UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 2:23-cr-00056/03
	)	
NASIR HUSSAIN	)	
	)	

JURY CHARGE

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime before trial. An indictment is not evidence. An 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 charges against the defendant. The defendant has pleaded not guilty to the second superseding 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 in the second superseding indictment and the denial made by the not guilty plea of the defendant.

ROLE OF THE COURT, THE JURY, AND COUNSEL

Your first duty is to consider and decide the factual issues of this case. You are the sole and exclusive judges of the facts. By the rulings which I made during the course of the trial, I did not intend to indicate to you or to express my own views about this case. You as jurors weigh the evidence, you determine the credibility or believability of the witnesses, you resolve any conflicts there may be in the evidence, and you draw any reasonable inferences or conclusions that you believe are justified by the facts as you find them. In a moment, I will define the word "evidence" and instruct you on how to assess it, including how to judge whether the witnesses have been honest and should be believed.

Your second duty is to apply the law that I give you to the facts. Do not single out one instruction alone, but consider the instructions as a whole. You should not be concerned with whether you agree with any instruction given by the court. You may have a different opinion as to what the law ought to be, but it would be a violation of your sworn duty as jurors to base your verdict on any version of the law other than what is contained in the instructions given by the court.

The lawyers may have referred to some of the governing rules of law in their argument. However, if you find any differences between the law as stated by the lawyers and the law as stated by me in these instructions, you must follow my instructions. It is the lawyers' job to point out the things that are most significant or most helpful to their side of the case. But remember that their statements regarding the law are not evidence in this case.

In addition, nothing I say in these instructions should be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts; rather, that job is yours alone. You must perform your duty as jurors with complete fairness and impartiality. All parties expect that you will diligently examine all of the evidence, follow the law as it is now being given to you, and reach a just verdict regardless of the consequences.

JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE

Anything you have seen or heard outside the courtroom is not evidence, and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. 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 the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

SYMPATHY, BIAS, PASSION, OR PREJUDICE

In arriving at a verdict, you must not permit yourselves to be influenced in the slightest degree by sympathy, bias, passion, or prejudice, or any other emotion in favor of or against either party. The law forbids you from being governed by mere sentiment, conjecture, sympathy, passion, or prejudice. You must not allow any of your personal feelings about the nature of the crime charged to interfere with your deliberations, or to influence the weight given to any of the evidence. You are to perform your duty in an attitude of complete fairness and impartiality.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

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

EQUALITY BEFORE THE COURT

All parties, whether government or individuals, stand as equals before the court. The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The government must prove the defendant guilty beyond a reasonable doubt. The question is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a whim, speculation, or suspicion. However, a reasonable doubt may arise from the evidence, conflicts in the evidence, or a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty, and it is not sympathy. If you have a reasonable doubt, you must find the defendant not guilty even if you think that the charge is probably true.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each element of the crime charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

The law presumes the defendant is innocent of the charges against him. The presumption of innocence is a piece of evidence that lasts throughout the trial and during your deliberations. The presumption of innocence ends only if you, the jury, find beyond

a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

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

EVIDENCE

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been admitted into evidence, and all the facts that have been admitted or stipulated. I would now like to call your attention to certain guidelines by which you are to evaluate the evidence.

There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses-something he or she has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. You infer on the basis of reason, experience, and common sense from one established fact the existence or non-existence of some other fact. For example, if you were to see cow tracks in a pasture, that would be circumstantial evidence that there are or were cows in the pasture.

Circumstantial evidence is of no less value than direct evidence. Circumstantial evidence alone may be sufficient evidence of guilt.

You should weigh all the evidence in the case. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof. After weighing all the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, then you must find him not guilty.

EVIDENCE OBTAINED BY SEARCH

You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Searches are appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations.

You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in the case in determining whether the government has proven the defendant's guilt beyond a reasonable doubt. You and you alone, however, decide the weight, if any, to give the evidence.

