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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Docket No. 2:95-CR-72
	:	
WILLIAM GREER, a/k/a "Thomas William Dodds,"	:	
STEPHEN HUTCHINS,	:	
THOMAS COOK, a/k/a "George Wright,"	:	
GREGORY STEVENS,	:	
and GLEN KOSKI,	:	
Defendants.	:	

JURY CHARGE

Members of the Jury:

This case is a criminal prosecution brought by the United States against the defendants William Greer, Stephen Hutchins, Thomas Cook, Gregory Stevens, and Glen Koski. The grand jury indictment charges the defendants in nine counts. You will receive a copy of the indictment to take with you into the jury room.

Count 1 alleges that all five Defendants conspired, in the District of Vermont and elsewhere, to import and export hashish and marijuana at various times between 1980 and 1993.

Count 2 alleges that William Greer, Stephen Hutchins, and Thomas Cook conspired in the District of Vermont to distribute and possess with intent to distribute hashish, marijuana, and

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cocaine, at various times between 1980 and 1993.

Count 3 is alleged against William Greer and Stephen Hutchins. It alleges that Mr. Greer and Mr. Hutchins engaged in a continuing criminal enterprise in the District of Vermont and elsewhere from sometime in 1980 until 1991.

Count 4 alleges that all five Defendants conspired to violate the Maritime Drug Law Enforcement Act within the District of Vermont and elsewhere between 1989 and July of 1991.

Count 5 is alleged against William Greer, Stephen Hutchins, and Thomas Cook. It alleges that between on or about August 15, 1990 and on or about November 1, 1990, in the District of Vermont, they knowingly and intentionally imported a quantity of hashish into the United States from Canada.

Count 6 is alleged against William Greer, Stephen Hutchins, and Thomas Cook. It alleges that on or about November 2, 1990, in the District of Vermont, they knowingly and willfully failed to file a Report of International Transportation of Currency or Monetary Instruments, as required by federal regulations, when they transported monetary instruments of more than ten thousand dollars from a place in the United States to a place outside of the United States. In addition, Count 6 alleges that Misters Greer, Hutchins, and Cook knowingly and willfully failed to file this report while they were engaged in violating other laws of the United States and as part of a pattern of illegal activity

involving more than $100,000 in a 12-month period.

Count 7 is alleged against William Greer, Stephen Hutchins, and Thomas Cook. It alleges that on or about November 2, 1990, in the District of Vermont, they knowingly and intentionally attempted to transfer monetary instruments and funds in United States currency from a place in the United States, to a place outside the United States, with the intent to promote the carrying on of unlawful activities.

Count 8 is alleged against William Greer, Stephen Hutchins, and Thomas Cook. It alleges that on or about November 2, 1990, in the District of Vermont, they knowingly, and intentionally attempted to import a quantity of hashish into the United States from Canada.

Count 9 is alleged against William Greer and Stephen Hutchins. It alleges that between on or about October 31, 1990 and on or about November 3, 1990, in the District of Vermont, they knowingly and willfully traveled in foreign commerce between the United States and Canada with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, namely, a business enterprise involving hashish; and thereafter performed or attempted to perform and act to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of that unlawful activity.

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 preliminary to trial. The 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 defendants.

The defendants have pled 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 not guilty pleas of the defendants. You are to perform this duty without bias or prejudice against the defendants or the government.

MULTIPLE COUNTS AND MULTIPLE DEFENDANTS

A separate crime or offense is charged in each of the nine counts of the indictment. Each charge against each defendant and the evidence pertaining to each charge should be considered separately. You must return separate verdicts on each count in which the defendants are 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.

In addition, it does not follow that if you find one defendant not guilty or guilty on one charge, that one or more of the other defendants is also not guilty or guilty of that same charge. Each defendant is entitled to fair consideration of his own defense and is not to be prejudiced by the fact, if it should become a fact, that you find against the other defendant on any charge. You must give separate and individual consideration to each charge against each defendant.

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, AND REASONABLE DOUBT

I instruct you that you must presume each defendant to be innocent of the crimes charged. Thus each defendant, although accused of crimes in the indictment, begins the trial with a "clean slate"--with no evidence against him. The indictment, as you already know, is not evidence of any kind. The defendants are, of course, not on trial for any act or crime not contained in the indictment. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against the defendants. The presumption of innocence alone therefore, is sufficient to acquit each defendant.

The burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a

criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

It is not required that the government 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 affairs.

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 the offense.

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.

You may consider two types of evidence: direct and circumstantial. Direct evidence is evidence such as the testimony of an eyewitness. Circumstantial evidence is proof of circumstances from which you may draw a logical conclusion concerning an essential fact in the case.

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

TESTIMONY AND ARGUMENTS EXCLUDED

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 exhibits that have been received in evidence.

During the course of the trial I occasionally asked questions of a witness in order to bring out facts not then fully covered in the testimony. You should not assume that I hold any opinion on matters to which my questions may have related. At all times, you, the jurors, are at liberty to disregard all

questions and comments by me in making your findings as to the 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.

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.

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, 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 defendants, 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 others 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 to you in this case.

INFORMANT - CREDIBILITY OF WITNESS

First, I will speak to you about informants. An informant is someone who provides testimony against someone else for money, or to escape punishment for his or her own misdeeds or crimes, or for other personal reasons or advantage. I instruct you that there is nothing improper in the government's use of informants.

The testimony of an informant must be examined and weighed by the jury with greater care than the testimony of a witness who is not so motivated. The jury must determine whether the informant's testimony has been affected by self-interest, or by the agreement he or she has with the government, or his or her own interest in the outcome of the case, or by prejudice against the defendants.

ACCOMPLICES AND IMMUNIZED WITNESSES: CREDIBILITY OF WITNESS

You have also heard witnesses who testified that they were

accomplices, that is, they said they participated with one or more of these defendants in the commission of a crime. I instruct you that there is nothing improper in the government's use of accomplices. 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 other witnesses who have received immunity. A witness receives immunity from the government when he or she 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 than 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. Conversely, a witness who realizes that he or she may benefit by providing truthful testimony has a motive to be honest. 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 or other witness having received immunity 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 defendants.

DRUG USERS: CREDIBILITY OF WITNESSES

There has been evidence that both sides have called as a witness a person or persons who were using drugs when the events he or she observed took place. There is nothing improper about calling such a witness to testify; however, testimony from such a witness should be examined with greater care than the testimony of witnesses who were not using drugs when the event they observed took place, because of the effect the drugs may have had on that person's ability to perceive or describe the events in question.

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 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.

IMPEACHMENT BY FELONY CONVICTION - NON-DEFENDANT

You have heard the testimony of witnesses who were previously convicted of crimes, punishable by more than one year in jail or involving dishonesty or false statements. These prior convictions were put into evidence for you to consider in evaluating the witnesses' credibility. You may consider the fact that the witnesses who testified are convicted felons or have been convicted of crimes involving dishonesty or false statements in deciding how much of their testimony to accept and what weight, if any, it should be given.

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 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 public concern to the community. Equally, this case is important to the defendants, who are 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. All parties, whether government or individuals, stand as equals before the Court.

INTEREST IN OUTCOME

In evaluating the credibility of witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness' interest has affected or colored his or her testimony.

DISPOSITION OF CO-DEFENDANTS CASES

At this time there are a number of alleged co-conspirators who are not on trial and you are not being asked to reach a verdict as to them. You are not to be concerned with these persons, nor to speculate about the reasons why they are not a part of this case, and this fact should not affect or influence your verdict with respect to the remaining defendants. You must base your verdict as to these defendants solely on the basis of

the evidence or lack of evidence against them.

