IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CR. NO. 06-20304-JPM
	)	
ARTHUR SEASE,	)	
	)	
Defendant.	)	

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your discussions -- what we call your deliberations.

It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the government.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against the defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require the 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 as to each of the charges in the indictment, and if it fails to do so as to any charge you must find the defendant not guilty as to that charge or charges.

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As stated earlier you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses, the exhibits admitted in the record and any facts of which the court has taken judicial notice or as to which the parties have stipulated. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between direct or circumstantial evidence.

Also you should not assume from anything I may have said or done that I have any opinion concerning any of the issues before you in this case. Except for my instructions to you, you should disregard anything I may have said in arriving at your own decision concerning the facts.

2.01A
Multiple Crimes

(1) The defendant has been charged with 50 crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

(2) Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on the other charges.

Judicial Notice

You are instructed that the Court has taken judicial notice of the fact that Memphis, Tennessee is located in the Western District of Tennessee.

Since you are the fact-finders in this case, you may, but are not required to, accept even this fact as conclusively established.

Stipulations

While we were hearing evidence, you were told that the government and the defendant agreed, or stipulated to certain facts. This means simply that the government and the defendant both accept these facts. There is no disagreement over these facts, so there was no need for evidence by either side on these points. You may accept these facts, even though nothing more was said about them one way or the other. This, of course, is all for you the jury to decide.

The parties in this case have stipulated as follows:

You have heard evidence that Arthur Sease was charged with robbery in state court. You cannot consider the evidence of the state charge or dismissal as evidence of his guilt of that robbery in this case.

Further, the parties are in agreement that the aforementioned facts have been proven beyond a reasonable doubt by this stipulation.

Number of Witnesses
Credibility

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things the witness testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony the witness gave before you during the trial.

The fact that a witness has been previously convicted of a felony offense is another factor you may consider in determining the credibility of the witness.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

Testimony of a Witness Under Grant
of Immunity or Reduced Criminal Liability
(7.07)

(1) You have heard the testimony of Kelvin Rico Mobley, Alexander Johnson, Jermaine Allen, Andrew Hunt, Anthony Hope, Lesley Covington, Nicholas Crawford, Nicholas Biles, Reggie Brown, Albert Durham, Lurico Barrett, Junior Jermaine Johnson, Laterrica Woods, Pedro Jorge Moreno, and Lammotto Shaffer. You have also heard that the government has promised each of these individuals that his statements will not be used against him in a criminal proceeding, that is, that he will not be prosecuted based on his or her statements or, if the witness has been prosecuted in Federal court, that the government may make a motion to reduce his sentence, all in exchange for his testimony against the defendant.

(2) It is permissible for the government to make such a promise. But you should consider each of these individual's testimony with more caution than the testimony of other witnesses. Consider whether his testimony may have been influenced by the government's promise.

(3) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

Testimony of an Accomplice
(7.08)

(1) You have heard the testimony of Fredrick Jackson, Alexander Johnson, Andrew Hunt, Nicholas Crawford, Lurico Barrett, and Laterrica Woods. You have also heard that each of these witnesses was involved in the same crime that the defendant is charged with committing. You should consider each of these individual's testimony with more caution than the testimony of other witnesses.

(2) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe such a witness’s testimony beyond a reasonable doubt.

(3) The fact that Alexander Johnson, Andrew Hunt, and Laterrica Woods have pleaded guilty to a crime is not evidence that the defendant is guilty, and you cannot consider this against the defendant in any way.

(1) A defendant has an absolute right not to testify. The fact that he did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations.

(2) Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

Law Enforcement
Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the city, county, state, or federal government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of each law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

Opinion/Testimony

You have heard the testimony of Keith Brown and Grant R. Sperry, witnesses who rendered opinions in this case. A witness who is allowed to render an opinion has special knowledge or experience that allows him/her to give an opinion.

You do not have to accept the opinion of such a witness. In deciding how much weight to give it, you should consider the witness's qualifications and how he or she reached his or her conclusions.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

Transcriptions of Tape Recordings
(7.17)

You have heard some tape recordings that were received in evidence, and you saw some written transcripts of the tapes scrolled on the screen.

Keep in mind that the transcriptions are not evidence. They were shown to you only as a guide to help you follow what was being said. The tapes themselves are the evidence. If you noticed any differences between what you heard on the tapes and what you saw on the screen, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the tapes, you must ignore the scrolled transcriptions as far as those parts are concerned.