STIPULATIONS OF FACT

A stipulation is an agreement among the parties that a certain fact is true. You may regard such agreed facts as true, however, I again remind you that you are the sole judges of the facts.

STRICKEN TESTIMONY, ATTORNEYS' STATEMENTS AND OBJECTIONS, AND THE COURT'S RULINGS

I caution you that you should entirely disregard any testimony or exhibit 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 attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

CREDIBILITY OF WITNESSES

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

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses or the most evidence. Remember, a defendant in a criminal prosecution has no obligation to present any evidence or call any 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 hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You 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.

INTEREST IN THE OUTCOME

As a general matter, in evaluating the credibility of each witness, 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 may create 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 has 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 only with great care.

This is not to suggest that any 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's interest has affected or colored his or her testimony.

EXPERT WITNESSES

You have heard evidence from witnesses who are known as expert witnesses. An expert witness is a person who has special knowledge, experience, training, or education in his or her profession or area of study. Because of this expertise, an expert witness may offer an opinion about one or more of the issues in the case.

In evaluating an expert witness's testimony, you should evaluate his or her credibility and statements just as you would with any other witness. You should also evaluate whether the expert witness's opinion is supported by the facts that have been proven, and whether the opinion is supported by the witness's knowledge, experience, training, or education. You are not required to give the testimony of an expert witness any greater weight than you believe it deserves just because the witness has been referred to as an expert.

LAW ENFORCEMENT WITNESSES

You have heard the testimony of 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 deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is proper 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 a law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.

DEFENDANT NOT TESTIFYING

You may have observed that the defendant 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 whether the defendant is guilty or not guilty of the crime charged, you are not to consider, in any manner, the fact that he did not testify. Do not even discuss it in your deliberations.

OTHER ACTS

You are only to determine whether the defendant is guilty or not guilty of the crime charged in the second superseding indictment. Your determination must be made only from the evidence admitted by the court in this case. The defendant is not on trial for any conduct or offense not charged in the second superseding indictment. You should consider evidence about other acts, only as they relate to the charge against the defendant.

"ON OR ABOUT" EXPLAINED

The second superseding indictment charges that the offense was committed "on or about" a certain date. Although 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 the second superseding indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

CHARTS & SUMMARIES ADMITTED AS EVIDENCE

The government and the defendant have presented exhibits in the form of charts and summaries. You should consider these charts and summaries as you would any other evidence.

GOVERNMENT NOT REQUIRED TO UTILIZE PARTICULAR INVESTIGATIVE METHODS

The government is not required to pursue any particular investigative method or methods in the investigation or prosecution of a crime. I remind you, however, that the government is always required to prove the defendant's guilt beyond a reasonable doubt.

IMPERMISSIBLE TO INFER PARTICIPATION FROM ASSOCIATION OR FROM MERE PRESENCE

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

STATEMENTS BY THE DEFENDANT

Evidence relating to any alleged statement, act or omission alleged to have been made or done by defendant outside of court and after a crime has been committed should always be considered by the jury with caution and weighed with great care. All such alleged statements, confessions, or admissions should be disregarded entirely unless the other evidence in the case convinces the jury beyond a reasonable doubt that the statement, confession, admission, or act or omission was made or done knowingly and voluntarily.

In determining whether any alleged statement, act or omission alleged to have been made by a defendant outside of court and after a crime has been committed was knowingly and voluntarily made or done the jury should consider the age, training, education, occupation, and physical and mental condition of the defendant, and his treatment while in custody or under interrogation as shown by all of the evidence in the case. Also consider all other circumstances in evidence surrounding the making of the alleged statement.

If after considering the evidence you determine that a statement, act or omission was made or done knowingly and voluntarily, you may give it such weight as you feel it deserves under the circumstances.

COUNT ONE: CONSPIRACY TO COMMIT WIRE FRAUD

Count One of the second superseding indictment charges the defendant with conspiracy to violate federal law.

The relevant statute on this subject is Title 18 of the United States Code, section 1349. It provides: "Any person who attempts or conspires to commit any offense under [the federal anti-fraud statutes]" shall be guilty of an offense.