WITNESSES - NOT PROPER TO CONSIDER GUILTY PLEA

You have heard testimony from witnesses who pled guilty to charges arising out of the same facts as in this case. You are instructed that you are to draw no conclusions or inferences of any kind about the guilt of the defendants on trial from the fact that witnesses pled guilty to similar charges. Those witnesses' decisions to plead guilty were personal decisions about their own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendants on trial here.

CO-DEFENDANT'S PLEA AGREEMENT

In this case, there has been testimony from government witnesses who pled guilty after entering into agreements with the government to testify. There is evidence that the government agreed to dismiss some charges against these witnesses and agreed not to prosecute them on other charges in exchange for the witnesses' agreement to plead guilty and testify at this trial against the defendants. The government also promised to bring the witnesses' cooperation to the attention of the sentencing court.

The government is permitted to enter into this kind of plea agreement. You, in turn, may accept the testimony of such a

witness and convict the defendants on the basis of this testimony alone, if it convinces you of the defendants' guilt beyond a reasonable doubt.

However, you should bear in mind that a witness who has entered into such an agreement has an interest in this case different than 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. Conversely, a witness who realizes that he or she may benefit by providing truthful testimony has a motive to be honest. Therefore, you must examine his or her testimony with caution and weigh it with great care. If, after scrutinizing his or her testimony, you decide to accept it, you may give it whatever weight, if any, you find it deserves.

ORAL ADMISSIONS - VIEWED WITH CAUTION

Evidence as to any oral admissions, claimed to have been made outside of court by a party to any case, should always be considered with caution and weighed with great care. The person making the alleged admission may have been mistaken, or may not have expressed clearly the meaning intended; or the witness testifying to an alleged admission may have misunderstood, or may have misquoted what was actually said.

However, when an oral admission made outside of court is proved by reliable evidence, such an admission may be treated as trustworthy, and should be considered along with all other evidence in the case.

You may consider an oral admission as evidence only against the defendant you find made the statement and not against any other defendant.

Having given you this general instruction, however, I also instruct you that there is a limited exception to that rule which applies in this case. In cases where a conspiracy is charged, such as in this case, you may use the admissions of one co-conspirator as evidence against other co-conspirators on the conspiracy charge. I will give you more detailed instructions on that exception in a few minutes when I explain to you the specific instructions regarding conspiracy charges. What is important for you to understand at this point is that the admissions of one defendant may not be used against another defendant when you deliberate about the other charges.

CONSCIOUSNESS OF GUILT FROM USE OF FALSE NAME

There has been evidence that defendants William Greer and Thomas Cook may have used false names. If you find that Misters Greer and Cook knowingly used a name other than their own in order to conceal their identity and to avoid identification, you

may, but are not required to, infer that Misters Greer and Cook believed that they were guilty of a crime. You may not, however, infer on the basis of this alone, that Misters Greer and Cook are, in fact, guilty of the crimes for which they are charged. Whether or not evidence of the use of a false name shows that these defendants believed they were guilty of committing a crime with which they are charged, and the significance, if any, to be attached to that evidence are matters for you to determine.

FALSE EXCULPATORY STATEMENTS

Statements knowingly and voluntarily made by a defendant upon being informed that a crime had been committed or upon being accused of a criminal charge may be considered by the jury.

When a defendant voluntarily offers an explanation or voluntarily makes some statement tending to show his innocence and it is later shown that the defendant knew that the statement or explanation was false, the jury may consider this as showing a consciousness of guilt on the part of the defendant since it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement tending to establish his or her innocence.

Whether or not evidence as to a defendant's explanation or statement points to a consciousness of guilt on his part and the significance, if any, to be attached to any such evidence, are

matters exclusively within the province of the jury as the sole judges of the facts.

In your evaluation of evidence of an exculpatory statement shown to be false, you may consider that there may be reasons -- fully consistent with innocence -- that could cause a person to give a false statement showing their innocence. Fear of law enforcement, reluctance to become involved, and simple mistake may cause a person who has committed no crime to give such a statement or explanation.

LAW ENFORCEMENT WITNESS

You have 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.

RACE, RELIGION, NATIONAL ORIGIN, SEX OR AGE

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

WITNESS PROTECTION PROGRAM

You have heard reference in this trial to something called the Witness Protection Program. Let me explain it to you and how you may consider that fact in evaluating the credibility of the witness who was in that Program.

By Act of Congress, the Attorney General has the power to protect the safety, health and welfare of government witnesses and their families. Under the Witness Protection Program, if a witness' or his or her family's safety is jeopardized by his or her willingness to testify, the Attorney General can assign United States Marshals to protect the witness; transfer the witness with a new identity; and help secure a job in the new location. The witness may also receive money to help him or her get started after he or she has moved. These things are all done to protect the witness in exchange for the risk the witness has been willing to take by cooperating with authorities.

You are instructed that you may consider the fact that a

witness has been in the Witness Protection Program creates a motive for the witness to testify falsely against the accused. You may ask yourselves whether the Program is regarded by the witness as a benefit; whether it creates an interest and whether the interest is more likely than not to create a bias against the defendants.

You are, however, cautioned that you may not consider the reasons for the witness entering the Witness Protection Program in determining the guilt of the defendants on trial. There is no evidence that the witness' participation in the Program has anything to do with the defendants on trial in this case and it may not be considered in any way by you, except in helping you decide whether to believe the witness and what weight, if any, to give his testimony.

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 and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts. In weighing the expert's testimony, you may consider 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 NOT TESTIFYING

You may have observed that the defendants did not testify in this case. A defendant has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. 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 a defendant's guilt or innocence of a crime charged, you are not to consider, in any manner, the fact that the defendant did not testify. Do not even discuss it in your deliberations.

SIMILAR ACTS - INTENT, KNOWLEDGE, PLAN, ABSENCE OF MISTAKE

The government has offered evidence tending to show that on a different occasion the defendants may have engaged in conduct similar to the charges in the indictment. The videotape offered

by DEA agent Michael Cunniff against Mr. Greer is an example of such evidence. Similarly, evidence regarding the conduct of some of the defendants between 1975 and 1979 was introduced by the government for this purpose.

In that connection, let me remind you that the defendants are not on trial for committing any acts not alleged in the indictment. Accordingly, you may not consider evidence of the similar acts as a substitute for proof that the defendants committed the crimes charged. Nor may you consider this evidence as proof that the defendants have criminal personalities or bad character. The evidence of the other, similar acts was admitted for a much more limited purpose and you may consider it only for that limited purpose.

If you determine that a defendant committed the acts charged in the indictment and the similar acts as well, you may, but need not, consider those acts not charged in the indictment for other legitimate purposes, such as proof of a defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake.

Evidence of similar acts may not be considered by you for any other purpose. Specifically, you may not use this evidence to conclude that because a defendant committed the other act he must also have committed the acts charged in the indictment.

IDENTIFICATION TESTIMONY

One important issue in this case is the identification of the defendants as the perpetrators of the crimes charged.

Identification testimony is an expression of belief on the part of the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and, later, to make a reliable identification of the offender.

I will only suggest to you that you should consider the following matters: Did the witness have the ability to see the offender at the time of the offense? Has the witness' identification of the defendant as the offender been influenced in any way? Has the identification been unfairly suggested by events that occurred since the time of the offense? Is the recollection accurate?

