

COPY

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

|                          |   |                       |
|--------------------------|---|-----------------------|
| UNITED STATES OF AMERICA | : |                       |
|                          | : |                       |
| v.                       | : | CRIM. NO. 1:95CR64-01 |
|                          | : |                       |
| ABRAHAM KALANTARY        | : |                       |
| _____                    | : |                       |

CHARGE TO THE JURY

Members of the Jury:

This is a criminal prosecution brought by the United States against defendant Abraham Kalantary. The indictment charges the defendant with six counts.

Count I charges the defendant with knowingly importing and bringing 13 Iranian carpets into the United States in violation of the embargo against importation of Iranian goods set forth in 18 U.S.C. § 545 and applicable federal regulations. Counts II through V charge the defendant with willfully and knowingly making false statements to the United States Department of the Treasury and the United States Customs Service, in violation of 18 U.S.C. § 1001. In Count VI, the government seeks forfeiture of the 13 Iranian carpets which the defendant is accused of unlawfully importing into the United States pursuant to 18 U.S.C. § 545.

You will be asked to consider a separate verdict on Count VI of the indictment which will not occur until after you have considered and returned verdicts on Counts I through V. I will instruct you separately on Count VI after you have returned your verdict on Counts I through V.

### 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 five 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 a defendant not guilty or guilty as to one of the offenses charged should not control your verdict as to any other offense charged against that 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.

### 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 expert witnesses. 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

Although a defendant in a criminal case cannot be compelled to testify, the defendant, of course, is permitted to take the witness stand on his or her own behalf. In this case, the defendant decided to testify. You should examine and evaluate his testimony no differently than you would the testimony of any witness with an interest in the outcome of this case.

### 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 September 5, 1994, and you find from the evidence beyond a reasonable doubt that the alleged crime occurred on September 4, 1994, a date reasonably near September 5, 1994, 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.

### False Statements

In Counts II through V, the defendant is charged with violating 18 U.S.C. § 1001. Section 1001 makes it a crime to knowingly and willfully make a false statement in a matter within the jurisdiction of a department or agency of the United States.

In relevant part, 18 U.S.C. § 1001 provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully makes any false statements or representations [shall be guilty of an offense against the United States.]"

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

1. On or about the date specified, the defendant made a material statement or representation;
2. The statement or representation was false or fictitious or fraudulent;
3. The false or fictitious or fraudulent statement was made unlawfully, knowingly and willfully; and,
4. The statement or representation was made in a matter within the jurisdiction of a department or agency of the United States.

Take particular note of the fact that the defendant has been charged in four counts with making four statements in violation of section 1001. For the government to meet its burden of proof on a particular count, you must find the government has proven beyond a

reasonable doubt each of four elements as to the statement at issue in the specific count of the indictment which you are considering.

The first element the government must prove beyond a reasonable doubt is that the defendant made a material statement or representation. To be material, the statement must have a natural tendency to influence or have been capable of influencing the decisionmaking body to which it was addressed. Under this statute, there is no distinction between written and oral statements.

The second element the government must prove beyond a reasonable doubt is that the statement is false. A statement, representation, or entry is "false" if untrue when made, and known at the time to be untrue by the person making it. Stated another way, a false statement is more than merely untrue or erroneous; rather, it is designedly untrue and made with the intention to deceive the person to whom the false statement is made.

The third element which the government must prove beyond a reasonable doubt is that the defendant acted knowingly and willfully. The term "knowingly" means that the defendant was conscious and aware of his action, realized what he was doing or what was happening around him, and did not act because of ignorance, mistake or accident. The term "willfully" means the defendant performed an act deliberately and intentionally, and with knowledge, as contrasted with accidentally, carelessly or unintentionally.

As I have told you, the fourth element is the statement be made with regard to a matter within the jurisdiction of a

department or agency of the United States. I charge you that the United States Customs Service is a department or agency of the United States.

There is no requirement that the statement actually be directed to or given to the United States Customs Service. All that is necessary is that you find that it was contemplated that the statement was to be utilized in a matter which was within the jurisdiction of an agency or department of the United States.

Furthermore, it is not necessary for the government to prove that the defendant had actual knowledge that the false statement was to be utilized in a matter which was within the jurisdiction or agency or department of the United States. It is sufficient to satisfy this element if you find the false statement was made with regard to a matter within the jurisdiction of a department of the United States.

### Good Faith Defense

The good faith of the defendant is a complete defense to the charges in Counts II, III, IV and V of the indictment because good faith on the part of the defendant is, simply, inconsistent with a finding of knowingly and willfully making false, fictitious or fraudulent statements as alleged in each of those charges.

A person who acts on a belief or an opinion honestly held is not punishable under 18 U.S.C. § 1001 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 knowledge and willfulness required by the statute.

The law is intended to subject to criminal punishment only those people who knowingly and willfully attempt to deceive. 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 comply with known legal duties.

In determining whether or not the government has proven that the defendant acted knowingly and willfully in making false, fictitious or fraudulent statements, or whether the defendant acted in good faith, 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 an 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

knowingly and willfully to make false, fictitious or fraudulent statements.

If the evidence in the case leaves the jury with a reasonable doubt as to whether the defendant acted in good faith, then the jury must acquit the defendant on that count.



## Smuggling of Goods into the United States

In Count I, the defendant is charged with smuggling goods into the United States in violation of 18 U.S.C. § 545.

In relevant part, 18 U.S.C. § 545 provides: "Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law [shall be guilty of an offense against the United States]."

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

1. The defendant imported or brought into the United States merchandise;
2. The defendant acted fraudulently or knowingly when he imported or brought the merchandise into the United States;
3. It was contrary to law to bring or import the merchandise into the United States contrary to law.

The first element requires the government to prove beyond a reasonable doubt that the defendant imported or brought merchandise into the United States.

The second element requires the government to prove beyond a reasonable doubt that the defendant imported or brought the merchandise into the United States fraudulently or knowingly. A statement or action is "fraudulent" if it was falsely made, or made with reckless indifference as to its truth or falsity, and made with an intent to deceive. A statement or action is done "knowingly" if the defendant was conscious and aware of his actions, realized what he was doing or what was happening around

him, and did not act because of ignorance, mistake or accident.

The third element requires the government to prove beyond a reasonable doubt that the merchandise was imported or brought into the United State contrary to law. In this regard, I instruct you that, under applicable federal regulations, it is contrary to law to import into the United States, merchandise from Iran, unless limited to five carpets which had been personally used by the importer's household.

### Entrapment by Estoppel

A defendant, however, cannot be found guilty of an offense where a government official misleads him into believing that the conduct for which he is on trial was lawful and that the defendant reasonably believed and relied on the official's statement.

Further, for the defendant's reliance to be reasonable, you must find that the defendant was a person sincerely desirous of obeying the law, would have accepted the information as true, and would not have been put on notice to make further inquiries. The burden of proof is on the defendant with respect to this particular defense.

The defendant has testified that he was told by a Customs official in Philadelphia that each member of his family was entitled to have 5 carpets brought into the United States on their behalf. Thus, you may find the defendant not guilty on Count I if you find that the defendant was told by a government official that he could bring 5 carpets into the United States on behalf of each member of his family and he reasonably relied on that representation.

### 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 Brattleboro, Vermont, this \_\_\_\_\_ day of  
May, 1996.

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J. Garvan Murtha  
Chief Judge