Under the law, a "conspiracy" is an agreement or a kind of partnership in criminal purposes in which each member becomes the agent or partner of the other members.

Because the essence of a conspiracy is the making of the scheme itself, it is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan. Indeed, you may find defendant guilty of the crime of conspiracy even though the substantive crimes which were the object of the conspiracy were not actually committed.

Elements of Conspiracy

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

First, that two or more persons entered into the unlawful agreement charged in the superseding indictment; and

Second, that the defendant knowingly and willfully became a member of the conspiracy.

Element One: Existence of an Agreement

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

The second superseding indictment alleges the objective of the conspiracy or unlawful agreement was to commit wire fraud, in violation of Title 18 of the United States Code, section 1343. A person commits wire fraud when he or she knowingly and willfully participates in a scheme to defraud or to obtain money or property by materially false and fraudulent pretenses, representations, or promises, with knowledge of the fraudulent nature of the scheme and with the specific intend to defraud and, during the course of that scheme, the person uses or causes the transfer of information via an interstate or international wire communication..

If you find beyond a reasonable doubt that the objective of the conspiracy was to commit this type of fraud, you may find that the joint plan or common design is proven.

In order for the government to satisfy this element, it must prove there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish the intended unlawful act, here wire fraud – knowingly and willfully participating in a scheme to defraud or to obtain money or property by materially false and fraudulent pretenses. You need not find that the alleged members of the conspiracy actually met and entered into any express or formal agreement. You need not find that the alleged members stated in words or writing what the object or purpose of the conspiracy was, or every precise detail of that scheme. The

agreement may only consist of a mutual understanding that the members would commit some illegal activity by means of a common plan or course of action, as alleged in the second superseding indictment.

There may or may not be direct proof of the agreement. However, because a conspiracy is sometimes characterized by secrecy, you may or may not infer its existence from the circumstances and the conduct of the parties involved. You may therefore consider the actions and statements of all of those you find to be participants as proof that a common design existed for acting together to accomplish an unlawful purpose. Acts that may seem innocent when taken individually may indicate guilt when viewed collectively and with reference to the circumstances in general.

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

Element Two: Membership in the Conspiracy

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

If you are satisfied that the conspiracy charged in the second superseding indictment existed, you must next ask yourselves who the members of that conspiracy

were. In order to make this determination, you must decide whether defendant knowingly and willfully joined the conspiracy with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective.

You must find that defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement, and with the intent of aiding in the accomplishment of those ends, in order to satisfy the knowledge and intent element of the conspiracy charge. In other words, the government must prove beyond a reasonable doubt that defendant acted with the specific intent to commit wire fraud. Proof of such intent need not be direct. Intent may be proved by circumstantial evidence alone.

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

The fact that acts of a defendant, without knowledge of the conspiracy, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. The defendant's knowledge is a matter of inference and must be established by his own acts or statements, as well as those of the other alleged co-conspirators. A defendant need not have known the identities of each and every member, nor been fully informed of all of their activities, nor all of the details of the conspiracy.

The extent of defendant's participation has no bearing on his guilt. A conspirator's liability is not measured by the extent or duration of his or her 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 roles in the scheme. The law does not require that each participant in the conspiracy play an equal role.

If the evidence establishes beyond a reasonable doubt that defendant knowingly and willfully entered into an agreement to commit the substantive offense as charged in the second superseding indictment, the fact that he did not join the agreement at its beginning, did not know all of the details of the agreement, did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goal, is not important to your decision regarding membership in the conspiracy.

However, mere association with others, mere presence at the place where a crime takes place or is discussed-or knowing about criminal conduct-does not, in and of itself, make someone a member of the conspiracy.

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 or she thereby becomes a knowing and willing participant in the unlawful agreement. In other words, he or she becomes a conspirator.