Cautionary Instruction

You have heard evidence that Mr. Sease paid a lawyer, Mr. Coleman Garrett.

While you consider this evidence, you should be aware that Mr. Stengel has been appointed to represent Mr. Sease. He has not and will not receive any payment from Mr. Sease.

I told you at the outset that this case was initiated through an indictment. An indictment is but a formal method of accusing the defendant of a crime. It includes the government's theory of the case, and we will be going over in a few minutes the substance of the indictment. The indictment is not evidence of any kind against an accused.

The defendant has pleaded not guilty to the charges contained in the indictment. This plea puts in issue each of the essential elements of the offense as described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

I will summarize the indictment for you once again so that you are well aware of the charges made in the indictment.

The indictment provides as follows:

COUNTS 26-37

17-1
The Statute

Title 18, United States Code, § 242

Counts 26 through 37 of the indictment charge the defendant with depriving the victim of his rights under color of law.

The relevant statute on the subject is 18 U.S.C. § 242 which provides:

> whoever under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens [shall be guilty of a crime].

17-2
Elements of the Offense

In order to prove the defendant guilty of depriving another of a right under color of law, the government must establish beyond a reasonable doubt each of the following elements

First, that on or about the date charged in the count you are considering, the defendant acted under color of law;

Second, that in so doing, the defendant deprived, or caused to be deprived, the victim set out in the count you are considering, of his right which is secured or protected by the Constitution or laws of the United States – that is, the right not to be deprived of property without due process of law by one acting under color of law or not to be subjected to unreasonable search and seizure by one acting under color of law; and

Third, that, as to the count you are considering, the defendant acted willfully.

17-3
First Element-Color of Law

The first element which the government must establish beyond a reasonable doubt is that the defendant acted under color of law.

This means that the defendant acted pursuant to, or was clothed with, authority to perform the act under state or federal law. Color of law means under pretense of law. You may find, therefore, that the defendant acted under color of law if the action of the defendant on or about the date and as to the victim set out in the count you are considering was an official duty (such as a police stop by a uniformed officer in a squad car) performed within or beyond the defendant's authority. That is to say, you must find that the act was done while the official was acting, or purporting to act, in the performance of his official duties, whether or not the official had actual authority to perform that duty.

He who acts under color of law may be a federal officer or a state officer. He may act under color of federal law or state law or any ordinance of any county or municipality of the state, or any regulation issued by any state, county, or municipal official or even pursuant to some state or local custom.

If you find, therefore, that defendant, on or about the date set out in the count you are considering was a state official and that the police stop was an official duty performed while the official was acting, or purporting to act, in the performance of his official duties, the first element of the offense will be satisfied.

17-5
Second Element-Deprivation
of a Federal Right

The second element which the government must prove beyond a reasonable doubt is that the defendant deprived the victim of a federal right.

The rights encompassed by section 242 include those protected or guaranteed by federal law or the United States Constitution. I instruct you that the right to not to be subjected to unreasonable search and seizure by one acting under color of law or the right not to be deprived of property without due process of law by one acting under color of law are such rights. If you find, therefore, that the act performed by the defendant caused the victim identified in the count you are considering to be deprived of either of his federal rights to as set on in the count you are considering, and you the jury unanimously agree that the same right or rights were violated, the second element of the offense will be satisfied.

17-6
Third Element-Defendant Acted Willfully

The third element which the government must prove beyond a reasonable doubt is that the defendant acted willfully.

"Willfully" means that the defendant acted voluntarily and intentionally, with the intent not only to act with a bad or evil purpose, but specifically to act with the intent to deprive a person of a federal right made definite by decisions or other rule of law--that is, either by the express terms of the Constitution or federal law or by decisions interpreting them.

To find that the defendant acted willfully, and to convict, therefore, you must find that the defendant not only had a generally bad or evil purpose, but also that the defendant had the specific intent to deprive the victim set out in the count you are considering of the federal right or rights set out in the count you are considering. This does not mean, however, that the government must show that the defendant acted with knowledge of particular provisions of the Constitution or federal law, or that the defendant was even thinking in these terms. It is enough that the federal right is clearly defined and that the defendant intended to invade interests protected by the constitution or federal law.

One may be said to act willfully if one acts in open defiance or in reckless disregard of a known and definite federal right-in this case, that is, the right or rights set out in the count you are considering. This specific intent to deprive another of a federal right need not be expressed; it may at times be reasonably inferred from the surrounding circumstances of the act. Thus, you may look at the defendant's words, experience, knowledge, acts and their results in order to decide this issue of willfulness.