TAPE RECORDINGS AND TRANSCRIPTS

Tape recordings of conversations have been received in evidence. The use of this procedure to gather evidence is perfectly lawful. 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.

IMPERMISSIBLE TO INFER PARTICIPATION FROM ASSOCIATION

You may not infer that a defendant was guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing.

IMPERMISSIBLE TO INFER PARTICIPATION FROM MERE PRESENCE

You may not infer that a defendant was guilty of participating in criminal conduct merely from the fact that he was present at the time the crime was being committed and had knowledge that it was being committed.

NOTES

You have been permitted to take notes during the trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence, and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not disclose your notes to anyone other than the other jurors. Your notes should remain in the jury room and will be collected at the

end of the case.

INSTRUCTIONS ON SUBSTANTIVE LAW OF THE CASE

Having told you the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to 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 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.

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

"ON OR ABOUT" EXPLAINED

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 specific count.

OFFENSES AGAINST THE UNITED STATES

All of the counts of the indictment require proof that offenses were committed against the laws of the United States.

CONSPIRACY

I will begin my instructions on the law in this case by first explaining to you the charge of conspiracy. The indictment charges defendants with three conspiracies. Count 1 of the indictment charges all five defendants with conspiring to import and export hashish and marijuana. Count 2 charges defendants William Greer, Stephen Hutchins, and Thomas Cook with conspiring to distribute and to possess with intent to distribute hashish, marijuana, and cocaine. Count 4 charges that all five defendants conspired to violate the Maritime Drug Law Enforcement Act. I will later describe

each count in greater detail. First, I will explain the elements of the offense of conspiracy.

Elements of the Offense of Conspiracy

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 offense separate and distinct from the actual violation of any specific federal laws, which the law refers to as "substantive crimes."

Indeed, you may find a defendant guilty of the crime of conspiracy to commit an offense even if the substantive crime was not actually committed.

The essence of a conspiracy is the agreement itself. In order to establish conspiracy, the government does not have to prove that the objects of the conspiracy were carried out or that the conspirators actually succeeded in carrying out their unlawful plan.

Nor is it necessary for the government to prove any overt acts as furthering the conspiracy in order for the offense of conspiracy to be complete.

The government must prove three elements beyond a reasonable doubt in order to establish a conspiracy:

First, that two or more persons formed or entered into an unlawful agreement to violate a federal law;

Second, that each of the defendants knowingly and willfully became a member of the conspiracy, that is, each entered into the unlawful agreement or understanding, either at the time it was reached or some later time when it was still in effect; and

Third, that at the time the defendants joined in the agreement or understanding, they knew the purpose of the agreement or understanding.

1. Existence of Agreement

In order for the government to prove the element of agreement, 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. It is sufficient for the government to prove it was the purpose and intention of each of the defendants to commit an unlawful act, whether or not

they succeeded in accomplishing the objective of the conspiracy.

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 circumstances 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 persons charged to act together to accomplish an unlawful purpose.

2. Membership in the Conspiracy

Next, the government must prove beyond a reasonable doubt that each defendant knowingly, willfully and voluntarily became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the count of the indictment you are considering existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant whom you are considering was, in fact, a member of the conspiracy, you should consider

whether the defendant knowingly and willfully joined the conspiracy. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective 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, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the defendant had 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 count of the indictment you are considering.

As I mentioned a moment ago, before a 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 a 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.

A 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, a 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 activities.

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 a defendant within the ambit of the conspiracy.

I want to caution you, however, that a defendant's mere presence at the scene of the 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, a 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.

SINGLE OR MULTIPLE CONSPIRACIES

Counts 1, 2 and 4 of the indictment charge that some or all of the defendants knowingly and deliberately participated in three conspiracies. The defendants contend that the government's proof fails to show the existence of one overall conspiracy within each count. Rather, they claim that there were actually several separate and independent conspiracies with various groups of members within each count.

Whether there existed a single unlawful agreement, or many such agreements, or indeed, no agreement at all, is a question of fact for you, the jury, to determine in accordance with the instructions I am about to give you.

When two or more people join together to further one unlawful design or purpose, a single conspiracy exists. By way of contrast, multiple conspiracies exist when there are separate unlawful agreements to achieve distinct purposes.

You may find that there was a single conspiracy despite the fact that there were changes in either personnel (by the termination, withdrawal, or additions of new members), or activities, or both, so long as you find that some of the co-conspirators continued to act for the entire duration of the conspiracy for the purpose(s) charged in the count of the indictment you are considering. The fact that the members of the conspiracy are not always identical does not necessarily

imply that separate conspiracies exist.

On the other hand, if you find that the conspiracy charged in the count of the indictment you are considering did not exist, you cannot find any defendant guilty of the single conspiracy charged in that count of the indictment. This is so even if you find that some conspiracy other than the one charged in that count of the indictment existed, even though the purposes of both conspiracies may have been the same and even though there may have been some overlap in membership.

Similarly, if you find that a particular defendant was a member of another conspiracy, and not the one charged in the count of the indictment you are considering, then you must acquit the defendant of the conspiracy charged in that count.

Therefore, what you must do is determine whether the conspiracy charged in the count of the indictment you are considering existed. If it did, you then must determine the nature of the conspiracy and who were its members.

MULTIPLE CONSPIRACIES - FACTORS IN DETERMINING

In deciding whether there was more than one conspiracy established with regard to a particular count of the indictment, you should concentrate on the nature of the agreement. To prove the single conspiracy charged in a

particular count of the indictment, the government must convince you that each of the members agreed to participate in what he knew was a group activity directed toward a common goal. There must be proof of an agreement on an overall objective.

But a single conspiracy may exist even if all the members did not know each other, or never sat down together, or did not know what roles all the other members played. And a single conspiracy may exist even if different members joined at different times, or the membership of the group changed. These are all things that you may consider in deciding whether there was more than one conspiracy, but they are not necessarily controlling.

Similarly, just because there were different subgroups operating in different places, or many different criminal acts committed over a long period of time, does not necessarily mean that there was more than one conspiracy. Again, you may consider these things, but they are not necessarily controlling.

What is controlling is whether the government has proved that there was an overall agreement on a common goal. That is the key.

SCOPE OF THE AGREEMENT AND STATUTE OF LIMITATIONS

As you know, the conspiracies alleged in Counts 1 and 2 of the indictment cover a 13-year period, from 1980 to 1993, and the conspiracy alleged in Count 4 of the indictment cover a period from 1989 to July, 1991. For each defendant charged in the count of the indictment you are considering, you must consider what particular agreement, if any, the defendant entered into, and whether the defendant withdrew from such agreement, or the agreement terminated, before the statute of limitations for charging the defendants ran out.

STATUTE OF LIMITATIONS

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 criminal prosecution to a certain fixed period of time following the occurrence of those acts that Congress has decided to punish. The purpose of the statute of limitations is to protect individuals from having to defend themselves against charges when the basic facts may have become stale or obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past.

The statute of limitations for drug offenses is five (5)

years. In this case, the government obtained the indictment against the defendants William Greer, Stephen Hutchins, Thomas Cook, and Gregory Stevens for Count 1 on August 1, 1995. Therefore, the statute of limitations bars prosecution of one of these defendants for the crime alleged in Count 1 if he withdrew from the conspiracy or the conspiracy terminated before August 1, 1990. This is known as the statute of limitations bar date.

The government obtained the indictment against defendant Glen Koski for Count 1 on July 18, 1996. Thus, the statute of limitations bar date for prosecuting Mr. Koski on Count 1 is July 18, 1991. If he withdrew from the conspiracy or the conspiracy terminated before this date, he may not be prosecuted for the crime alleged in Count 1.

