

INSTRUCTION NO. A (Preliminary Jury Instruction)

Members of the Jury:

At the end of the trial, I will give you detailed guidance on the law and on how you will go about reaching your decision. But now, I simply want to generally explain how the trial will proceed.

This criminal case has been brought by the United States government. I will sometimes refer to the government as the prosecution. The government is represented at this trial by Assistant United States Attorney(s) [*names*]. The defendant, [*name*], is represented by Attorney [*name*].

The Indictment charges the defendant with [*summarize charge(s)*]. The Indictment is simply the description of the charge[s] made by the government against the defendant; it is not evidence of guilt or anything else. The defendant pleaded not guilty and is presumed innocent. The defendant may not be found guilty by you unless all twelve of you, unanimously, find that the government has proved the defendant's guilt beyond a reasonable doubt. [*Addition for multi-defendant cases: There are multiple defendants in this case, and you will have to give separate consideration to the case against each defendant as each is entitled to individual consideration.*]

The first step in the trial will be the opening statements. The government in its opening statement will tell you about the evidence which it intends to put before you. Just as the Indictment is not evidence, neither is the opening statement. Its purpose is only to help you understand what the evidence will be. It is a road map to show you what is ahead.

After the government's opening statement, the defendant's attorney may make an opening statement. [*Change if the defendant reserves his statement until later or omit if the defendant has decided not to make an opening statement.*]

Evidence will be presented from which you will have to determine the facts. The evidence will consist of the testimony of the witnesses, documents and other things received into the record as exhibits, and any facts about which the lawyers agree or to which they stipulate.

The government will offer its evidence. After the government's evidence, the defendant's lawyer may [*make an opening statement and*] present evidence, but he is not required to do so. I remind you that the defendant is presumed innocent and it is the government that must prove the defendant's guilt beyond a reasonable doubt. If the defendant submits evidence, the government may introduce rebuttal evidence.

At times during the trial, a lawyer may make an objection to a question asked by another lawyer, or to an answer by a witness. This simply means that the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections or from my rulings on the objections. If I sustain an objection to a question, the witness may not answer it. Do not attempt to guess what answer might have been given if I had allowed the answer. If I overrule the objection, treat the answer as any other. If I tell you not to consider a particular statement, you may not refer to that statement in your later deliberations. Similarly, if I tell you to consider a particular piece of evidence for a specific purpose, you may consider it only for that purpose.

During the course of the trial, I may have to interrupt the proceedings to confer with

the attorneys about the rules of law that should apply. Sometimes we will talk briefly, here at the bench. But some of these conferences may take more time, so I will excuse you from the courtroom. I will try to avoid such interruptions whenever possible, but please be patient even if the trial seems to be moving slowly, because conferences often actually save time in the end.

You are to consider all the evidence received in this trial. It will be up to you to decide what evidence to believe and how much of any witness's testimony to accept or reject. You, and you alone, are judges of the facts. Therefore, you should give careful attention to the testimony and exhibits because, based upon this evidence, you will decide whether the government has proved, beyond a reasonable doubt, that the defendant has committed the crime[s] charged in the Indictment. You must base that decision only on the evidence in the case and my instructions about the law. After you have heard all the evidence on both sides, the government and the defense will each be given time for their final arguments.

During the course of the trial, I may ask a question of a witness. If I do, that does not indicate I have any opinion about the facts in the case, but I am only trying to bring out facts that you may consider.

The final part of the trial occurs when I instruct you on the rules of law which you are to use in reaching your verdict. I will give you detailed instructions on the law at the end of the case and those instructions will control your deliberations and decision. But, in order to help you follow the evidence, I will now give you a brief summary of the elements of the offense[s] that the government must prove to make its case.

The defendant is charged in the Indictment with [*summarize charge(s)*]. In order to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt: [*itemize elements*].

If you would like to take notes during the trial, you may. On the other hand, you are not required to take notes. If you do decide to take notes, please be careful not to get so involved in note-taking that you become distracted; and remember that your notes will not necessarily reflect exactly what was said, so your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors. If you do take notes, please leave them in the jury room at night and do not discuss the contents of your notes until you begin deliberations.