If you find that the defendant had the purpose-that is, the end at which his act was aimed-to deprive the victim set out in the count you are considering of the federal right set out in the count you are considering, the third element of the offense is satisfied.

17-8
Defense of Immunity

It is not a defense to the offense of depriving another of his constitutional rights under color of law that the defendant is otherwise immune to prosecution by virtue of his position as an officer of the state government.

COUNTS 36 AND 37

Counts 36 and 37, like the preceding Counts 26 through 35, charge a violation of 18 U.S.C. § 242 (deprivation of rights under color of law) and, additionally, charge, in Count 36 and Count 37 kidnapping or attempted kidnapping in the commission of the deprivation of rights under color of law offense.

Thus, in each of Counts 36 and 37, if you find that the government has proven beyond a reasonable doubt each of the three elements as set out in the Court's immediately preceding instructions, then you also will be asked an additional question — whether the government has established beyond a reasonable doubt that the named individual was kidnapped in the commission of the offense.

17-7
Additional Fact-Kidnapping

As to Count 36 and/or Count 37, if the government establishes with proof beyond a reasonable doubt each of the three elements under 18 U.S.C. § 242, then, as to the count you are considering (either Count 36 or 37)you have determined that the defendant is guilty of that count, as set out in the verdict form. You must then also determine whether the government has established an additional fact.

The additional fact you must determine, if you find the defendant guilty of Count 36 or 37, is whether the government has proven beyond a reasonable doubt that the defendant's conduct caused the kidnapping of a victim identified in either Count 36 or 37.

For the purpose of determine this fact, kidnapping means to abduct or confine someone without his consent.

Kidnapping
(2.12)

In Counts 36 and 37 of the Indictment, it is alleged that the defendant kidnapped and attempted to kidnap three persons.

To kidnap a person for the purposes of Title 18, United States Code, Section 242, means to unlawfully hold, detain, or transport that person against his will. It is lawful for law enforcement officers to hold, detain, and transport people when doing so for a legitimate law enforcement reason. It is not lawful, however, for a law enforcement officer to hold, detain, or transport a person when he does so for the purpose of personal profit.

Kidnapping in Addition to
An 18 U.S.C. § 242 Violation

Remember, as to Counts 36 and 37, the evidence in the case need not establish this particular fact (kidnapping) in order to establish a violation of 18 U.S.C. § 242, but only that each element of a § 242 violation has been established beyond a reasonable doubt.

I instruct you, however, in regard to Counts 36 and 37 that, if you find the defendant guilty of a deprivation of rights offense, then you are to determine whether the government has established beyond a reasonable doubt an additional fact — whether defendant's conduct constituted "kidnapping" as that is defined in these instructions. Such a finding will be in addition to your finding in each of Counts 36 and 37, only if you first find that there has been a violation of 18 U.S.C. § 242 in the count you are considering.

Summary/Counts 26-37

As to each of Counts 26 through 37, if, as to the count you are considering, you find that each of the three elements required under these instructions has been established by the government with proof beyond a reasonable doubt, then as to the count you are considering you must return a verdict of guilty. If, as to the count you are considering, the government has failed to establish beyond a reasonable doubt any of the three elements required under these instructions, then as to the count you are considering you must return a verdict of not guilty.

COUNTS 15 THROUGH 25

21 U.S.C. § 841

Counts 15 through 25 of the indictment charge defendant with knowingly and intentionally possessing with the intent to distribute a controlled substance. Each count identifies a specific substance and the date of the alleged offense.

Title 21, United States Code, Section 841, makes it a federal crime or offense for anyone to possess a "controlled substance" with intent to distribute it. This is the law that the defendant is charged with violating in Counts 15 through 25.

Cocaine, cocaine base, and marijuana are "controlled substances" within the meaning of the law.

The elements that the government must prove beyond a reasonable doubt as to each count in connection with the offense of possession of a controlled substance with the intent to distribute are:

First, that a person knowingly and willfully possessed a controlled substance (i.e., cocaine base in Count 25, cocaine

in Counts 15, 17, 20, 22, 23 and 24, and marijuana in Counts 16, 18, and 21) as charged; and

Second, that he possessed the substance in the count you are considering with the intent to distribute it.

To "possess with intent to distribute" simply means to possess with intent to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction.