The government obtained the indictment against defendants William Greer, Stephen Hutchins, and Thomas Cook for Count 2 on August 1, 1995. The statute of limitations bar date for prosecuting these defendants on Count 2 is therefore August 1, 1990. If one of these defendants withdrew from the conspiracy or the conspiracy terminated before this date, he may not be prosecuted for the crime alleged in Count 2.

The government obtained the indictment against all five defendants for Count 4 on July 18, 1996. Therefore, the

statute of limitations bar date for prosecuting one of these defendants on Count 4 is July 18, 1991. If a defendant withdrew from the conspiracy or the conspiracy terminated before this date, he may not be prosecuted for the crime alleged in Count 4.

I will now explain the requirements for withdrawal and the ending of a conspiracy.

WITHDRAWAL AS A DEFENSE TO CONSPIRACY BASED ON STATUTE OF LIMITATIONS

Some of the defendants have raised the defense that they were not members of the charged conspiracies because they withdrew from the conspiracies before their respective statute of limitations bar dates, and that the statute of limitations ran out before the government obtained an indictment charging them with the conspiracies.

This can be a defense, but each defendant has the burden of proving to you that he did in fact withdraw, and that he did so before his statute of limitations bar date, specified in the previous section.

If you find that a defendant withdrew from one of the charged conspiracies before his statute of limitations bar date, then you must acquit that defendant. To prove this defense, each defendant must establish each and every one of the following:

First, that he completely withdrew from the conspiracy. A partial or temporary withdrawal is not sufficient.

Second, that he took some affirmative step to renounce or defeat the purpose of the conspiracy. This would include things like voluntarily going to the police or other law enforcement officials and telling them about the plan; or telling the other members of the conspiracy that he did not want to have anything more to do with it; or any other affirmative acts that are inconsistent with the purpose of the conspiracy, and that are communicated in a way that is reasonably likely to reach the other members. But some affirmative step is required. Just doing nothing, or just avoiding contact with the other members, would not be enough.

The third thing that each defendant must prove is that he withdrew before his statute of limitations bar date.

The fact that the defendants have raised this defense does not relieve the government of its burden of proving that there was an agreement, and that the defendants knowingly and voluntarily joined it. Those are still things that the government must prove in order for you to find each defendant guilty of the conspiracy charge. Each defendant has the burden of proving, by a preponderance of the evidence, that he withdrew from the conspiracy. To prove something by a preponderance of the evidence means to prove that it is more

likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more convincing. In determining whether the defendant has proven that he withdrew from the conspiracy, you may consider the relevant testimony of all witnesses, regardless of who may have called them, and all the relevant exhibits received in evidence regardless of who may have produced them. If the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve this question against the defendant. However, it is important to remember that the fact that the defendants have raised this defense does not relieve the government of its burden of proving that there was an agreement, that the defendants knowingly and voluntarily joined it, and that the defendants knew the purpose of the agreement at the time that they joined it. Those are things that the government still must prove beyond a reasonable doubt in order for you to convict the defendants of the crime of conspiracy.

END OF CONSPIRACY AS A DEFENSE
TO CONSPIRACY BASED ON STATUTE OF LIMITATIONS

The defendants have also raised the defense that the conspiracies with which they are charged ended before their respective statute of limitations bar dates, and that the statute of limitations ran out before the government obtained

an indictment charging them with the conspiracies.

If you find that one of the charged conspiracies ended before a defendant's statute of limitations bar date, then you must acquit that defendant of that conspiracy.

A conspiracy ends when its goals have been achieved. But sometimes a conspiracy may have a continuing purpose, and may be treated as an ongoing, or continuing, conspiracy. This depends on the scope of the agreement.

If the agreement includes an understanding that the conspiracy will continue over time, then the conspiracy may be a continuing one. And if it is, it lasts until there is some affirmative showing that it has ended. On the other hand, if the agreement does not include any understanding that the conspiracy will continue, then it comes to an end when its goals have been achieved. This, of course, is for all of you to decide.

VENUE

In addition to the foregoing elements of the offense, you must consider whether any act in furtherance of the crime occurred within the District of Vermont.

There is no requirement that any of the particular conspiracies or other crimes charged in the indictment take place entirely here in the District of Vermont. But for you

to return a guilty verdict on any of the conspiracy charges, the government must convince you that an act in furtherance of each of the crimes charged took place here in the District of Vermont.

Unlike all the other elements that I have described, this is a fact that the government only has to prove by a preponderance of the evidence. This means that the government only has to convince you that it is more likely than not that part of each of the crimes charged took place here.

Remember that all the other elements I have described must be proved beyond a reasonable doubt.

COUNT I - CONSPIRACY TO IMPORT AND EXPORT MARIJUANA AND HASHISH

Count 1 of the indictment charges that all five defendants conspired, in the District of Vermont and elsewhere, to import and export hashish and marijuana at various times between 1980 and 1993, in violation of Title 21, United States Code, Section 963.

Section 963 makes it a separate federal criminal offense for anyone to conspire or agree with someone else to do something which, if actually carried out, would constitute a drug offense. 21 U.S.C. § 952 states in pertinent part: "It shall be unlawful . . . to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter . . . ." Section 953(c) provides in pertinent part: "It shall be unlawful to export from the United States any . . .controlled substance in schedule I [or] II . . . ."

For the conspiracy alleged in Count 1, the government must prove three elements beyond a reasonable doubt:

First, that between 1980 and on or about February 12, 1993, two or more persons reached an agreement or in some way or manner came to a mutual understanding to import or export hashish and marijuana;

Second, that the defendants voluntarily and

intentionally joined in the agreement or understanding, either at the time it was reached or at some later time while it was still in effect; and

Third, that at the time the defendants joined in the agreement or understanding, they knew the purpose of the agreement or understanding was to import or export hashish and marijuana.

I will now define certain terms relevant to Count 1.

1. Controlled Substances

You are instructed as a matter of law that hashish and marijuana are Schedule I controlled substances. You must ascertain whether or not the materials in question were in fact hashish and marijuana. In so doing, you may consider all evidence in the case which may aid the determination of that issue, including the testimony of any expert or other witness who has testified either to support or to dispute the allegation that the materials in question were controlled substances. The nature of a substance such as hashish or marijuana need not be proved by direct evidence where circumstantial evidence establishes its identity beyond a reasonable doubt.

Quantity is not an element of the crime of conspiring to import and export controlled substances. Therefore, it is

not necessary for the government to prove a specific amount of the controlled substance that was distributed. It is enough that the government prove beyond a reasonable doubt that the defendants conspired to import and export a measurable amount of hashish and marijuana.

2. Import and Export Defined

The term "import" is defined as "any bringing in or introduction of [a controlled substance] into any area. . . ." 21 U.S.C. § 951.

The term "export" means to take out of the United States.

COUNT 2 - CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE HASHISH, MARIJUANA, AND COCAINE

Count 2 of the indictment charges that defendants William Greer, Stephen Hutchins, and Thomas Cook conspired in the District of Vermont and elsewhere to distribute and possess with intent to distribute hashish, marijuana, and cocaine, in violation of Title 21, United States Code, Section 846.

