

UNITED STATES DISTRICT COURT
NAME OF DISTRICT)

United States :
 :
v. : No.
 :
Defendant :
 :

Jury Instructions

I will now instruct you on the law to be applied in this

case.

You must take the law as I give it to you and if any
attorney or any witness or exhibit has stated a legal principle
different from actions, it is
my instructions that you must follow. The instructions as a
whole constitute the law of this case and must be applied as a
whole; you should not single out any one instruction alone as
stating the law.

Regardless of any opinion you may have as to what the law is
or ought to be, it would be a violation of your sworn duty to
base a verdict upon any view of the law other than the
instructions of the Court. It would also be a violation of your
sworn duty if you were to base any finding of fact on anything
other than the evidence presented to you in this case.

Role of the Jury

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

In determining these issues, no one may invade your province or function as jurors. In order for you to determine the facts, you must rely upon your own recollection of the evidence.

The Government as a Party

You are to perform the duty of finding the facts without bias or prejudice as to any party, and with an attitude of complete fairness and impartiality.

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 the litigation. By the same token, it is entitled to no less consideration. All parties, whether the Government or individuals, stand equal before the law and are to be dealt with as equals in a court of justice. However, it is the Government which bears the burden of proving the Defendant's guilt beyond a reasonable doubt.

Sympathy

Similarly, under your oath as jurors you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case, and the crucial, central question that you must ask yourselves as you sift through the evidence is: Has the Government proved the guilt of the Defendant beyond a reasonable doubt?

It is for you alone to decide whether the Government has met its burden of proof on the crimes charged based only on the evidence introduced and subject to the law as I charge you in these instructions. If you let fear or prejudice, or bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

**Burden of Proof, Reasonable Doubt and
Presumption of Innocence**

_____ Although the Defendant, (defendant), has been indicted, you must remember that an indictment is only an accusation. It is not evidence. (Defendant) has pleaded not guilty to the indictment.

The law presumes a Defendant to be innocent of the charge against him. The burden is on the Government to prove the guilt of the Defendant beyond a reasonable doubt on each element of the crimes charged. This burden never shifts to the Defendant for the simple reason that the law never imposes upon a Defendant in a criminal case the burden or duty of calling any witness or producing any evidence. I therefore instruct you that you must presume that (defendant) is innocent throughout your deliberations until such time, if any, that you as a jury are satisfied that the Government has proved his guilt beyond a reasonable doubt.

You may not infer that (defendant) was guilty of participating in criminal conduct merely from the fact that he associated with people who were guilty of wrongdoing, and (defendant) is not on trial for any act or any conduct not specifically charged in the indictment.

In short, (defendant) begins the trial with a clean slate and this presumption of innocence alone is sufficient to acquit him unless, after careful and impartial consideration of all the

evidence in this case, you as jurors are unanimously convinced beyond a reasonable doubt of his guilt.

Reasonable doubt is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. A reasonable doubt may arise from the evidence itself or lack of evidence. It is a doubt which would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. 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. It is not required that the Government prove guilt beyond all possible doubt. Proof beyond a reasonable doubt is sufficient to convict. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion.

If, after fair and impartial consideration of all of the evidence, you have a reasonable doubt on any element of one of the crimes charged, it is your duty to acquit the Defendant of that charge. On the other hand, if after fair and impartial consideration of all of the evidence you find the Defendant's guilt beyond a reasonable doubt, you should vote to convict the Defendant on that particular count.

"Prove" and "Find"
Each Element Must Be Established Beyond Reasonable Doubt

You should understand that whenever I say that the Government has to "prove" a fact to you, I mean that it has to prove that fact to you beyond a reasonable doubt, as I just explained that term to you. You are to understand my use of the word "prove" to mean "prove beyond a reasonable doubt," even if I do not always repeat these exact words. Similarly, when I say that you must "find" a fact in order to return a guilty verdict, you must find that fact to have been proved by the Government beyond a reasonable doubt, even if I simply use the word "find."

Defendant's Election Not to Testify

The Defendant, (defendant), did not testify in this case. Under the U.S. constitution, he has no obligation to testify or to present any other evidence because it is the Government's burden to prove the Defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to the Defendant. In our system, no Defendant is ever required to say or do anything, or to prove that he is innocent.