Possession – Defined

A person has possession of something if he had control of it, even though it was in the actual possession of another person. It is not enough that a person may have known about the controlled substance (as to the count you are considering); the defendant possessed the controlled substance only if he had control of it, either alone or together with someone else.

2.10

Constructive Possession

The law recognizes two kinds of possession -- actual possession and constructive possession. Either one of these constitutes possession under the law.

To establish actual possession, the government must prove that the defendant had direct, physical control over the controlled substance in the count you are considering and knew that he had control of it.

To establish constructive possession, the government must prove that the defendant had the right to exercise physical control over the controlled substance in the count you are considering and knew that he had this right, and that he intended to exercise physical control over it at some time, either directly or through other persons.

For example, if you left something with a friend intending to come back later and pick it up, or intending to send someone else to pick it up for you, you would have constructive possession of it while it was in the actual possession of your friend.

But understand that just being present where something is located does not equal possession. The government must prove that the defendant had actual or constructive possession of the controlled substance in the count you are considering and knew that he did, for you to find him guilty of that count. This, of course, is for you to decide.

Quantity of Controlled Substance

In the indictment, a particular amount or quantity of cocaine is alleged in Counts 23 and 24. The evidence in the case need not establish a particular amount or quantity of a controlled substance, but only that a measurable amount was in fact the subject of the acts charged in the indictment.

I instruct you, however, in regard to Counts 23 and 24 (cocaine) that, if you find the defendant guilty of either offense, you will be asked to determine whether the government has established beyond a reasonable doubt whether the amount was 500 grams or more.

Summary/Counts 15-25

As you consider each of Counts 15 through 25, as to the count you are considering, if you determine that the government has established beyond a reasonable doubt each of the elements of the offense charged, then as to that count you must return a verdict of guilty. If as to the count you are considering you determine that the government has failed to prove beyond a reasonable doubt any element of the offense charged, then as to that count you must return a verdict of not guilty.

COUNTS 1 AND 2

CONSPIRACY

Counts 1 and 2 each charge the defendant with conspiracy to violate a specific law. I will, therefore, describe to you the elements of the offense of a conspiracy and then, as to Count 1 and 2 will discuss the specific conspiracy statute and its additional element that must be established with proof beyond a reasonable doubt.

19-2

Purpose of the Statute

In this case, the defendant is accused of having been a member of a conspiracy to violate certain federal laws. 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.”

Indeed, you may find the defendant guilty of the crime of conspiracy to commit an offense against the United States even though the substantive crime which was the object of the conspiracy was not actually committed.

Congress has deemed it appropriate to make conspiracy, standing alone, a separate crime even if the conspiracy is not successful. This is because collective criminal activity poses a greater threat to the public's safety and welfare than individual

conduct, and increases the likelihood of success of a particular criminal venture.

19-3
Elements of Conspiracy

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

First, that two or more persons entered the unlawful agreement charged in the indictment starting on or about November, 2003; and

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

19-3S
Conspiracy Instruction

In order for a defendant to be guilty of a conspiracy to violate federal law, the Government must prove beyond a reasonable doubt, first, that such a conspiracy existed; and second, that at some point the defendant knowingly and willfully joined and participated in the conspiracy.

With respect to the first element, a "conspiracy" is an agreement among two or more persons to achieve an unlawful object, in this case, in Count 1 the carrying out of the substantive crime previously described in Counts 26 through 37 (deprivation of rights) and in Count 2 the carrying out of the substantive crime in Counts 15 through 25 (possession with intent to distribute a controlled substance). To show a conspiratorial agreement, the Government is not required to prove that two or more people entered into a solemn pact, but only that two or more persons explicitly or implicitly came to an understanding to achieve the specified unlawful object, whether or not they were successful. Also, it is not necessary for the Government to prove that the conspiracy lasted throughout the entire period alleged, but only that it existed for some time within that period.

With respect to the second element -- that the defendant knowingly and willfully joined and participated in the conspiracy -- to act "knowingly" means to act consciously and deliberately rather than mistakenly or inadvertently, and to act "willfully" means to act purposely and with an intent to do something unlawful. Thus, a defendant enters into a conspiracy "knowingly and willfully" if he joins and participates in the conspiracy with knowledge of, and the intent to further, its unlawful object. It is not necessary, however, that a defendant be fully informed of all the details of the conspiracy, or all of its participants. He may not know more than one other member of the conspiracy, or more than one of its objects. He may have joined the conspiracy at any time in its duration, and may not have received any benefit in return. However, mere association by a defendant with a conspirator does not itself make the defendant a member of the conspiracy even if he knows of the conspiracy. In other words, knowledge is not enough; the defendant himself must intentionally participate in the conspiracy with the purpose of helping to achieve at least one of its unlawful objects.