Section 846 makes it a separate criminal offense for any person to conspire to commit certain drug offenses, including those prohibited by 21 U.S.C. § 841(a)(1). Section 841(a)(1) makes it a criminal offense for any person "knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

For the conspiracy alleged in Count 2, the government must prove three elements beyond a reasonable doubt:

First, that between 1980 and on or about February 12, 1993, two or more persons reached an agreement or in some way or manner came to a mutual understanding to distribute and possess with intent to distribute hashish, marijuana, and cocaine;

Second, that the defendants voluntarily and intentionally joined in the agreement or understanding, either at the time it was reached or at some later time while

it was still in effect; and

Third, that at the time the defendants joined in the agreement or understanding, they knew the purpose of the agreement or understanding was to distribute or to possess with the intent to distribute hashish, marijuana, and cocaine.

I will now define several terms relevant to Count 2.

1. Controlled Substances

I have already instructed you that hashish and marijuana are, as a matter of law, Schedule I controlled substances. I now instruct you that cocaine is a Schedule II controlled substance. The instructions I have given you about controlled substances with regard to Count 1 apply with equal force to Count 2. Thus, you must ascertain whether or not the material in question were in fact hashish, marijuana and cocaine. Quantity is not an element of the crime of distributing controlled substances, and therefore the government need not prove that a specific quantity of controlled substances was involved in the conspiracy. Rather, it is enough that the government prove beyond a reasonable doubt that the defendants conspired to knowingly and intentionally distribute and to possess with intent to distribute a measurable amount of hashish, marijuana, and

cocaine.

2. Definition of Distribute

The term "distribute" means to deliver or to transfer possession or control of something from one person to another. The term "to distribute" includes the sale of something by one person to another.

3. Possession

The legal concept of possession may differ from the everyday usage of the term, so I will explain it in some detail.

The law recognizes two kinds of possession: actual possession and constructive possession. Actual possession is what most of us think of as possession: that is, when a person knowingly has direct physical control or authority over something. However, a person need not have actual physical custody of an object in order to be in legal possession of it. The "possession" is called constructive possession when a person does not have direct physical control over something, but can knowingly control it and intend to control it, sometimes through another person.

The law also recognizes that the possession may be sole or joint. If one person alone has actual or constructive

possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Possession of drugs cannot be found solely on the ground that a defendant was near or close to the drugs. Nor can it be found simply because a defendant was present at a scene where drugs were involved, or solely because a defendant associated with a person who does control the drugs or the property where they are found. However, these factors may be considered by you, in connection with all other evidence, in making your decision whether the defendant agreed to possess the drugs.

4. Knowing Possession of a Controlled Substance

A person acts knowingly or intentionally if he acts voluntarily, and not because of ignorance, mistake, accident, or carelessness.

Whether a defendant acts knowingly or intentionally involves a decision about the defendant's state of mind. Direct evidence of his state of mind is obviously impossible, but you may infer what the defendant's state of mind was from a consideration of all the facts and circumstances shown by the evidence. Experience has taught us that frequently actions speak louder and more clearly than words. Therefore,

you may well rely in part on circumstantial evidence, for example, the defendant's behavior, in determining the defendant's state of mind.

5. Intent to Distribute

The phrase "with intent to distribute" means to intend or to plan in some way to deliver or to transfer possession or control over a thing to someone else.

For a defendant to have "intent to distribute" does not necessarily mean that the defendant intended personally to distribute or deliver the drugs. An intent to cause or assist the distribution is sufficient.

Basically, what you are determining is whether the drugs in question were for personal use or for the purpose of distribution. Often it is possible to make this determination from the quantity of drugs that the defendants' attempted to possess. The attempted possession of a large quantity of drugs, however, does not necessarily mean that a defendant intended to distribute them. On the other hand, a defendant may have intended to distribute drugs even if he did not attempt to possess large amounts of them. Other physical evidence, such a paraphernalia for the packaging or processing of drugs, can show such an intent. There might also be evidence of a plan to distribute. The same

considerations that apply to your determination concerning whether a defendant knew that he possessed a controlled substance apply to your decision concerning whether the defendant intended to distribute it.

6. Knowingly and Intentionally

A person acts knowingly and intentionally if he acts voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether a defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

COUNT 3 - CONTINUING CRIMINAL ENTERPRISE

In order to sustain its burden of proof for the crime of operating a continuing criminal enterprise as charged in Count 3 of the indictment against each of the defendants William Greer and Stephen Hutchins, the government must prove the following five essential elements beyond a reasonable doubt:

One: The defendant committed a felony violation of the federal narcotics laws, that is, he committed any of the offenses alleged in Counts 1, 2, 5, or 8 or another violation of title 21, U.S.C. § 841(a)(1), 952, 953, 960 or 963;

Two: Such violation was part of a continuing series of related violations of the federal narcotics laws;

Three: The continuing series of violations was undertaken by the defendant in association or concert with five or more other persons;

Four: The defendant was an organizer of these five or more other persons or occupied a management or supervisory position with respect to these five or more other persons; and

Five: The defendant obtained substantial income or resources from the continuing series of narcotics violations.

"A Continuing Series of Violations" - Defined

The phrase "a continuing series of violations" means three or more violations of the federal narcotics laws which are in some way related to one another. In order for this element to be satisfied, you must agree unanimously as to which three violations of the federal narcotics laws, if any, constitute the "continuing series of violations."

If you acquit a defendant of one of the substantive charges alleged in the indictment, you may not consider that charge as one of the three or more violations of federal narcotics laws required in order to establish a continuing criminal enterprise.

"In Concert with Five or More Other Persons" - Defined

The phrase "in concert with five or more other persons" means some type of arrangement or joint action, whether direct or indirect, with at least five other persons who were involved in the continuing series of narcotics violations.

The phrase "in concert with five or more other persons" does not require proof from the government that the "five or more other persons" actually had contact with each other, or knew each other, or committed each violation together, or operated together continuously at the same time. The government is not required to prove that the defendant

managed, supervised, or organized these five or more persons at the same time.

The government must prove beyond a reasonable doubt, however, that the defendant and at least "five or more other persons" were part of an agreement or joint action to commit the continuing series of violations of the federal narcotics laws.

Although this element is not satisfied unless you agree unanimously that five or more people other than the defendant were part of an agreement to commit a continuing series of violations of the federal narcotics laws, you need not be unanimous as to *which* five individuals constituted that group of five or more people. Thus, this element is satisfied even if you differ among yourselves as to which individuals, if any, were a part of the group of five or more, so long as you all agree that there existed some group of five or more people in an agreement with the defendant to commit a continuing series of violations of the federal narcotics laws.

"Organizer . . . Supervisory Position, or Any Other Position of Management" - Defined

The term "organizer" and the terms "supervisory position" and "position of management" are to be given their usual and ordinary meanings. These words imply the exercise

of power or authority by a person who occupies some position of management or supervision. This person need not be the sole or only organizer, supervisor, or manager of the activities or persons in question.

"Obtains Substantial Income or Resources" - Defined

The phrase "obtains substantial income or resources" should also be given its usual and ordinary meaning. The statute requires proof that the income or resources obtained from the activity must be significant, not trivial. It is not limited to profit, but includes gross income or gross receipts.

". . . [S]ubstantial income or resources" may include money and other things of value, such as controlled substances, which are actually received by the defendant.

COUNT 4 - MARITIME DRUG ACT

Count 4 alleges that the defendants conspired to violate 46 U.S.C. § 1903(a), the so-called Maritime Drug Act.

Title 46, United States Code, Section 1903(j), cited in the indictment, makes it unlawful for any person to conspire to commit an offense as defined in Section 1903(a).

Section 1903(a) provides in relevant part that: "It is unlawful for any person on board a vessel . . . subject to the jurisdiction of the United States, or who is a citizen of the United States . . . on board any vessel, to knowingly and intentionally . . . distribute, or possess with intent to distribute, a controlled substance."