You may not attach any significance to the fact that the Defendant chose not to testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this against the Defendant in any way in your deliberations in the jury room.

Role of Attorneys

Our courts operate under an adversary system in which we hope that the truth will emerge through the competing presentations of adverse parties. It is the role of the attorneys to press as hard as they can for their respective positions. In fulfilling that role, they have not only the right, but the obligation to make objections to the introduction of evidence they feel is improper. The application of the rules of evidence is not always clear, and lawyers often disagree. It has been my job as the judge to resolve these disputes. It is important for you to realize, however, that my rulings on evidentiary matters have nothing to do with the ultimate merits of the case, and are not to be considered as points scored for one side or the other.

During the course of this trial there have been occasions for the attorneys to confer with me out of your hearing. In the interest of justice and in order to expedite trial, it is perfectly proper that conferences be held here at the bench between counsel and the Court, because this serves to avoid the inconvenience of having the jury file out and back in again. In such situations you should not feel slighted. You are not to muse or venture on what was being discussed and, likewise, you should have no resentment toward the attorney who requested the sidebar conference.

Similarly, one cannot help becoming involved with the personalities and styles of the attorneys, but it is important for

you as jurors to recognize that this is not a contest among attorneys. You are to decide this case solely on the basis of the evidence. Remember, statements and characterizations of the evidence by the attorneys are not evidence. Insofar as you find their closing arguments helpful, take advantage of them, but it is your memory and your evaluation of the evidence in the case that counts.

What Is and Is Not Evidence

The evidence in this case is the sworn testimony of the witnesses, regardless of who may have called them; the exhibits received in evidence, regardless of who may have produced them; and all facts which may have been stipulated by the parties. What the lawyers have said in their closing arguments, in their objections or in their questions is not evidence. It is the witnesses' answers that are evidence. At times, a lawyer on cross-examination may have incorporated into a question a statement which assumed certain facts to be true, and then asked the witness if that statement was true. If the witness agreed with it, you may find those facts to be true, but you may not consider it to be true simply because it was in the lawyer's question. As a simple example, if a lawyer asks a witness if a certain car was red, and the witness says yes, that is evidence that the car was red. If the witness says no, that is evidence that the car was not red. If the witness says he or she does not know, then there is no evidence in the record as to what color the car was.

You may not consider any answer that I directed you to disregard or that I directed to be struck from the record. Do not consider such answers. You should also disregard evidence as to which an objection was sustained.

A stipulation is an agreement among the parties that a certain fact is true. In this case the parties have entered into various

written stipulations which will be marked as a court exhibit and which you will have in the jury room during your deliberations. You may regard such agreed facts as true.

Arguments or statements by lawyers are not evidence because the lawyers are not witnesses. What they said to you in their summations was intended to help you understand the evidence from their viewpoint in reaching your verdict. However, if your recollection of the facts differs from the lawyers' statements, it is your recollection that controls.

Further, anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded. In addition, materials used only to refresh a witness's recollection are not evidence, but if recollection is refreshed from those materials, such testimony is evidence. Exhibits which have been marked for identification but not received into evidence may not be considered by you as evidence. Only those exhibits received as full exhibits may be considered.

Moreover, what I may have said during the trial or what I may convey in these instructions is not evidence and my rulings on the admissibility of evidence do not, unless I expressly gave you a limiting instruction, indicate the weight or effect of such evidence. It is for you alone to decide the weight, if any, to be given to the testimony you have heard and to the exhibits you have seen.

Transcripts of Tape Recordings

There were transcripts of telephone tape recordings, which were shown to you on the screen as an aid or guide to assist you in listening to the tapes. These transcripts, however, are not evidence. You alone will make your own interpretation of what you heard on the tapes. If you think you heard something different than what appeared in the transcript then what you heard is controlling.

The recording of the prison telephone calls are on tape and can be played back for you if you need that.

Direct and Circumstantial Evidence

There are two types of evidence which you may properly use in deciding whether the Government has or has not proven that a Defendant is guilty beyond a reasonable doubt.

