

JUDGE MARTHA VÁZQUEZ
Criminal Stock Instruction Index

UNITED STATES vs. _____ Cr. No. _____

Instruction	Parties Accept	Do Not Accept	Parties Prefer Alternatives (State Source)	Parties Cannot Agree (State Positions)
Preliminary Instruction Before Trial				
1. Introduction to Final Instructions				
2. Duty to Follow Instructions				
3. Presumption of Innocence - Burden of Proof - Reasonable Doubt				
4. Note-taking by Jurors				
5. Evidence – Defined				
6. Evidence - Direct and Circumstantial - Inferences				
7. Credibility of Witnesses				
8. Impeachment by Prior Inconsistencies				
9. Expert Witness				
10. Consider Only the Crime Charged				
11. Date of Indictment				
12. Multiple Defendants – Multiple Counts				
13. Multiple Defendants – Single Count				
14. Punishment				
15. Duty to Deliberate - Verdict Form				
16. Use of Electronic Technology During Deliberations				

MV STOCK PRELIMINARY 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. For now, however, I simply want to explain in general terms 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 by Assistant United States Attorneys **[insert names]**. The Defendant, **[insert name]**, is represented by his attorney, **[insert name]**.

An **[Indictment returned by the Grand Jury/Information]** charges the Defendant, **[insert name]**, with **[charges]**. Specifically, the **[Indictment/Information]** provides:

[Insert Indictment/Information]

[Insert elements of crimes charged if you so elect]

The first step in the trial will be the opening statements. The government in its opening statement will tell you about the evidence that it intends to put before you. Just as the **[Indictment/Information]** is not evidence, neither is the opening statement. Its purpose is only to help you understand what evidence will be presented; 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 this if the Defendant reserves his statement until later or omit if the Defendant has decided not to make an opening statement.]**

Evidence then 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.

It will be your duty to find from the evidence what the facts are. You and you alone will be the judges of the facts. You then will have to apply those facts to the law as presented to you by the Court. You must follow that law whether you agree with it or not.

Certain things are not evidence and must not be considered by you in determining what the facts of the case are. I will list them for you now.

1. Statements, arguments, and questions by lawyers are not evidence.
2. Objections to questions are not 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 conclusions 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 permitted the witness to answer. If I overrule the objection, treat the answer as you would treat 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 for that limited purpose alone.

3. Testimony that the court has excluded or told you to disregard is not evidence and

must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is evidence of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

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. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

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, 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 such conferences often actually save time in the end.

During the course of the trial I may ask a question of a witness. If I do, that does not indicate that I have any opinion about the facts in the case; rather, I am only trying to bring out facts that you may consider. Nothing that I may say or do during the course of the trial is intended to indicate, or should be taken to indicate, what your verdict ought to be.

As you know, this is a criminal case. There are three basic rules about a criminal case that you must keep in mind.

First, the Defendant is presumed innocent until proven guilty. As noted above, the Superseding Indictment brought by the government against the Defendant is only an accusation, nothing more. It is not proof of guilt or anything else. The Defendant therefore begins with a clean slate.

Second, the burden of proof is on the government throughout the case. The Defendant has no burden to prove his innocence, or to present any evidence, or to testify. Since the Defendant has the right to remain silent, the law prohibits you from arriving at your verdict by considering the fact that the Defendant may not have testified.

Third, the government has the burden of proving the Defendant guilty beyond a reasonable doubt. Bear in mind that in this respect a criminal case is different from a civil case. 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.

Now I will say a few words about your conduct as jurors.

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of the courtroom. This means that during the course of the trial, you should not talk with the judge, or with any witness, or with the Defendant, or with any of the lawyers at all. The attorneys, witnesses, and parties in this case are also directed not to speak to the jurors.

In addition, during the course of the trial you, as jurors, should not talk about the trial with anyone else. Do not discuss the case with anyone or provide any information about the trial to anyone outside the courtroom until you are dismissed.

I know that many of you use smart phones, the internet, and other tools of technology. You must not use any of these tools to communicate electronically with anyone about this case, including family and friends. You may not use any electronic device or media – such as a smart phone or computer, the internet, any text or instant messaging service, or website such as Facebook or Twitter – to communicate to anyone any information about this case or to conduct any research about this case. Simply put, do not communicate with anyone about the trial, through any means, until you are dismissed.

Also, you should not discuss this case among yourselves until I have instructed you on the law and you have gone to the jury room to make your decision at the end of the trial. It is important that you wait until all the evidence is received and you have heard my instructions on the controlling rules of law before you deliberate among yourselves. Only after you retire to deliberate may you begin to discuss the case with your fellow jurors. However, you cannot discuss the case with anyone else until you have returned a verdict and the case has concluded.

Let me add that during the course of the trial you will receive all the evidence you properly may consider to decide the case. Because of this, you should not attempt to gather any information or do any research on your own, or otherwise attempt to find out information from

any source outside the confines of this courtroom. Do not attempt to visit any places mentioned in the case, either in person or on the internet, and do not in any other way try to learn about the case outside the courtroom. In other words, you should not consult dictionaries or reference materials, search the internet, websites, or blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Also, now that the trial has begun you must not hear or read about it in the media. The reason for this is that your decision in this case must be made solely on the evidence presented at the trial.

I expect that each of you will inform me immediately if you become aware of another juror's violation of these instructions. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result, which would require that the entire trial process start over.

Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

If you want to take notes during the course of the trial, you may do so. However, it is difficult to take detailed notes and pay attention to what the witnesses are saying at the same time. If you do take notes, be sure that your note-taking does not interfere with your listening to and consideration of all of the evidence. Also, if you do take notes, do not discuss them with anyone before you begin your deliberations. Do not take your notes with you at the end of the day; they must be left in the jury room.