Count 4 essentially charges that the defendants violated §1903(a) by conspiring in either one of two ways. The indictment first charges that the defendants conspired to have a citizen of the United States on board a vessel distribute or possess with intent to distribute hashish, a controlled substance. The indictment secondly charges that the defendants conspired to have a person on board a vessel subject to the jurisdiction of the United States distribute or possess with intent to distribute hashish, a controlled substance. The government does not have to prove both of these for you to return a verdict of guilty. Proof beyond a reasonable doubt of one of these is sufficient. But in order

to return a guilty verdict, all twelve of you must agree that the same one, or both, have been proven beyond a reasonable doubt. What you are being asked to consider is whether the defendants conspired during the years 1989 through 1991 to have an American citizen, in this case William Greer or Michael Maple in 1989, upon a vessel distribute or possess with intent to distribute hashish. Or you are being asked whether the defendants conspired to have a person on board vessels, here either the Lukas in 1989 or the Pacific Tide No. 3/Giant 4 in 1991, which vessels are subject to the jurisdiction of the United States, distribute or possess a with intent to distribute hashish.

All of the instructions I provide to you concerning the guilt or innocence of a person involved in a conspiracy apply here as well.

To "possess with intent to distribute" simply means to possess with intent to deliver or transfer possession of a controlled substance to another person. To "distribute" simply means to deliver or transfer possession of a controlled substance to another person.

I instruct you that as a matter of law, a person is a United States citizen if the person is born in the United States.

Title 46, United States Code, Section 1903(c)(1),

provides in pertinent part as follows:

> ". . . [A] vessel subject to the jurisdiction of the United States includes --
>
> (E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.
>
> Consent or waiver of objection by a foreign nation to the enforcement of the United States law by the United States under subparagraph (E) . . . of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee."

The government has introduced evidence of such a certification by a designee of the Secretary of State of the United States. This certification alone is sufficient evidence from which you may find that the government has proved beyond a reasonable doubt that the vessels Lukas and Pacific Tide No. 3/Giant 4 were "vessels subject to the jurisdiction of the United States."

Count 4 of the indictment charges that the defendants knowingly and deliberately entered into a conspiracy to either:

1. Distribute hashish, a Schedule I controlled substance, on board a vessel subject to the jurisdiction of the United States; or

2. Distribute hashish, a Schedule I controlled substance, on board a vessel by a United States citizen; or

3. Possess with intent to distribute hashish, a

Schedule I controlled substance, on board a vessel subject to the jurisdiction of the United States; or

4. Possess with intent to distribute hashish, a Schedule I controlled substance, on board a vessel by a United States citizen; in violation of section 1903(j) of Title 46 of the United States Code.

Proof of any one of these four purposes is sufficient to meet this element of the charge, but you all must be unanimous with regard to which purpose you find.

If you find that a conspiracy to violate the Maritime Drug Act existed, you must consider when that conspiracy ended. If you find that the conspiracy ended after the 1989 offload, then you must apply the statute of limitations, as I have already explained to you.

COUNT 5 - IMPORTATION OF HASHISH

To sustain the charge of importation of controlled substances between August 15, 1990 and November 1, 1990, against any of the defendants William Greer, S phen Hutchins, and Thomas Cook, the government must prove the following elements beyond a reasonable doubt:

First, the defendant imported or aided and abetted the importation of hashish into the United States on or about the time in question;

Second, the defendant knew the substance imported was a controlled substance.

If you find from your consideration of all the evidence that these elements have been proven beyond a reasonable doubt with regard to any of the aforementioned three defendants, then you must find that defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that either of these elements has not been proved beyond a reasonable doubt with regard to a particular defendant, then you must find that defendant not guilty.

AIDING AND ABETTING (8 U.S.C. § 2)

As I have noted, you may find the defendants guilty of aiding and abetting the importation of hashish as stated in

Count 5.

m54-UUnder the aiding and abetting statute, it is not necessary for the government to show that a defendant himself physically committed the crime with which he is charged in order for you to find the defendant guilty.

A person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you may find a defendant guilty of the offense charged if you find beyond a reasonable doubt that the government has proved that another person actually committed the offense with which the defendant is charged, and that the defendant aided or abetted that person in the commission of the offense.

As you can see, the first requirement is that you find that another person has committed the crime charged. Obviously, no one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of the crime.

In order to aid or abet another to commit a crime, it is necessary that the defendant willfully and knowingly associate himself in some way with the crime, and that he

willfully and knowingly seek by some act to help make the crime succeed.

Participation in a crime is willful if action is taken voluntarily and intentionally; that is to say, with a bad purpose either to disobey or to disregard the law.

The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or the mere acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding and abetting. An aider and abettor must have some interest in the criminal venture.

To determine whether a defendant aided or abetted the commission of the crime with which he is charged, ask yourself these questions:

Did he participate in the crime charged as something he wished to bring about?

Did he associate himself with the criminal venture knowingly and willfully?

Did he seek by his actions to make the criminal venture succeed?

If he did, then the defendant is an aider and abettor, and therefore guilty of the offense.

If, on the other hand, your answers to this series of

questions are "no," then the defendant is not an aider and abettor, and you must find him not guilty.

PINKERTON CHARGE

There is another method by which you may evaluate the possible guilt of defendants William Greer, Stephen Hutchins and Thomas Cook for the substantive charges described in counts 5, 6, 7, and 8 and of the defendants William Greer and Stephen Hutchins for the substantive charge described in count 9 of the indictment even if you do not find that the government has satisfied its burden of proof with respect to each element of the substantive crime.

If, in light of my instructions, you find, beyond a reasonable doubt, that the defendant was a member of the conspiracy charged in count 1 of the indictment, and thus, guilty on the conspiracy count, then you may also, but you are not required to, find him guilty of the substantive crime charged against him in counts 5, 6, 7, 8, and 9, provided you find, beyond a reasonable doubt, each of the following elements:

First, that the crime charged in the substantive count was committed;

Second, that the person or persons you find actually committed the crime were members of the conspiracy you found

existed;

Third, that the substantive crime was committed pursuant to the common plan and understanding you found to exist among the conspirators;

Fourth, that the defendant was a member of that conspiracy at the time the substantive crime was committed;

Fifth, that the defendant could have reasonably foreseen that the substantive crime might be committed by his co-conspirators.

If you find all five of these elements to exist beyond a reasonable doubt, then you may find the defendant guilty of the substantive crime charged against him, even though he did not personally participate in the acts constituting the crime or did not have actual knowledge of it.

If, however, you are not satisfied as to the existence of any of these five elements, then you must not find the defendant guilty of the substantive crime, unless the government proves, beyond a reasonable doubt, that the defendant personally committed, or aided and abetted the commission of, the substantive crime charged.

COUNT 6 - FAILURE TO FILE CURRENCY TRANSACTION REPORT

The defendants William Greer, Stephen Hutchins, and Thomas Cook are charged in Count 6 of the indictment with transporting currency in excess of $10,000.00 from the United States without filing a report as required by law.

The relevant statute on this subject is 31 U.S.C. § 5316(a)(1)(A) which reads in pertinent part:

> [A] person or an agent or bailee of the person shall file a report [with the Secretary of the Treasury] when the person, agent or bailee knowingly . . . transports, is about to transport, or has transported monetary instruments of more than $10,000.00 at one time . . . from a place in the United States to . . . a place outside the United States.