One type of evidence is called direct evidence. Direct evidence is a witness's testimony as to what he or she saw, heard or observed. In other words, when a witness testifies about what is known to him or her of his or her own knowledge by virtue of his or her own senses -- what he or she sees, feels, touches or hears -- that is called direct evidence.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and experience and common sense from an established fact whether or not some other fact has been proven.

Circumstantial evidence is of no less value than direct evidence. The law makes no distinction between direct and circumstantial evidence, and as I have explained before, you must be satisfied with the Defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

Speculation, guesswork or intuition cannot be substituted for proof. You must be satisfied beyond a reasonable doubt from the evidence, whether it be direct or circumstantial, that the Government has proven that (defendant) committed the crimes set forth in the indictment, that is, that the Government's proof

establishes every element of the crimes, as I shall later describe them to you.

Inference Defined

During the trial, as well as in these instructions, you have heard the term "inference," and you have been asked to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact. An inference is not a suspicion or a guess; it is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

There are times when different inferences may be drawn from the same facts. The Government may ask you to draw one set of inferences, while the defense may ask you to draw another. It is for you, and you alone, to decide what inferences you will draw. The process of drawing inferences from facts in evidence is not a matter of guesswork, speculation or intuition. An inference is a deduction or conclusion which you, the jury, are permitted to draw -- but not required to draw -- from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense, and may draw such reasonable inferences from the facts as you find to be justified in light of your experience and common sense.

Witness Credibility: Generally

You have had an opportunity to observe all of the witnesses. It is part of your job to decide how believable each witness was in his or her testimony. As I have said, you are the sole judges of the credibility of each witness and of the importance of his or her testimony.

It must be clear to you by now that you are being called upon to resolve various factual issues in the face of the very different pictures painted by the Government and the defense. In deciding whether the Government has proved its case beyond a reasonable doubt, you will be making judgments about the testimony of the witnesses you have listened to and observed. In making those judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you to decide the truth and the importance of each witness's testimony.

Your decision whether or not to believe a witness may depend on how that witness impressed you. Was the witness candid, frank and forthright? Or, did the witness seem as if he or she was hiding something, being evasive or suspect in some way? How did the way the witness testified on direct examination compare with how the witness testified on cross-examination? Was the witness consistent in her testimony or was

the witness's testimony contradictory? Did the witness appear to know what he or she was talking about? Did the witness strike you as someone who was trying to report his or her knowledge accurately?

How much you choose to believe a witness may be influenced by the witness's bias. Does the witness have a relationship with the Government or the Defendant that may affect how he or she testified? Does the witness have some incentive, loyalty or motive that might cause him or her to shade the truth or to be fully truthful? Does the witness have some bias, prejudice or hostility that may have caused the witness -- consciously or not -- to give you something other than a completely accurate account of the facts he or she testified to, or does the witness have an incentive to be accurate?

Even if a witness was impartial, you should consider whether the witness had an opportunity to observe the facts he or she testified about. You should also consider the witness's ability to express himself or herself. Ask yourselves whether the witness's recollection of the facts stands up in light of all the other evidence in this case.

You must decide the accuracy, credibility, trustworthiness, and reliability of the evidence. The weight of the evidence as to a particular fact is not determined by the number of witnesses or exhibits, nor by which party produced the most

witnesses or exhibits. It is the quality of the evidence that supports a finding as to a particular fact that should control, whether that evidence comes from a single source or many sources.

In sum, what you must try to do in deciding credibility is to size a person up in light of his or her demeanor, the information and explanations given, and all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward and accurate in his or her testimony. In deciding the question of credibility, remember that you should use your common sense, your good judgment, and your experience.

Witness Credibility: Impeachment by Prior Inconsistent Statement

You have heard that certain witnesses made statements on earlier occasions which counsel argue are inconsistent with those witnesses' trial testimony. With some exceptions, which I address in the next section entitled "Inconsistent Sworn Testimony," evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence because this evidence was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of a witness who contradicted himself. If you find that a witness made an earlier statement that is inconsistent with his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, whether that explanation appealed to your common sense, and whether the alleged inconsistent statement was made at all.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior

statement was inconsistent, and if so how much, if any, weight should be given to the inconsistent statement in determining whether or not to believe all or part of a witness's testimony.

