty of aiding and abetting the commission of the crimes charged in Counts III and IV, the government must prove beyond a reasonable doubt that the defendant:

(1) knew that the crime charged was to be committed or was being committed;

(2) knowingly did some act for the purpose of aiding, commanding or encouraging the commission of that crime; and

(3) acted with the intention of causing the crime charged to be committed.

Before the defendant may be found guilty as an aider or an abettor to the crime, the government must also prove, beyond a reasonable doubt, that someone committed each of the essential elements of the offense charged as detailed for you in the instructions relating to Counts III and IV.

Merely being present at the scene of the crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find the defendant aided and abetted the commission of that crime. Instead, the government must prove that the defendant knowingly and deliberately associated himself with the crime in some way as a participant -- someone who wanted the crime to be committed -- not as a merely spectator.

### Evidence of Prior Acts or Offenses

You have also heard evidence relating to the defendant's two prior convictions. Evidence that an act was done or that an offense was committed by the defendant at some other time is not, of course, any evidence or proof whatever that, at another time, the defendant performed a similar act or committed a similar offense, including the offenses charged in this indictment.

Evidence of a similar act or offense may not be considered by the jury in determining whether the defendant actually performed the physical acts charged in this indictment. Nor may such evidence be considered for any other purpose whatever, unless the jury first finds beyond a reasonable doubt from other evidence in the case, standing alone, that the defendant physically did the act charged in the count of this indictment which you are considering.

If the jury should find beyond a reasonable doubt from other evidence in the case that the defendant did the acts or acts alleged in the particular count under consideration, then the jury may consider evidence as to an alleged earlier act of like nature in determining the state of mind or intent with which the defendant actually did the act or acts charged in the particular count.

The defendant is not on trial for any acts or crimes not alleged in the indictment. Nor may a defendant be convicted of the crimes charged even if you were to find that he committed other crimes--even crimes similar to the one charged in this indictment.

### Good Faith Defense

The good faith of the defendant provides a complete defense to any or all of the charges contained in the indictment because good faith on the part of the defendant is inconsistent with the intent to defraud and the intent to obtain money or property by means of false or fraudulent pretense, representations or promises alleged in the counts of the indictment.

A person who acts, or causes another person to act, on a belief or an opinion honestly held is not punishable under the statutes which the defendant is charged with violating merely because the belief or opinion turns out to be inaccurate, incorrect, or wrong. An honest mistake in judgment or an error in management does not rise to the level of intent to defraud.

A defendant does not act in "good faith" if, even though he or she honestly holds a certain opinion or belief, the defendant also knowingly makes false or fraudulent pretenses, representations, or promises to others.

The mail, wire and bank fraud statutes charged in the indictment are written to subject to criminal punishment only those people who knowingly defraud or attempt to defraud, or knowingly obtain money or property or attempt to obtain money or property, by means of false or fraudulent pretenses, representations or promises.

While the term "good faith" has no precise definition, it means, among other things, a belief or opinion honestly held, an

absence of malice or ill will, and an intention to avoid taking unfair advantage of another.

With regard to each count alleged in the indictment, you must determine whether or not the government has proven that the defendant acted with the requisite intent to defraud, or whether the defendant acted in good faith. In making this determination, the jury must consider all of the evidence in the case bearing on the defendant's state of mind.

The burden of proving good faith does not rest with the defendant because the defendant does not have any obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that the defendant acted with the intent to defraud.

If the evidence relating to a particular count in the indictment leaves the jury with a reasonable doubt as to whether the defendant acted with an intent to defraud or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, or whether the defendant acted in good faith, then the jury must acquit the defendant on that count.

### 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 the defendant is not on trial for any act or conduct or offense not alleged in the Indictment. Neither are you called upon to return a verdict as to the guilty or innocence of any other person or persons not on trial as a defendant in this case.

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 accused.

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 fellow jurors. Do not hesitate to re-examine your own views and change your opinion if you think you were wrong. But also do not surrender your honest convictions about the case 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. In other words, your verdict must be unanimous.

I appoint \_\_\_\_\_ as your foreperson.

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 each of the counts contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty as to each count of the Indictment. Your foreperson will then sign and date the verdict form, and you will return to the courtroom.

If during your deliberations you wish to communicate with the Court, please put your message or question in writing, signed by the foreperson, and pass the note to the marshal who will then 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 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 any time.

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

Dated at Rutland, Vermont, this \_\_\_\_\_ day of May, 1996.

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J. Garvan Murtha  
Chief Judge