

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
) Criminal No. 97-CR-XXXXX
v.)
)
Defendant,) OPENING JURY
Defendant.) INSTRUCTIONS FOR PART I

Members of the Jury:□

Before we begin the trial, I would like to tell you about what will be happening.□ I want to describe how the trial will be conducted and explain what we will be doing -- you, the lawyers for both sides, and I.□ At the end of the trial I will give you more detailed guidance on how you are to go about reaching your decision. For now I simply want to 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.□ As I indicated last week, the government is represented at this trial by assistant United States attorneys AUSA One and AUSA Two. The defendant, Defendant, is represented by his lawyers Attorney One and Attorney Two.

Defendant has been charged by the government with violation of a federal law. He is charged with conspiracy to sell crack cocaine and powder cocaine. He is also charged with two first-degree murders: the murder of Victim One and the murder of Victim Two. The charges against Mr. Defendant are contained in the

indictment. The indictment is simply the description of the charges made by the government against Defendant and is not evidence of anything. Defendant pleaded not guilty to the charges and denies committing the offenses. Under the United States Constitution, the defendant is presumed innocent. He may not be found guilty on a charge unless all twelve of you unanimously find that the government has proved his guilt on that charge beyond a reasonable doubt.

The first step in the trial will be the opening statements. In its opening statement, the government will tell you about the evidence it intends to put before you, so that you will have an idea of what the government's case is going to be. It is not an argument, but rather a summary.

Just as the indictment is not evidence, neither is the opening statement evidence. Its purpose is only to help you understand what the evidence will be and what the government will try to prove.

After the government's opening statement, Defendant's attorney will make an opening statement. At this point in the trial, no evidence has been offered by either side.

After opening statements, the government will offer evidence that it says will support the charges against Defendant. The government's evidence in this case will consist of the testimony of witnesses as well as documents and exhibits. Some of you have probably heard the terms "circumstantial evidence" and "direct evidence." Do not be concerned with these terms. You are to consider all the evidence given in this trial.

After the government's evidence, Defendant's lawyers may present evidence on his behalf, but they are not required to do so. □ remind you that Defendant is presumed innocent and the government must prove the guilt of Defendant beyond a reasonable doubt. □ Defendant does not have to prove his innocence. □ One of the ways that Defendant's lawyers may choose to present evidence is by cross-examining the government's own witnesses. Cross-examination is part of the way that counsel for Defendant puts forth evidence. Although Defendant's lawyers are never required to present evidence, cross-examination is one of the ways they may do so.

After you have heard all the evidence on both sides, the government and the defense will each be given time for their final arguments. □ I just told you that the opening statements by the lawyers are not evidence. □ The same applies to the closing arguments. □ They are not evidence either. □ In their closing arguments the lawyers for the government and Defendant will be attempting to summarize their cases and help you understand the evidence that was presented. □

The final part of the trial occurs when I instruct you about the rules of law which you are to use in reaching your verdict. □ After hearing my instructions, you will leave the courtroom together to make your decision. □ Your deliberations will be secret. □ You will never have to explain your verdict to anyone. □

If you want to take notes during the course of the trial you may do so. □ However, it may be 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 taking

of notes does not interfere with your listening to and considering all the evidence. Also, if you take notes, do not discuss them with anyone before you begin your deliberations. Do not take the notes with you at the end of the day. Be sure to leave them closed in the jury room.

If you choose not to take notes, remember 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; you must all remember the evidence in this case.

Now that I have described the trial itself, let me explain the jobs that you and I are to perform during the trial. I will decide which rules of law apply to this case. I will decide this in response to questions raised by the attorneys as we go along and also in the final instructions given to you after the evidence and arguments are completed. You will decide whether the government has proved, beyond a reasonable doubt, that the defendant has committed the crime of drug conspiracy, and whether the government has proved beyond a reasonable doubt that the defendant committed either or both murders. You must base that decision only on the evidence in the case and my instructions about the law.

During the course of the trial, you should not talk with any witness, with the defendant, or with any of the lawyers in the case. Please don't talk with them about any subject at all. In addition, during the course of the trial you should not talk about the trial with anyone else -- not your family, not your friends, not the people you work with. 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 rules of law before you deliberate among yourselves. 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 on your own which you think might be helpful. Do not do any outside reading on this case, do not attempt to visit any places mentioned in the case, and do not in any other way try to learn about the case outside the courtroom.

Now that the trial has begun you must not read about it in the newspapers or watch or listen to television or radio reports of what is happening here.

The reason for these rules, as I am certain you will understand, is that your decision in this case must be made solely on the evidence presented at the trial.

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. These only relate to the legal questions that I must determine and should not influence your thinking. 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 had I allowed the question to be answered. Similarly, if I tell you not to consider a particular statement, you

should put that statement out of your mind, and you may not refer to that statement in your later deliberations.□

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.□

If, at the end of your deliberations, you find Defendant guilty of either or both of the charges of murder, it may then become your responsibility to consider the death penalty. Even though you may have to consider the sentence for Defendant in a second phase of the trial, you are not to allow that potential to enter into your considerations on the question of whether the government has proved its case -- at this stage of the process -- beyond a reasonable doubt. The consideration of penalty must not enter into your consideration or discussions at any time during this part of the process.

Finally, let me clarify something you may wonder about later.□ During the course of the trial I may have to interrupt the proceedings to talk with the attorneys about the rules of law which should apply here.□ Sometimes we will talk here, at the bench.□ But some of these conferences may take time.□ So, as a convenience to you, sometimes I may excuse you from the courtroom.□ I will try to avoid such interruptions as much as possible, but please be patient even if the trial seems to be moving slowly because conferences often save time for all of us.□

Thank you for your attention.□