19-4
Existence of Agreement

I will now further discuss the two elements of conspiracy.

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

In order for the government to satisfy this element, you need not find that the alleged members of the 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 an unlawful act.

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 an unlawful purpose.

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

If you are satisfied that the conspiracy charged in the count you are considering existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant whom you are considering was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly and willfully joined the conspiracy. 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, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, 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 the 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.

It is important for you to note that the defendant's participation in the conspiracy must be established by independent evidence of his own acts or statements, as well as those of the other alleged co-conspirators, and the reasonable inferences which may be drawn from them.

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 conspiracy in order to justify an inference of

knowledge on his part. Furthermore, the defendant need not have joined in all of the conspiracy's unlawful objectives.

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 play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution you, however, that the defendant's mere presence at 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 the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish membership in the 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 some of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised or assisted in it for the purpose of furthering the illegal undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement--that is to say, a conspirator.

Title 18, United States Code, § 241

While I have now instructed you regarding the two elements of conspiracy, I will now instruct you regarding the specific statutes that the defendant is alleged to have conspired to violate in Counts 1 and 2 and more specifically discuss the elements that must be established as to Counts 1 and 2.

Count 1 of the indictment charges the defendant knowingly and willfully conspired and agreed to injure, oppress, threaten, and intimidate persons in the free exercise and enjoyment of rights secured to them by the Constitution and laws of the United States, that is, the right to be free from unreasonable searches and seizures and the right to be free from deprivation of property without due process of law by those acting under color of law.

The relevant statute on the subject is 18 U.S.C. § 241 which provides:

> two or more persons [who] conspire to injure, oppress, threaten, or intimidate any person in any State, Territory,

Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same [shall be guilty of a crime].

17-33
Elements of the Offense

In order to prove the defendant guilty of conspiracy to deprive someone of his or her civil rights, the government must establish beyond a reasonable doubt each of the following elements:

First, that the defendant entered into a conspiracy to injure, oppress, threaten, or intimidate any of the persons identified in Counts 26 through 37 of the indictment. To establish a conspiracy the government must prove, beyond a reasonable doubt: (1) an agreement between two or more people to do something the law forbids; and (2) membership in the conspiracy by the defendant. These are the elements as to which I have already instructed you.

Second, that the defendant intended to interfere with at least one of the specific person or persons identified in Counts 26 through 37 in the exercise or enjoyment of a right which is secured (or protected) by the Constitution or laws of the United States—that is, the right to be free from unreasonable searches and seizures and the right to be free from deprivation of property without due process of law by those acting under color of law; and

Third, that the specific person or persons identified in Counts 26 through 37 was present in any state, district, or territory of the United States.

In order to convict, you must agree beyond a reasonable doubt that a specific victim or victims was or were the object of the conspiracy (the first element); that the defendant intended to interfere with the same victim's or victims' right(s) (second element); and that the same victim or victims were present as required under the third element. You must be unanimous as to the person (or persons) and the right (or rights).

17-34
First Element-Conspiracy to Injure

The first element which the government must establish beyond a reasonable doubt is that the defendant entered into a conspiracy to injure, oppress, threaten, or intimidate any of the persons identified in Counts 26 through 37.

The words “injure, oppress, threaten, or intimidate” means conduct intended to harm, frighten, prevent, inhibit or punish the free actions of other persons. To threaten or oppress does not require the possibility of physical force or physical harm.

To establish this element, the government must establish that the defendant entered into a conspiracy. I have already instructed you regarding the two elements of conspiracy. If you determine that the government has proven beyond a reasonable doubt these two elements (a criminal agreement and membership in the conspiracy) then the first element has been satisfied.

19-9
Acts and Declarations of Co-Conspirators

You will recall that I have admitted into evidence against the defendant the acts and statements of others because these acts and statements were committed by persons who, the government charges, were also confederates or co-conspirators of the defendant on trial.

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

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

If you find, beyond a reasonable doubt, that the defendant was a member of the conspiracy charged in the count you are considering, 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 first determine 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.