Prior Sworn Testimony

During the course of this trial, you have heard testimony from witnesses who had previously appeared and testified under oath, either before the grand jury or at some other proceeding. The prior sworn testimony of some witnesses has been read to you. You may consider this prior testimony as affirmative substantive evidence in this case, not just as it relates to those witnesses' credibility, which is the case with other inconsistent testimony (as I explained in the previous section). In other words, if you believe that a witness's prior testimony was truthful, you may consider that testimony just as if that witness had testified to the same effect while on the witness stand at trial. You should judge the credibility of any prior sworn testimony in the same way that you would judge the credibility of testimony given at trial. As with any inconsistent testimony, you may also consider a witness's prior testimony when deciding whether to believe the trial testimony of the witness.

You also heard the grand jury testimony of (name), which was read to you in place of her live testimony because of her medical unavailability. This testimony is also affirmative substantive evidence as if she gave her testimony from the witness stand during this trial.

Witness Credibility: Impeachment by Prior Conviction

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

Witness Credibility: Law Enforcement Witnesses

You have heard the testimony of law enforcement officers. The sole fact that a witness is employed by the federal, state or local Government as a law enforcement officer 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. You may consider, however, whether the law enforcement officer's testimony is colored by a personal or professional interest in the outcome of the case. As with any other witness, it is your decision, after reviewing all the evidence, what weight, if any, you will give to the testimony of the law enforcement witnesses you heard.

Witness Credibility: Cooperating Witnesses Called by the Government

You have heard the testimony of three cooperating witnesses who testified that they were actually involved in planning and carrying out the crimes charged in the indictment – (witness #3), (witness #2), and (witness #1). You also heard the testimony of another cooperating witness (witness #6). The law allows the use of cooperating witnesses. Under federal law, accomplice witness testimony may be enough in itself for conviction, if the jury finds that the testimony establishes guilt beyond a reasonable doubt on all of the elements of the offenses charged.

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

The general considerations on credibility which I have given you apply here. 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 witnesses 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 which would cause him to lie, or was it one which would cause him to tell the truth? Did this motivation color his testimony?

You will have a copy of all plea agreements and cooperation agreements related to the three cooperating witnesses who entered into formal agreements with the Government. These written agreements have been received in evidence so you can have before you the actual terms of the plea and cooperation agreements. The Government is permitted to enter into these kinds of plea and cooperation agreements. I want to caution you that the agreement itself is not evidence that the witness has, in fact, testified truthfully. It may only be considered by you as to whether the witness has a motive to testify falsely, or whether it is in his interest to testify truthfully.

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

Unindicted Co-Conspirator as Government Witness

The Government has called a witness, (witness 1), who is named by the prosecution as a co-conspirator but who was not charged as a defendant.

For this reason, like the reasons I gave you earlier, you should exercise caution in evaluating his testimony and scrutinize it with great care. You should consider whether the witness has an interest in the case and whether he has a motive to testify falsely or truthfully. In other words, ask yourselves whether this witness has a stake in the outcome of this trial. As I have indicated, this witness's testimony may be accepted by you if you believe it to be true and it is up to you, the jury, to decide what weight, if any, to give to the testimony of an unindicted co-conspirator.

Government Witness Compelled to Testify

You have heard the testimony of a witness, (witness #6), who has testified under a compulsion order of this Court. What this means is that he was ordered to give testimony but his testimony may not be used against him in any criminal case, except in a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order of this Court.

The testimony of a witness who has been ordered to testify on these terms 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 colored in such a way as to place guilt upon the Defendant in order to further the witness's own interests; for such a witness, confronted with the realization that he can retain his own freedom by helping to convict another, may have a motive to falsify his testimony.

Such testimony should be scrutinized by you with great care and you should act upon it with caution. If you believe it to be true, and determine to accept the testimony, you may give it such weight, if any, as you believe it deserves.

Government Witness -- Not Proper to Consider Guilty Plea

_____ You have heard testimony from Government witnesses (witness #2) and (witness #3) who pleaded 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 (defendant) from the fact that a Government witness pleaded guilty to similar charges. That witness's 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, but may be considered as to that witness's interest, motive or bias.