We do have an official court reporter making stenographic notes of everything that is said here at the trial. This is basically to assist any appeals. We will not have typewritten transcripts of this record available for your use in reaching a decision in this case. On the other hand, any exhibits will be available to you during your deliberations.

Ordinarily, the attorneys will develop all the relevant evidence that will be necessary for you to reach your verdict. However, in rare situations, a juror may believe a question is critical to reaching a decision on a necessary element of the case. In that exceptional circumstance, you may write out a question and provide it to the courtroom deputy while the witness is on the stand. I will then consider that question with the lawyers. If it is determined to be a proper and necessary question, I will ask it. If I do not ask it, you should recognize that I have determined it is not a legally appropriate question

and you should not worry about why it was not asked or what the answer would have been.

During the course of the trial, you shouldn't talk with any witness, or with the defendant, or with any of the lawyers. The lawyers in this case are aware of this, and should you happen to see any of them outside the courtroom, they will, and should, ignore you. Please don't take offense. They will only be acting properly by doing so. In addition, during the course of the trial, you should not talk about the trial with anyone else, including each other, your family members, or your friends. You should not discuss this case among yourselves until I have instructed you on the law and you've gone to the jury room to deliberate and make your decision at the end of the trial. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end. It is important that you wait until all the evidence is received and you've heard my instructions on the controlling rules of law before you begin your deliberations.

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals [or corporations] involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

I hope that for all of you this case is interesting and noteworthy; however, certain

developments in technology compel me to point out that some common, daily activities many of you may enjoy are strictly forbidden in your role as jurors. I know that many of you use cell phones, the internet, and other tools of technology. You must not use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case via a telephone or any electronic device or media, such as email, text messaging, blogs, or comments, or on social media websites and apps (such as Facebook, Instagram, LinkedIn, YouTube, WhatsApp, Snapchat, or Twitter). You may not use any similar technology or social media, even if I have not specifically mentioned it here.

RB Criminal Stock

SOURCES:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.01 (2021) Preliminary Instructions (modified)

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.02(B) (2021) Note-Taking by Jurors

5th Cir. PATTERN CRIMINAL JURY INSTRUCTIONS § 1.01 (2019) Preliminary Instruction (modified)

Proposed Model Jury Instruction - The Use of Electronic Technology to Learn or Communicate about a Case, Judicial Conference Committee on Court Administration and Case Management (updated June 2020)

Instruction No. 1

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges, you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

In explaining the rules of law that you must follow, first, I will give you some general instructions which apply in every criminal case B for example, instructions about burden of proof and insights that may help you to judge the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts you may return. These instructions will be given to you for use in the jury room, so you need not take notes.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.03 (2021) Introduction to Final Instructions

Instruction No. 2

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences. However, you should not read into these instructions, or anything else I may have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.04 (2021) Duty to Follow Instructions

Instruction No. 3

The government has the burden of proving the defendant guilty beyond a reasonable doubt. The law does not require a defendant to prove his innocence or produce any evidence at all. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must find the defendant not guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.05 (2021) Presumption of Innocence - Burden of Proof - Reasonable Doubt

Instruction No. 4

You must make your decision based only on the evidence that you saw and heard here in Court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of Court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence[, the stipulations that the lawyers agreed to, and the facts that I have judicially noticed].

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

[During the trial, I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.]

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) §1.06 (2021) Evidence - Defined

Instruction No. 5

There are, generally speaking, two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law simply requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

While you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you feel are justified in the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts which have been proved.

By permitting such reasonable inferences, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in this case.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.07 (2021) Evidence - Direct and Circumstantial - Inferences

Instruction No. 6

I remind you that it is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses [including the defendant] who testified in this case. You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions:

- Did the witness impress you as honest?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome in this case?
- Did the witness have any relationship with either the government or the defense?
- Did the witness seem to have a good memory?
- Did the witness clearly see or hear the things about which he/she testified?
- Did the witness have the opportunity and ability to understand the questions clearly and answer them directly?
- Did the witness’s testimony differ from the testimony of other witnesses?