17-35
Second Element-Intent to
Interfere with a Federal Right

The second element which the government must establish beyond a reasonable doubt is that the defendant intended to interfere with a person or persons named in Counts 26 through 37 in the exercise or enjoyment of a right which is secured or protected by the Constitution or laws of the United States – that is, the right to be free from unreasonable searches and seizures or the right to be free from deprivation of property without due process of law by those acting under color of law.

The rights encompassed by section 241 include those protected or guaranteed by federal law or the United States Constitution. I instruct you that the right to be free from unreasonable searches and seizures and the right to be free from deprivation of property without due process of law by those acting under color of law is such a right. If you find, therefore, that the defendant intended to deprive a person or persons named in Counts 26 through 37 of his federal right to be free from unreasonable searches and seizures or the right to be free from deprivation of property without due process of law by those acting under color of law, the second element of the offense will be satisfied.

17-36
Third Element-Victim in United States

The third element which the government must establish beyond a reasonable doubt is that the victim (a person or person set out in Counts 26 through 37) was present in any state, district, or territory of the United States.

COUNT 2

21 U.S.C. § 846

Count 2 of the indictment charges the defendant with knowingly and willfully conspiring and agreeing to possess with the intent to distribute 5 kilograms or more of cocaine; a measurable quantity of cocaine base (crack cocaine); and a measurable quantity of marijuana, in violation of Title 21, United States Code, Section 846.

Title 21, United States Code, Section 846, provides in relevant part that:

> Any Person who attempts or conspires to commit any offense defined in this title shall be . . . guilty of a crime.

Title 21, United States Code, Section 841(a)(1), makes it a federal crime or offense for anyone to possess a "controlled substance" with intent to distribute it.

Therefore, Title 21, United States Code, Section 846, makes it a federal crime or offense for anyone to “attempt” to possess

a controlled substance with intent to distribute or for anyone to "conspire" to possess a controlled substance with intent to distribute. This is the law that the defendant is charged with violating in Count 2.

Cocaine, cocaine base, and marijuana are "controlled substances" within the meaning of the law.

Conspiracy (3.01A)

(1) Count 2 of the indictment accuses the defendant of a conspiracy to possess a controlled substance (cocaine, crack cocaine, and marijuana) in violation of federal law. It is a crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal.

(2) A conspiracy is a kind of criminal partnership. For you to find the defendant guilty of the conspiracy charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

(A) First, that two or more persons conspired, or agreed, to commit the crime to possess a controlled substance with the intent to distribute.

(B) Second, that the defendant knowingly and voluntarily joined the conspiracy.

I have already given you detailed instructions regarding these two elements of conspiracy and those instructions apply in determining whether the government has established each element

necessary to establish beyond a reasonable doubt the charge contained in Count 2 of the indictment.

(3) You must be convinced that the government has proved both of these elements beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charge in Count 2.

I will, however, briefly review the two elements that the government must establish beyond a reasonable doubt as to Count 2.

(1) With regard to the first element--a criminal agreement--the government must prove that two or more persons conspired, or agreed, to cooperate with each other to possess a controlled substance with the intent to distribute it.

(2) This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

(3) 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 commit the crime to

possess with intent to distribute a controlled substance. This is essential.

(4) An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

(5) One more point about the agreement. The indictment accuses the defendant of conspiring to commit several federal crimes. The government does not have to prove that the defendant agreed to commit all these crimes. But the government must prove an agreement to commit at least one of them for you to return a guilty verdict on the conspiracy charge.

Defendant's Connection to Conspiracy
(3.03)

(1) If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that the defendant knowingly and voluntarily joined that agreement. You must consider the defendant separately in this regard. To convict the defendant, the government must prove that the defendant knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

(2) This does not require proof that the defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that the defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

(3) But proof that the defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because the defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These

are all things that you may consider in deciding whether the government has proved that the defendant joined a conspiracy. But without more they are not enough.

(4) What the government must prove is that the defendant knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals. This is essential.

(5) The defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

Unnamed or Separately Tried Co-Conspirators
(3.06)

(1) Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding.

(2) Nor is there any requirement that the names of the other conspirators be known. An indictment can charge a defendant with a conspiracy involving people whose names are not known, as long as the government can prove that the defendant conspired with one or more of them. Whether they are named or not does not matter.

Summary/Counts 1-2

As to each of Counts 1 through 2, if, as to the count you are considering, you find that each of the elements required under these instructions has been established by the government with proof beyond a reasonable doubt, then as to the count you are considering you must return a verdict of guilty. If, as to the count you are considering, the government has failed to establish beyond a reasonable doubt any of the elements required under these instructions, then as to the count you are considering you must return a verdict of not guilty.