The Indictment

With these general instructions in mind, I will now turn to the three counts contained in the indictment against (defendant). I remind you again that an indictment itself is not evidence. It merely describes the charges made against a Defendant. It is an accusation, and here the Defendant has pleaded not guilty to all charges against him. Consequently, the Government, in order to support a verdict of guilty on any of the charges, must prove each element of that charge beyond a reasonable doubt. It is your duty to consider each count of the indictment separately. That is, you must consider whether or not, with respect to each individual count, the Government has met its burden of proving each and every element of that offense beyond a reasonable doubt. The indictment may not be considered by you as any evidence of the guilt of the Defendant.

The indictment has three counts relating to (defendant). Count One charges (defendant) with being a member of a conspiracy to commit murder-for-hire by use of interstate travel. Count Two charges (defendant) with the substantive crime of interstate travel murder-for-hire. Count Five charges (defendant) with the crime of causing death by use of a firearm during a crime of violence.

You will note that the indictment charges that the offenses were committed "on or about" a certain date. The Government does not have to prove with certainty the exact dates of the alleged offenses. It is sufficient if the Government proves beyond a reasonable doubt that the offenses were committed on dates reasonably within the time period alleged. You will have a copy of the portion of the indictment related to this defendant with you in the jury room during your deliberations.

Certain Terms Defined: Knowingly and Willfully

All three counts in the indictment relevant to (defendant) require the Government to prove beyond a reasonable doubt that the Defendant acted knowingly and willfully. A person acts knowingly if he acts intentionally, voluntarily and with an awareness of his actions, and not because of ignorance, mistake, accident, or carelessness. Whether a Defendant acted knowingly may be proven by a Defendant's conduct and by all the facts and circumstances surrounding the case.

"Willfully" means acting knowingly, purposefully and deliberately with an intent to do something the law forbids, that is to say with the bad purpose to disobey or to disregard the law. A Defendant's conduct was not "willful" if it was due to negligence, inadvertence or mistake.

Counts One and Two: The Statute

Count One and Two are brought under Title 18, United States Code, Section 1958, which states:

Whoever travels in or causes another . . . to travel in interstate . . . commerce, . . . with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of . . . anything of pecuniary value, or who conspires to do so, . . . and if death results, shall be [guilty of a crime].

Count One: Nature of a Conspiracy

Count One charges the Defendant with having been a member of a conspiracy to commit murder-for-hire by use of interstate travel. A conspiracy is a kind of criminal partnership -- a combination or agreement of two or more persons to join together to accomplish some unlawful purpose.

The crime of conspiracy to violate a federal law is an independent offense. It is separate and distinct from the actual violation of any specific federal laws, which the law refers to as "substantive crimes."

Count One: Conspiracy to Commit Interstate Travel
Murder-for-Hire

Count One charges conspiracy to commit murder for hire by use of interstate travel. In my instructions on this count, I will necessarily be using some terms and concepts that will be explained in my instructions on the substantive offense of interstate travel murder-for-hire (Count Two). Therefore, when you consider Count One, you will utilize all the instructions for Counts One and Two.

In order for a Defendant to be guilty of being a member of a conspiracy to commit interstate murder for hire, the Government must prove each of the following three essential elements beyond a reasonable doubt:

First, that two or more persons entered into an unlawful agreement to travel or cause someone else to travel interstate with the intent that a murder be committed as consideration for the receipt of anything of value;

Second, that the Defendant knowingly and willfully became a member of the conspiracy; and

Third, that death resulted.

Count One: First Element (Existence of an Agreement)

The first element that the Government must prove beyond a reasonable doubt to establish the offense of conspiracy to commit murder for hire by use of interstate travel is that two or more persons entered the unlawful agreement which is charged in the indictment. In order for the Government to satisfy this element, you need not find that the alleged members of the charged conspiracy met together and entered into any express or formal agreement. Similarly, you need not find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the Government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish the unlawful act charged in the indictment, that is, the murder for hire of (victim) by interstate travel.

You may, of course, find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the circumstances of this case and the conduct

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

Count One: Second Element (Membership in the Conspiracy)

The second element which the Government must prove beyond a reasonable doubt is that (defendant) knowingly, willfully and voluntarily became a member of the alleged conspiracy to commit the murder for hire of (victim) by use of interstate travel. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker?