PURPOSE OF THE STATUTE

The purpose of the requirement that certain transactions be reported to the Secretary of the Treasury is to assist the government in criminal, tax, and regulatory investigations and proceedings.

ELEMENTS OF THE OFFENSE

In order to prove the defendants guilty of Count 6 of the Indictment, the United States must prove each of the following elements beyond a reasonable doubt.

First, that on or about November 2, 1990, the defendants transported monetary instruments of more than $10,000.00;

Secondly, that the defendants were about to transport the monetary instruments from the United States to a place outside the United States, in this case Canada;

Thirdly, that the defendants failed to file a report as prescribed by the statute; and,

Fourth, that the defendants acted willfully.

TRANSPORTATION OF MONETARY INSTRUMENTS

The first element of the offense which the government must prove beyond a reasonable doubt is that the defendants were involved in the transportation of monetary instruments in excess of $10,000.00 from the United States. Some of these terms may require further definition.

The term "monetary instrument" means, among other things, currency of the United States.

"Transportation" is not a word which requires a definition; it is a word which has its ordinary, everyday meaning. The government need not prove that the defendant physically carried the funds or monetary instrument in order to prove that he is responsible for transporting it. All that is required is proof that the defendant caused the funds or monetary instruments to be transported.

If you find that the government has proved each of these facts beyond a reasonable doubt, then this first element is

satisfied.

The second element of the offense that the government must prove beyond a reasonable doubt is that the defendant was about to transport the monetary instruments from the United States to a place outside the United States, in this case Canada. I have previously defined the word "transportation" for you. Therefore, if you find from the evidence that the defendants were about to transport in excess of $10,000.00 from the United States to Canada, then the government has met its burden regarding the second element.

The third element which must be proven beyond a reasonable doubt is that the defendants failed to file a report as prescribed by the statute. In this case you have heard testimony and evidence has been introduced that the form that must be filled out is form number 4790 which is issued by the Department of Treasury. Therefore, in order for the government to have satisfied its burden regarding this element, the facts and circumstances must prove beyond a reasonable doubt that the defendants failed to fill out the required report.

Finally, the fourth element the government must prove beyond a reasonable doubt is that the defendant acted willfully in failing to report the transportation of the

currency or monetary instruments.

A willful violation of this reporting requirement can only occur if the government proves beyond a reasonable doubt that the defendant knew of the requirement and that the defendant acted with the specific intent to violate that requirement.

If you find that defendant had knowledge of the reporting requirement and acted voluntarily, intentionally, and with the bad purpose to disobey or disregard the law by not filing the report as required, then this element is satisfied.

FAILURE TO FILE A CURRENCY TRANSACTION REPORT -- VIOLATION OF ANOTHER LAW OR AS A PATTERN

If you find any defendant guilty of violating Count 6, then you must determine whether such violation was committed while the defendant was engaged in violating another law of the United States or as part of a pattern of illegal activity involving more than $100,000 in a 12-month period.

To support this further determination, the government does not have to prove both of these further elements, but only that the defendant committed the violation of Count 6 either while he was engaged in violating another law of the United States or as part of a pattern of illegal activity involving more than $100,000 in a 12-month period.

COUNT 7 - ATTEMPTED MONEY LAUNDERING

In Count 7, the defendants William Greer, Stephen Hutchins and Thomas Cook are charged with unlawfully attempting to transport monetary instruments or funds from the United States, in violation of Title 18, United States Code, section 1956(a)(2).

Section 1956 of Title 18, United States Code, deals with the unlawful transportation of funds or monetary instruments to or from the United States. Specifically, section 1956(a)(2) provides:

> Whoever transports . . . or attempts to transport, . . . a monetary instrument or funds from a place in the United States to . . . a place outside the United States . . .
>
> with the intent to promote the carrying on of specified unlawful activity [commits a crime].

ELEMENTS OF THE OFFENSE

In order to prove the crime of unlawful transportation of funds or monetary instruments with the intent to promote the carrying on of specified unlawful activity, in violation of section 1956(a)(2), the government must establish beyond a reasonable doubt each of the following elements:

First, that the defendants attempted to transport monetary instruments or funds from a place in the United States to a place outside the United States; and

Second, that the defendants did so with the intent to promote the carrying on of specified unlawful activity.

FIRST ELEMENT -- TRANSPORTATION OF A MONETARY INSTRUMENT OR FUNDS FROM THE UNITED STATES

The first element of the offense which the government must prove beyond a reasonable doubt is that the defendants attempted to transport monetary instruments or funds from the United States. Some of these terms may require further definition.

The term "monetary instrument" means, among other things, currency of the United States.

The term "funds" refers to money.

"Transportation" is not a word which requires a definition; it is a word which has its ordinary, everyday meaning. The government need not prove that the defendant physically carried the funds or monetary instrument in order to prove that he is responsible for transporting it. All that is required is proof that the defendant caused the funds or monetary instrument to be transported or participated in or aided and abetted in their transportation.

Finally, the government is also required to prove, in order to establish a violation of this section, that the defendants attempted to transport the funds or monetary instruments from somewhere in the United States to someplace

outside the United States.

If you find that the government has proved each of these facts beyond a reasonable doubt, then this first element is satisfied.

SECOND ELEMENT -- INTENT TO PROMOTE THE CARRYING ON OF SPECIFIED UNLAWFUL ACTIVITY

The second element of the offense which the government must prove beyond a reasonable doubt is that the defendants acted with intent to promote the carrying on of specified unlawful activity, in this case, the importation, receiving, buying, selling and otherwise dealing in a controlled substance or, in the case of defendants William Greer and Stephen Hutchins only, engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848 as I have previously explained to you.

To act intentionally means to act willfully, not by mistake or accident, with the deliberate purpose of promoting, facilitating or assisting the carrying on of these offenses. If you find that the defendants acted with the intention or deliberate purpose of promoting, facilitating, or assisting in the carrying on of these activities, then the second element is satisfied.

AIDING AND ABETTING

You may also find the defendants guilty of attempting to transport monetary instruments or funds from the United States, in violation of 18 U.S.C. § 1956(a)(2), as an aider or abettor as I have previously described those terms to you with regard to Count 5.

COUNT 8 - ATTEMPTED IMPORTATION

In order to sustain its burden of proof for the crime of attempted importation of hashish as charged in Count 8 of the indictment against the defendants William Greer, Stephen Hutchins, and Thomas Cook, the government must prove the following two (2) essential elements beyond a reasonable doubt:

First: The defendants intended to import hashish from Canada into the United States on or about November 2, 1990; and

Second: Thereafter the defendants did an act constituting a substantial step towards the commission of that crime.

"A SUBSTANTIAL STEP"-DEFINED

A defendant may be found guilty of attempting to commit a crime even though no one actually did all of the acts necessary in order to commit the crime. A defendant may not be found guilty, however, of attempting to commit any crime merely by thinking about it or even by making some plans or some preparation for the commission of a crime.

In order to convict the defendant of an attempt, you must find beyond a reasonable doubt that the defendant intended to commit the crime charged, and that he took some action which was a substantial step toward the commission of

that crime.

In determining whether the defendant's actions amounted to a substantial step toward the commission of the crime, it is necessary to distinguish between mere preparation on the one hand, and the actual doing of the criminal deed on the other. Mere preparation, which may consist of planning the offense, or of devising, obtaining or arranging a means for its commissions is not an attempt, although some preparations may amount to an attempt. The acts of a person who intends to commit a crime will constitute an attempt where the acts themselves clearly indicate an intent to willfully commit the crime, and the acts are a substantial step in a course of conduct planned to culminate in the commission of the crime.