COUNTS 3 THROUGH 14

Robbery or Extortion Under Color of Official Right - The Hobbs Act (18 U.S.C. § 1951) (50-17)

Counts 3 through 14 of the indictment charge the defendant with violating § 1951 of Title 18 of the United States Code. That section, in pertinent part, provides:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of an article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section [commits a crime].

18 U.S.C. § 1591: Multiple Offenses

In Counts 3 through 14, the Indictment charges that the defendant unlawfully obstructed, delayed, and affected and attempted to obstruct, delay, and affect interstate commerce by robbery or extortion under color of official right. To prove any of these counts, the United States must prove *either* that the defendant affected interstate commerce by robbery *or* by extortion under color of official right. I will instruct you on what the government must prove to prove robbery, and I will instruct you on what the government must prove to prove extortion under color of official right. If you unanimously find that the government proved one of those crimes for any of those Counts – in other words, if you all agree that the defendant committed a robbery, *or* you all agree that the Defendant committed extortion under color of official right – then you may find the Defendant guilty on that count.

Robbery

The term “robbery” means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession.

The elements of the offense of robbery affecting interstate commerce are:

First, that the defendant knowingly obtained or took the personal property of another, or from the presence of another;

Second, that the defendant took this property against the victim’s will, by actual or threatened force, violence, or fear of injury, whether immediately or in the future.

Third, interstate commerce was affected.

First Element--Personal Property

Under the government's robbery theory, the first element that the government must prove beyond a reasonable doubt is that the defendant knowingly obtained or took the personal property of another, or from the presence of another.

The term "property" includes money and other tangible and intangible things of value.

50-5
Second Element--Unlawful
Taking by Force, Violence or Fear

Under the government's robbery theory, the second element the government must prove beyond a reasonable doubt is that the defendant unlawfully took this property against the victim's will, by actual or threatened force, violence, or fear of injury, whether immediately or in the future.

In considering whether the defendant used, or threatened to use force, violence or fear, you should give those words their common and ordinary meaning, and understand them as you normally would. The violence does not have to be directed at the person whose property was taken. The use or threat of force or violence might be aimed at a third person, or at causing economic rather than physical injury. A threat may be made verbally or by a physical gesture. Whether a statement or physical gesture by the defendant actually was a threat depends upon the surrounding facts.

Affect on Interstate Commerce

Under the government's robbery theory, finally the government must prove that interstate commerce was obstructed, delayed or affected.

The term "obstructs, delays, or affects commerce" means any action which, in any manner or to any degree, interferes with, changes, or alters the movement or transportation or flow of goods, merchandise, money, or other property in commerce.

There is no requirement that the commerce be legal commerce. Illegal commerce counts as commerce for purposes of the law. If you find that the robberies disrupted illegal trafficking in drugs by reducing the amount of drugs or money that a person could use in a drug trafficking business, this would satisfy the interstate commerce requirement.

It is not necessary for the government to prove that the defendant actually intended to obstruct, delay, or affect commerce. The government must prove beyond a reasonable doubt, however, that the defendant deliberately performed an act, the ordinary and natural consequences of which would be to obstruct,

delay, or affect commerce, and that commerce was, in fact, obstructed, delayed, or affected.

If the government has proven beyond a reasonable doubt, all three of these elements as to the count you are considering, then as to that count you must return a verdict of guilty. If the government has failed to prove any of the three elements of robbery under these instructions then you cannot find the defendant guilty of that count under the theory of robbery.

Definition of Extortion
Under Color of Official Right
(50-18)

The government's second theory under 18 U.S.C. § 1951 (The Hobbs Act) is that the defendant committed extortion under color of official right.

The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Extortion under color of official right is the use of one's position as a public official, or the authority of public office, to obtain money or services not due the official or his public office.

The phrase "extortion . . . under color of official right" means the use by a public official or employee of the power and authority of the office he occupies in order to obtain money, property, or something of value from another to which that government official or employee has no official right.

It is not necessary for the government to prove that the public official or employee made any specific threat or used force or fear to cause a person to part with the property that the indictment alleges was obtained by that public official or employee.

It is required, however, that the public officer be the initiator or inducer of the obtaining of the money or property. It is this requirement of inducing or initiating by the action or inaction of the defendant that distinguishes this crime from bribery.

The government must prove beyond a reasonable doubt that the defendant knowingly and deliberately used his official position in order to obtain money, property, or something of value, to which the defendant had no right.