In that regard, it has been said that in order for a Defendant to be deemed a participant in a conspiracy, he must have had a stake in the venture or its outcome. You are instructed that proof of a financial interest in the outcome of a scheme is not essential. If you find that the Defendant had such an interest, however, that is a factor which you may properly consider in determining whether or not the Defendant was a member of the conspiracy charged in the indictment.

As I mentioned a moment ago, before a Defendant can be found to have been a conspirator, you must first find that he knowingly joined in the unlawful agreement or plan. The key question, therefore, is whether the Defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

The Defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to become a member of the conspiracy, the Defendant need not have known the identities of each and every other member, nor need he have been apprised of all of their activities. Moreover, the Defendant need not have been fully informed as to all of the details, or the scope, of the charged conspiracy in order to justify an inference of knowledge on his part. It is sufficient if the Defendant joined in either of the conspiracy's unlawful purposes, namely, to commit the murder for hire of (victim) by interstate travel.

The extent of a Defendant's participation has no bearing on the issue of a Defendant's guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed, each member may perform separate and distinct acts and may perform them at different times. Some conspirators may play major roles, while others may play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act committed by the Defendant may be sufficient to draw him within the ambit of the conspiracy.

I want to caution you, however, that a Defendant's mere presence at or near the scene of the alleged crime does not,

by itself, make him a member of the conspiracy. Similarly, mere association with one or more members of a conspiracy does not automatically make the Defendant a member. A person may know, or be friendly with, a conspirator, without being a co-conspirator himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a Defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the Defendant a member. More is required under the law. What is necessary is that the Defendant must have participated with knowledge of at least one of the two purposes of the charged conspiracy and with the intention of aiding in the accomplishment of that unlawful end.

In sum, a Defendant, with an understanding of the unlawful character of the alleged conspiracy, must have intentionally engaged, advised or assisted in it for the purpose of furthering the illegal undertaking. He thereby

becomes a knowing and willing participant in the unlawful agreement - that is to say, a conspirator.

Count One: Third Element (Death)

The third element which the Government must prove beyond a reasonable doubt is that the conspiracy resulted in the death of a human being, namely, (victim).

Count One: Acts and Declarations of Co-Conspirators

The acts and statements of others were admitted into evidence against the Defendant because these acts and statements were committed by persons who, the Government charges, were also confederates or co-conspirators of the Defendant on trial. Whether or not they were, in fact, co-conspirators is solely for you to decide.

The reason for allowing this evidence to be received against the Defendant has to do with the nature of the crime of conspiracy. As I earlier referenced, 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 made 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 was a member of the conspiracy charged in the indictment, then, any acts done or statements made in

furtherance of the conspiracy by persons also found by you to have been members of that conspiracy, may be considered against that Defendant. This is so even if such acts were done and statements were made in the Defendant's absence and without his knowledge.

However, before you may consider the statements or acts of a co-conspirator in deciding the issue of a Defendant's guilt, you must make two separate determinations: (1) that (defendant) was a member of the conspiracy alleged; and (2) that the acts and 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.

Count Two: Interstate Travel Murder-for-Hire

To prove the substantive crime of interstate murder-for-hire under Count Two, the Government must establish beyond a reasonable doubt each of the following four elements of the offense:

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

Second, that this travel was done or caused with the intent that a murder be committed in violation of the laws of any State or the United States;

Third, that the murder in question was intended to be committed as consideration for the receipt of anything of value; and

Fourth, that death resulted.

Count Two: First Element (Interstate Travel)

The first element the Government must prove beyond a reasonable doubt is that the Defendant traveled, or caused someone else to travel, interstate. Interstate travel is simply travel between one state and any other state. The interstate travel must have occurred to facilitate or further the commission of the murder. It need not have been the only reason, or even the principal reason, for the interstate travel as long as it was one of the reasons for the travel.

Count Two: Second Element (Intent that Murder be Committed)

The second element the Government must establish beyond a reasonable doubt is that this travel was done or caused with the intent that a murder be committed in violation of the laws of any State or the United States.