When weighing the conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. And you should keep in mind that innocent misrecollection—like failure of recollection—is not uncommon.

[The testimony of the defendant should be weighed and his credibility evaluated in the same way as that of any other witness.]

[The defendant did not testify and I remind you that you cannot consider his decision not to testify as evidence of guilt. You must understand that the Constitution of the United States grants to a defendant the right to remain silent. That means the right not to testify. That is a constitutional right in this country, it is very carefully guarded, and you must not presume or infer guilt from the fact that a defendant does not take the witness stand and testify or call any witnesses.]

In reaching a conclusion on particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.08 (2021) Credibility of Witnesses

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.08.1 (2021) Non-Testifying Defendant

Instruction No. 7

You have heard the testimony of [name of witness]. You have also heard that, before this trial, he made a statement that may be different from his testimony here in court. This earlier statement was brought to your attention only to help you decide how believable his testimony in this trial was. You cannot use it as proof of anything else. You can only use it as one way of evaluating his testimony here in court.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.10 (2021) Impeachment By Prior Inconsistencies

Instruction No. 8

You will note that the Indictment charges that the crime(s) was(/were) committed from on or about _____ until on or about _____

. The government must prove beyond a reasonable doubt that the defendant committed the crime(s) reasonably near those dates.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.18 (2021) On or About

Instruction No. 9

You are here to decide whether the government has proved beyond a reasonable doubt that the Defendant is guilty of the crime charged. The Defendant is not on trial for any act, conduct, or crime not charged in the Indictment.

It is not up to you to decide whether anyone who is not on trial in this case should be prosecuted for the crime charged. The fact that another person *also* may be guilty is no defense to a criminal charge.

The question of the possible guilt of others should not enter your thinking as you decide whether this defendant has been proved guilty of the crime charged.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.19 (2021) Caution—Consider only Crime Charged

Instruction No. 10

If you find the defendant guilty, it will be my duty to decide what the punishment will be. You should not discuss or consider the possible punishment in any way while deciding your verdict.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.20 (2021) Caution—Punishment

Instruction No. 11

In a moment the courtroom deputy will escort you to the jury room and provide you with six copies of the instructions that I have just read. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson, who will help to guide your deliberations and will speak for you here in the courtroom. The second thing you should do is review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law stated in the instructions.

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous. Your deliberations will be secret. You will never have to explain your verdict to anyone.

You must consult with one another and deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges—judges of the facts. You must decide whether the government has proved the defendant guilty beyond a reasonable doubt.

During your deliberations, you must not communicate or correspond with or provide any information to anyone by any means about this case. You may not use telephone or any electronic device or media, such as email, text messaging, blogs, or comments, or on social media websites and apps (such as Facebook, Instagram, LinkedIn, YouTube, WhatsApp, Snapchat, or Twitter), to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

A form of verdict has been prepared for your convenience.

The foreperson will write the unanimous answer of the jury in the space provided, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the Court Security Officer. I will either reply in

writing or bring you back into the Court to respond to your message. Under no circumstances should you reveal to me the numerical division of the jury.

RB Criminal Stock

SOURCE:

10th Cir. PATTERN JURY INSTRUCTIONS (Criminal) § 1.23 (2021) Duty to Deliberate - Verdict Form

Proposed Model Jury Instruction - The Use of Electronic Technology to Learn or Communicate about a Case, Judicial Conference Committee on Court Administration and Case Management (updated June 2020)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR _____ - _____ RB

[name],

Defendant.

VERDICT

Count One:

WE, THE JURY, find the defendant, **[name],**

_____ Guilty

_____ Not Guilty

of the charge of [name of charge] as charged in Count One of the [Indictment/Information].

Count Two: [title of count]

WE, THE JURY, find the defendant, **[name],**

_____ Guilty

_____ Not Guilty

of the charge of [name of charge] as charged in Count One of the [Indictment/Information].

DATED this _____ day of _____, 202_.

Signature of Foreperson