"Knowingly" and "Willfully" Defined

You have been instructed that to sustain its burden of proof on Count One, the government must prove that the defendant acted knowingly and willfully. A person acts

knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. You may consider evidence of the defendant's words, acts, or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

Willfully means to act with knowledge that one's conduct is unlawful and with the intent to do something that the law forbids, that is to say with the bad purpose to disobey or to disregard the law. The defendant's conduct was not willful if it was due to negligence, inadvertence, or mistake.

Acts and Declarations of Co-Conspirators

I have admitted into evidence against the defendant the acts and statements of other co-conspirators because the government charges defendant with others known and unknown.

The reason for allowing this evidence to be received has to do with the nature of the crime of conspiracy. A conspiracy is often referred to as a partnership in crime. Thus, as in other types of partnerships, when people enter into a conspiracy to accomplish an unlawful end, each and every member becomes an agent for the other conspirators in carrying out the conspiracy.

Accordingly, the reasonably foreseeable acts, declarations, statements and omissions of any member of the conspiracy and in furtherance of the common purpose of the conspiracy, are deemed, under the law, to be the acts of all of the members, and all of the members are responsible for such acts, declarations, statements and omissions.

If you find beyond a reasonable doubt that the defendant whose guilt you are considering was a member of the conspiracy charged in Count One of the second superseding indictment, then any acts done or statements made in furtherance of the conspiracy by persons also found by you to have been members of the conspiracy, may also be considered against that defendant. This is so even if such acts were done and statements were made in his absence and without his knowledge.

However, before you may consider the statements or acts of a co-conspirator, you must first determine that the acts and the statements were made during the existence, and in furtherance, of the unlawful scheme. If the acts were done or the statements made by someone whom you do not find to have been a member of the conspiracy or if they were not done or said in furtherance of the conspiracy, they may be considered by you as evidence only against the member who did or said them.

UNANIMOUS VERDICT REQUIRED

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous regarding each essential element of the crime charged.

JUROR NOTE-TAKING

During this trial, you have been provided with pen and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes.

RECOLLECTION OF EVIDENCE

Let me remind you that in deliberating upon your verdict, you are to rely solely and entirely upon your own memory of the testimony. If, during your deliberations, you are unable to recall with any degree of accuracy a particular part of the testimony, or a part of these instructions, you may do the following:

1. Write out your question, and have the foreperson sign it;
2. Knock on the door of the jury room; and
3. Deliver your note to the Court Officer to give to me.

After the attorneys have been consulted, and the record has been reviewed, I will decide what action to take, and I will tell you my ruling.

INFORMAL IMMUNITY OF GOVERNMENT WITNESS

You have heard the testimony of witnesses who have been promised that in exchange for testifying truthfully, completely, and fully, they will not be prosecuted for any crimes that they may have admitted either here in court or in interviews with the prosecutors. This promise was not a formal order of immunity by the court, but was arranged directly between the witness and the government.

The government is permitted to make these kinds of promises and is entitled to call as witnesses people to whom these promises are given. You are instructed that you may convict a defendant on the basis of such a witness' testimony alone, if you find that his testimony proves the defendant guilty beyond a reasonable doubt.

However, the testimony of a witness who has been promised that they will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is effected in such a way as to place guilt upon the defendant in order to further the witness' own interests; for, such a witness, confronted with the realization that they can win their own freedom by helping to convict another, has a motive to falsify their testimony. Such testimony should be received by you with suspicion and you may give it such weight, if any, as you believe it deserves.

ACCOMPLICES CALLED BY THE GOVERNMENT

You have heard witnesses who testified that they were actually involved in planning and carrying out the crime charged in the second superseding indictment. There has been a great deal said about these so-called accomplice witnesses in the summations of counsel and whether or not you should believe them.

The government argues, as it is permitted to do, that it must take the witnesses as it finds them. It argues that only people who themselves take part in criminal activity have the knowledge required to show criminal behavior by others.

For those very reasons, the law allows the use of accomplice testimony. Indeed, it is the law in federal courts that the testimony of accomplices may be enough in itself for conviction, if the jury finds that the testimony establishes guilt beyond a reasonable doubt.