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence. You cannot give this responsibility to someone who is taking notes. We depend on the judgment of all members of the jury; each of you must remember the evidence presented in this case.

The court reporter is making stenographic notes of everything that is said in Court. This is basically to create a record of the case, including in the event of an appeal. However, a typewritten copy of the testimony will not be available for your use during deliberations. By contrast, any exhibits admitted by the Court will be made available to you during your deliberations.

After you have heard all of the evidence on both sides, I will instruct you on the rules of law that you are to use in reaching your verdict. The government and the defense then will each be given time for their final arguments.

With that introduction, [**insert name of AUSA**], you may present the opening statement for the government.

Source: 10th Cir. Pattern Jury Instructions 1.01 (2015) (modified) and Case Management, Proposed Model Jury Instruction (June 2012) (modified).

MV STOCK 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 that apply in every criminal case – 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.

Source: 10th Cir. Pattern Jury Instructions § 1.03 (2011).

MV STOCK 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.

Source: 10th Cir. Pattern Jury Instructions § 1.04 (2015).

MV STOCK 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.

Source: 10th Cir. Pattern Jury Instruction § 1.05 (2015).

MV STOCK INSTRUCTION NO. 4

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

Source: 5th Cir. Pattern Jury Instructions (Criminal) § 1.02 Alt. B (2015) (modified).

MV STOCK INSTRUCTION NO. 5

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.

Source: 10th Cir. Pattern Jury Instruction § 1.06 (2015).

MV STOCK INSTRUCTION NO. 6

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 that 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 that have been established by the testimony and evidence in this case.

Source: 10th Cir. Pattern Jury Instructions § 1.07 (2015).

MV STOCK INSTRUCTION NO. 7

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/her] 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/her] decision not to testify as evidence of guilt. I want you to clearly understand that the

Constitution of the United States grants to a defendant the right to remain silent. That means the right not to testify or call any witnesses. That is a constitutional right in this country, it is very carefully guarded, and you should understand that no presumption of guilt may be raised and no inference of any kind may be drawn from the fact that a defendant does not take the witness stand and testify or call any witnesses.]

In reaching a conclusion on a 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.

Source: 10th Cir. Pattern Jury Instruction § 1.08 (2015).

MV STOCK INSTRUCTION NO. 8

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.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

Source: 10th Cir. Pattern Jury Instructions § 1.10 (2015), plus last sentence of 5th Cir. Pattern Jury Instructions § 1.10 (2015).

MV STOCK INSTRUCTION NO. 9

During the trial, you heard the testimony of **[insert name]**, who expressed opinions concerning **[insert subject of expert testimony]**. In some cases, such as this one, scientific, technical, or other specialized knowledge may assist the jury in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training or education, may testify and state an opinion concerning such matters.

You are not required to accept such an opinion. You should consider opinion testimony just as you consider other testimony in this trial. Give opinion testimony as much weight as you think it deserves, considering the education and experience of the witness, the soundness of the reasons given for the opinion, and other evidence in the trial.

Source: 10th Cir. Pattern Jury Instructions § 1.17 (2015).

MV STOCK INSTRUCTION NO. 10

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

Source: 10th Cir. Pattern Jury Instructions § 1.19 (2015).

MV STOCK INSTRUCTION NO. 11

You will note that the Indictment charges that the crime was committed **[insert date or date range]**. The government must prove beyond a reasonable doubt that the Defendant committed the crime reasonably near **[date or date range]**.

Source: 10th Cir. Pattern Jury Instructions § 1.18 (2015).

MV STOCK INSTRUCTION NO. 12

A separate crime is charged against [one or more of] the defendant[s] in [each count of] the Indictment. You must separately consider the evidence against [each/the] Defendant [as to each count] and return a separate verdict for [each/the] Defendant.

Your verdict as to any one [Defendant or] count, whether it is guilty or not guilty, should not influence your verdict as to any other [Defendants or] [counts.]

Source: 10th Cir. Pattern Jury Instructions § 1.22 (2015).

Note: *The second paragraph should be modified when guilt of one charge is a prerequisite for conviction of another charge.*

MV STOCK INSTRUCTION NO. 13

[The rights of each of the defendants in this case are separate and distinct. You must separately consider the evidence against each defendant and return a separate verdict for each.

Your verdict as to one defendant, whether it is guilty or not guilty, should not affect your verdict as to any other defendant.]

Source: 10th Pattern Jury Instruction § 1.21 (2011).

MV STOCK INSTRUCTION NO. 14

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.

Source: 10th Cir. Pattern Jury Instructions § 1.20 (2015).

MV STOCK INSTRUCTION NO. 15

In a moment our court security officer will escort you to the jury room. You have each been given a copy 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, first you should 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 as to each count of the Superseding Indictment. 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.

A form of verdict has been prepared for your convenience. The foreperson will write the unanimous answer of the jury in the space provided for each count of the Superseding Indictment,

either not guilty or 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 courtroom to respond to your message. Under no circumstances should you reveal to me the numerical division of the jury.

Source: 10th Cir. Pattern Jury Instruction § 1.23 (2015) (modified).

MV STOCK INSTRUCTION NO. 16

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. 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. You may not use any electronic device or media – such as a smart phone or computer, the internet, any text or instant messaging service, or website such as Facebook or Twitter – to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

Source: Judicial Conference Committee on Court Administration and Case Management, Proposed Model Jury Instruction (June 2012) (modified).