The State of (name of state) has defined murder as follows: A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person. The essential elements of murder under (state name) state law are (1) specific intent, (2) causation, and (3) death by killing.

The Government must prove that the travel was done or caused with the intent to further or facilitate the commission of the murder. You are thus being asked to look into the Defendant's mind and ask what was his purpose in traveling interstate or causing another to travel interstate. You may determine the Defendant's intent from all the evidence that has been placed before you, including the statements of the Defendant and his conduct before and after the travel.

**Count Two: Third Element (Murder
to be Committed as Consideration)**

The third element that the Government must establish beyond a reasonable doubt is that the murder in question was intended by the Defendant to be committed as consideration for the receipt of anything of value. This requires that the Government prove that there was a mutual agreement, understanding or promise that something of value would be exchanged for committing the murder. "Anything of value" means money or anything else the primary significance of which is economic advantage.

Count Two: Fourth Element (Death)

The fourth element that the Government must establish beyond a reasonable doubt is that the commission of this crime resulted in the death of a human being, namely, (victim).

**Count Five: Causing Death By Use of a Firearm
During a Crime of Violence (Statute)**

Count Five is brought under two statutes, Title 18,
United States Code, Sections 924(c) and Section 924(j).

Section 924(c) states:

[A]ny person who, during and in relation to any
crime of violence . . . for which the person may be
prosecuted in a court of the United States, uses or
carries a firearm . . . shall [be guilty of a
crime].

Section 924(j) states:

A person who, in the course of a violation of
[Section 924(c)], causes the death of a person
through the use of a firearm, shall[,] . . . if the
killing is a murder . . . , be [guilty of a crime].

Count Five: Elements

In order to sustain its burden of proof for the substantive crime of using or carrying a firearm during and in relation to a crime of violence as charged in Count Five of the indictment, the Government must prove the following three essential elements beyond a reasonable doubt:

First, that the Defendant committed a crime of violence, that is, interstate murder-for-hire, as charged in Counts One or Two of the indictment;

Second, that during and in relation to the commission of that crime, the Defendant knowingly used or carried a firearm; and

Third, that in the course of using or carrying that firearm, the Defendant caused the murder of (defendant) through the use of that firearm.

Count Five: First Element (Crime of Violence)

The first element the Government must prove beyond a reasonable doubt is that the Defendant committed a crime of violence for which he might be prosecuted in a court of the United States -- specifically, the crime charged in either Count One or Count Two.

Count Five: Second Element (Uses or Carries a Firearm)

The second element the Government must prove beyond a reasonable doubt is that during and in relation to the commission of that crime, (defendant) knowingly used or carried a firearm. The phrase "uses or carries a firearm" means having a firearm available to assist or aid in the commission of the crimes alleged in Counts One or Two of the indictment.

In determining whether (defendant) used or carried a firearm, you may consider the evidence in the case, including the nature of the underlying crime of violence alleged, the proximity of the Defendant to the firearm in question, the usefulness of the firearm to the crime alleged, and the circumstances surrounding the presence of the firearm.

A "firearm" is any weapon which will or is designed to, or may be readily converted to, expel a projectile by the action of an explosive. A person "carries" a firearm if, during and in relation to the crime of violence, he either (1) had physical possession of the firearm, or (2) moved the firearm from one place to another. A person "uses" a firearm if he actively employs the firearm. "Active employment" of a firearm includes such things as brandishing, displaying, striking with, firing, attempting to fire, and the silent but obvious and forceful display of a firearm in plain view.

A person takes such action "in relation to the crime" if the firearm facilitated or played a role in the crime. To satisfy this element, you must also find that the co-conspirator carried or used the firearm knowingly. This means that he carried the firearm purposefully and voluntarily, and not by accident or mistake. It also means that he knew that the weapon was a firearm, as we commonly use the word.

Count Five: Third Element (Murder)

The third element that the Government must prove beyond a reasonable doubt is that, in the course of using or carrying that firearm during and in relation to the commission of the crime of violence, (defendant) caused the murder of (victim) through the use of that firearm. For purposes of Count Five, the term "murder" is defined under federal law, which is different from its definition under the laws of the State of Connecticut.