However, it is also the case that accomplice testimony is of such nature that it must be scrutinized with great care and viewed with particular caution when you decide how much of that testimony to believe.

I have given you some general considerations on credibility and I will not repeat them all here. Nor will I repeat all of the arguments made on both sides. However, let me say a few things that you may want to consider during your deliberations on the subject of accomplices.

You should ask yourselves whether these so-called accomplices would benefit more by lying, or by telling the truth. Was their testimony made up in any way because they believed or hoped that they would somehow receive favorable treatment by

testifying falsely? Or did they believe that their interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one that would cause them to lie, or was it one that would cause them to tell the truth? Did this motivation effect their testimony?

In sum, you should look at all of the evidence in deciding what credence and what weight, if any, you will want to give to the accomplice witnesses.

WITNESS—NOT PROPER TO CONSIDER GUILTY PLEA

You have heard testimony from government witnesses who pled guilty to charges arising out of the same facts as this case. You are instructed that you are to draw no conclusions or inferences of any kind about the guilt of the defendant on trial from the fact that a prosecution witness pled guilty to similar charges. That witness' decision to plead guilty was a personal decision about his own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendant on trial here.

CO-DEFENDANT'S PLEA AGREEMENT

In this case, there has been testimony from government witnesses who pled guilty after entering into an agreement with the government to testify. There is evidence that the government agreed to dismiss some charges against the witness and agreed not to prosecute them on other charges in exchange for the witness' agreement to plead guilty and testify at this trial against the defendant. The government also promised to bring the witness' 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 defendant on the basis of this testimony alone, if it convinces you of the defendant's 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 they may be able to obtain their own freedom, or receive a lighter sentence by giving testimony favorable to the prosecution, has a motive to testify falsely. Therefore, you must examine their testimony with caution and weigh it with great care. If, after scrutinizing their testimony, you decide to accept it, you may give it whatever weight, if any, you find it deserves.

VENUE

The Second Superseding Indictment alleges that some act in furtherance of the conspiracy charged occurred in the District of Vermont. There is no requirement that all aspects of the entire conspiracy take place here in the District of Vermont. Before you may return a verdict of guilty, however, if that is your decision, the government must convince you that some act in furtherance of the crime charged, either the agreement or one of the acts in furtherance of the agreement took place in the District of Vermont. The District of Vermont has the same geographic boundaries as the State of Vermont.

Unlike the specific elements of the crime charged that I have described elsewhere in these instructions, this fact regarding venue need only be proven by a preponderance of the evidence. This means the government need only convince you that it is more likely than not that some act in furtherance of the conspiracy took place here.

The government, however, must prove all the elements of any crime charged, as I have described elsewhere in these instructions, beyond a reasonable doubt. The lesser standard of preponderance of the evidence only applies to your decision on the issue of venue.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the defendant before you today is not guilty or guilty solely from the evidence in this case. I remind you that the mere fact that a defendant has been indicted is not evidence against him. Also, a defendant is not on trial for any act or conduct or offense not alleged in the second superseding indictment. Nor 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 not consider the consequences of a guilty or not guilty determination. The punishment provided by law for the offense charged in the indictment is a matter exclusively within the responsibility of the judge and should never be considered by the jury in any way in arriving at an impartial verdict.

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

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done. A verdict form has been prepared for your conclusions. If the verdict form varies in any way from the instructions provided within

this jury charge, I instruct you that you are to follow the instructions provided within this jury charge.

After you have reached an agreement, the foreperson will record a verdict of guilty or not guilty. Your foreperson will then sign and date the verdict form and you will return to the courtroom. In all other respects, a foreperson is the same as any other juror. His or her vote does not count more than any other member of the jury.

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 Court Officer, who will bring it to my attention. I will then confer with the attorneys and I will respond as promptly as possible, either in writing or by having you return 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. You should also never communicate the subject matter of your note or your deliberations to any member of the court's staff.