AIDING AND ABETTING

You may also find the defendants guilty of attempting to import hashish as an aider or abettor as I have previously described those terms to you with regard to Count 5.

COUNT 9 - THE TRAVEL ACT

Count 9 of the indictment charges the defendants William Greer and Stephen Hutchins with violating a law known as the Travel Act.

The Travel Act makes it a federal crime for anyone to travel in interstate (*or* foreign) commerce for the purpose of carrying on certain unlawful activities. The law says:

> Whoever travels in interstate or foreign commerce . . . with intent to . . . promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity,
>
> and thereafter performs or attempts to perform any of [these] acts [is guilty of a crime].

For the purposes of this section, "unlawful activity" means "any business enterprise involving . . . narcotics or controlled substances." 18 U.S.C. § 1952(b).

ELEMENTS OF THE OFFENSE

In order to prove that the defendants violated the Travel Act, the government must establish, beyond a reasonable doubt, each of the following three elements of the offense.

First, that the defendants traveled or caused someone else to travel interstate;

Second, that this travel was done with the intent to promote, manage, establish or carry on a business enterprise

involving hashish; and

Third, that after this foreign travel, the defendants performed or attempted to perform an act in furtherance of this same business enterprise.

INTERSTATE/FOREIGN TRAVEL DEFINED

As I have just told you, the first element that the government must prove beyond a reasonable doubt is that the defendant traveled or caused another to travel interstate. Interstate travel is simply travel between the United States and a foreign country.

The defendants have been charged with traveling or causing another to travel between the United States and Canada between on or about October 31, 1990 and November 3, 1990. If the Government has proved these facts beyond a reasonable doubt, then you may find that it has proved the first element of the Travel Act charge against the defendants.

CAUSING ANOTHER TO TRAVEL IN FOREIGN COMMERCE

In order to meet its burden of proof on the first element, it is not necessary for the government to prove that the defendant himself traveled in foreign commerce. The Travel Act also applies to a person who causes another person

to travel in foreign commerce. Therefore, if the government proved beyond a reasonable doubt that the defendant caused another person to travel in foreign commerce, then you may find that the government has proved the first element of the offense.

KNOWLEDGE OF THE INTERSTATE/FOREIGN COMMERCE ELEMENT

It does not matter whether the defendant knew that he was traveling interstate. Nor does it matter whether the defendant intended to travel interstate. All the government must prove with respect to the first element is that the defendant did, in fact, travel in foreign commerce cause another person to travel in foreign commerce.

INTENT TO ENGAGE IN UNLAWFUL ACTIVITY

The second element that the government must prove beyond a reasonable doubt is that the defendant traveled interstate or caused another to travel interstate with the intent to promote, manage, establish or carry on the unlawful activity charged in the indictment; that is, a business enterprise involving hashish.

It is not enough for the government to prove that the defendant traveled interstate or caused another to so travel. The Government must also prove, beyond a reasonable doubt,

that the defendant embarked on his interstate trip for the purpose of facilitating the unlawful activity.

On the other hand, the Government does not have to prove that the furtherance of the unlawful activity was the defendant's sole purpose in traveling or causing someone to travel interstate. It is sufficient if the Government proves that the defendant had a mixed motive. That is, so long as one of the defendant's reasons for traveling interstate was to further the unlawful activity, this element may be satisfied. Thus, if you find that the defendant traveled in foreign commerce with the intent to facilitate the unlawful activity, and you also find that the defendant undertook this same travel for other reasons that have nothing to do with the unlawful activity, you may still find that the government has met its burden of proof on the second element of the offense.

You are thus being asked to look into the defendant's mind and ask what was the defendant's purpose in traveling interstate. You may determine the defendant's intent from all the evidence that has been placed before you, including the statements of the defendant and his conduct before and after the travel.

TRAVEL NEED NOT BE ESSENTIAL TO THE UNLAWFUL SCHEME

As I have instructed you, the government must prove that the defendant intended the interstate travel to facilitate or further the unlawful activity. The government does not, however, have to prove that the travel was essential to the unlawful activity or fundamental to the unlawful scheme, or that the unlawful activity could not have been accomplished without the travel. So long as the government proves that the defendant, with the necessary unlawful intent, traveled or caused another to travel interstate, the government may rely on any interstate travel that made the unlawful activity easier to accomplish.

THE REQUIRED KNOWLEDGE

The government must prove that the defendant traveled or caused another to travel interstate with the intent to facilitate an activity which the defendant knew was illegal. The government does not have to prove that the defendant knew that the travel was illegal. However, the government must prove beyond a reasonable doubt that the defendant knew that the activity he intended to facilitate was illegal. Thus, if the defendant traveled or caused another to travel interstate intending to facilitate a business deal, but he did not know that the deal was illegal or involved unlawful activity, then

you must find the defendant not guilty.

BUSINESS ENTERPRISE REQUIREMENT

The government must prove that the unlawful activity that the defendant traveled or caused another to travel to facilitate was a business enterprise. That is, the government must prove that the unlawful activity was part of a continuous course of criminal conduct, and not simply an isolated criminal incident. If you find that the unlawful activity was an isolated incident, and was not part of an ongoing course of criminal conduct, you must find the defendant not guilty.

However, to prove that the unlawful activity was a business enterprise, the government does not have to show that the alleged illegal activity was engaged in for a particular length of time. Nor must the government prove that such activity was defendant's primary pursuit or occupation, or that it actually turned a profit. What the government must prove beyond a reasonable doubt is that the defendant engaged in a continuous course of criminal conduct for the purpose of profit, rather than casual, sporadic or isolated criminal activity.

THIRD ELEMENT: SUBSEQUENT ACT IN FURTHERANCE OF THE UNLAWFUL ACTIVITY

The third element that the government must prove, again beyond a reasonable doubt, is that the defendant's travel was followed by his performance or attempted performance of an act in furtherance of the business enterprise in hashish or that the person who the defendant caused to travel interstate thereafter performed or attempted to perform an act in furtherance of the business enterprise. This act need not itself be unlawful. However, this act must come after the travel. Any act that happened before the travel cannot satisfy this element.

AIDING AND ABETTING

You may also find the defendants guilty of violating the Travel Act as an aider or abettor as I have previously described those terms to you with regard to Count 5.

STATUTE OF LIMITATIONS DEFENSE

I earlier explained to you that the statute of limitations may be a defense to the conspiracy charges alleged in Counts 1, 2, and 4 of the indictment if a charged defendant withdrew from such a conspiracy--if any--or the conspiracy terminated before the statute of limitations bar date. I now instruct you that the statute of limitations may

be a defense to Counts 3, 5, 6, 7, 8, and 9 as well. Counts 3, 5, 6, 7, 8 and 9 of the indictment were returned on August 1, 1995. Therefore, the statute of limitations bar date for the offenses charged in these counts is August 1, 1990.

CONCLUSION

I caution you, members of the jury, that you are here to determine the guilt or innocence of the five defendants before you today solely from the evidence in this case. I remind you that the mere fact that these defendants have been indicted is not evidence against them. Also, the defendants are 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 guilt 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 the other jurors. Do not hesitate to re-examine your own views and change your opinion if you think that 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.

At this time, I would like to offer my sincere thanks to the alternates.

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 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 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 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 this charge will go with you into the jury

room for your use.

I appoint _____ as your foreperson.

Dated at Burlington, in the District of Vermont, this ___ day of May, 1997.

_____
William K. Sessions III
District Judge