For purposes of Count Five, the term "murder" is defined under federal law as follows:

Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by . . . any . . . kind of willful, deliberate, malicious and premeditated killing . . . is murder in the first degree.

Malice is the state of mind that would cause a person to act without regard to the life of another. To act with malice aforethought, the Defendant must have acted consciously, with the intent to kill another person. Premeditation means "with deliberation or prior thought." An act is done with premeditation if it is done upon deliberation. The Government must prove beyond a reasonable doubt that (defendant) killed the victim only after thinking the matter over, deliberating whether to act before committing the crime. There is no requirement that the Government prove that the

Defendant deliberated for any particular period of time in order to show premeditation. It is sufficient to satisfy this element if you find that, before he acted, the Defendant had a period of time to become fully aware of what he intended to do and to think it over before he acted.

Punishment

I have now concluded the instructions relevant to the specific charges in this case. Before closing I must add several final notes concerning your deliberations.

First, at this stage in the proceedings, the question of possible punishment of the Defendant must be of no concern to the jury and should not, in any sense, enter into or influence your deliberations.

As you know from jury selection, the Defendant faces the possibility of the death penalty in this case. But, at this stage in the case, your only concern should be whether the Government has satisfied its burden of proving the Defendant's guilt in regard to the charged crimes. The fact that a verdict of guilty could lead to a particular punishment must not influence your decision at all during this stage of the case.

Note Taking

You were permitted to take notes during the course of the trial, and I noticed that some of you have taken notes; some have not. Please keep in mind, however, that your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and must not be influenced by the notes of other jurors.

Conclusion

In closing, I remind you that for each crime charged, in order for the Government to prove a Defendant guilty, the Government must prove each of the essential elements beyond a reasonable doubt as already explained in these instructions. If the Government succeeds, your verdict should be "guilty"; if it fails, your verdict must be "not guilty". In order to return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

Your function is to weigh the evidence in the case and determine whether or not the Defendant has been proved guilty solely upon the basis of such evidence or lack of evidence and any reasonable inference that you choose to draw therefrom.

Each juror is entitled to his or her opinion; each should, however, exchange views with his or her fellow jurors. Keep in mind the purpose of jury deliberation: to discuss and consider the evidence; to listen to the arguments of fellow jurors; to present your individual views; to consult with one another; and to reach an agreement based on the evidence or lack of evidence - if you can do so. Retire to reflect and consider the evidence and instructions. Let me know if, where, and how the Court may assist you in your endeavor.

Each of you must decide the case for yourself, after consideration, with your fellow jurors, of the evidence in the case. However, if, after carefully considering all the

evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you are not to change your view simply because you are outnumbered. Your final vote must reflect your conscientious conviction as to how the issues should be decided.

During your deliberations you will have all exhibits with you in the jury room. If you want any of the testimony read, this can also be done. Because it is not always easy to locate what you might want, please be as specific as possible in requesting portions of the testimony you may want reread.

If, during your deliberations, you should desire to communicate with the Court, please put your message or question in writing, have it signed by the foreperson and pass the note to the marshal, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, that in any communication you might send, you should never state or specify your numerical division at the time.

When you get into the jury room, before you begin your deliberations, you should select one of you to be the foreperson. The foreperson will be responsible for signing all communications to the Court and for handing them to the marshal during your deliberations. After you have retired to

begin your deliberation, you are not to leave your jury room without first notifying the marshal, who will escort you.

The Clerk will make available to you a verdict form for reporting your verdict. When you have reached a verdict, the foreperson should complete the verdict form, sign it and note the date and time of your verdict. When you have reached your verdict, inform the Court through the marshal who will be right outside your door, and you will return to the courtroom where your verdict will be announced; your verdict will not and should not be announced anywhere else. Please note, there is nothing suggestive about the verdict form -- it is just a way to let you return your verdict.

Now, proceed to your deliberations in the jury room. Deliberate only when all twelve of you are present. Determine the facts on the basis of the evidence as you have heard it and apply the law as I have outlined it to you. Render your verdict fairly, uprightly and without a scintilla of prejudice. Take as long as you think is necessary to fairly and impartially reach your verdict.

The members of the jury may now retire to the jury room.