50-19
Elements of the Offense

In order to meet its burden of proof, the government must establish beyond a reasonable doubt each of the following elements under its theory of extortion under color of official right:

First, that the defendant was a public official, or held public office;

Second, that the defendant obtained property or services not due him or his office;

Third, that this property or service was given, with the consent of the giver, to the defendant, who knew that the property was given because of the power of the defendant's official position; and

Fourth, that interstate commerce, or an item moving in interstate commerce, was delayed, obstructed, or affected in any way or degree.

The court instructs you that it is not relevant that the defendant's action or inaction was already required by his official duty or would have been performed in any event.

50-20
First Element--Defendant Was Public Official

Under the government's extortion theory, the first element that the government must prove beyond a reasonable doubt is that at the time of the events charged in the indictment, the defendant was a public official, or held public office.

50-21

Second Element--Property Not Due That Office

Under the government's extortion theory, the second element which the government must prove beyond a reasonable doubt is that defendant obtained money, goods, or services, which were not legitimately owed to the office the defendant represents.

The government does not have to prove that the money or items given were of personal benefit to the defendant. The money or items given may be obtained by the defendant for the personal benefit of others. The amount of money and the value of the goods or services may be considered in helping you determine the facts of the situation.

The government does have to prove, beyond a reasonable doubt, that the money, goods, or services obtained were not due or owing the office which the defendant represents.

50-22

Third Element--Misuse of Official Position

Under the government's extortion theory, the third element which the government must prove beyond a reasonable doubt is that the defendant used the authority of his office or position to obtain the money, goods or services. That is, you must decide whether the defendant represented himself as capable of doing something, or of refusing to do something because of his official position.

To satisfy this element, the government must prove beyond a reasonable doubt the defendant obtained a payment either directly or indirectly to which he was not entitled, knowing that the payment was made in return for official acts rather than being given voluntarily or unrelated to the defendant's office. The defendant need not have affirmatively induced the payments by his actions, but he must have known that the payment was offered in exchange for a specific exercise (or failure to exercise) of his official powers. You do not have to determine whether the defendant could or did actually perform the service, or whether he actually had a duty to do so.

Wrongfully Obtained
Consent of the Giver
(50-23)

If you decide that the defendant was given money, goods or services not due the office he represents, you must then decide whether the defendant used the authority of his office or position to obtain the money, goods or services. The focus of your inquiry is whether the money, goods or services were given to the defendant because of the defendant's misuse of his position. The government must prove beyond a reasonable doubt that these items were given to the defendant in connection with his power and authority as a public official. The giver may have initiated this exchange, and the parties may be on friendly terms. These are factors to consider in deciding whether the giver gave the payments because he believed the defendant would use his office for acts not properly related to his official duty, or whether, instead, the giver was making a voluntary contribution.

Unless you decide, beyond a reasonable doubt, that the defendant knew the giver's consent was wrongfully obtained--that is, that the money, goods or services were given in connection with the defendant's misuse of his official position rather than being given voluntarily--you cannot convict the defendant.

Fourth Element--Affecting Interstate Commerce

Under the government's extortion theory, if you decide that the defendant obtained another's property either through robbery or through extortion under color of official right, you must then decide whether this action would affect interstate commerce in any way or degree. You must determine whether there is an actual or potential effect on commerce between any place within the State of Tennessee and any place outside the State of Tennessee.

If you decide that there was any effect at all on interstate commerce, then that is enough to satisfy this element. The effect can be minimal. For example, if a successful extortion of money would prevent the use of those funds to purchase articles which travel through interstate commerce, that would be a sufficient effect on interstate commerce.

The government's claim is that assets taken from the victims were business assets and not purely personal assets. It would not be sufficient to prove this element if the defendant targeted only the personal assets of the victims. Instead, the government must prove that the defendant targeted business assets of the victim which would have been used to purchase articles which

travel through interstate commerce, or which were articles that traveled through interstate commerce and were to be sold for a business purpose by the defendant. For purposes of this statute, a drug dealer's drugs intended for sale and money intended to purchase more drugs count as business assets.

If you decide that interstate commerce would potentially or probably be affected if the defendant had successfully and fully completed his actions, then the element of affecting interstate commerce is satisfied. You do not have to find that interstate commerce was actually affected. However, if the defendant has finished his actions, and done all he intended to do, and you determine there has been no effect on interstate commerce, then you cannot find the defendant guilty.

You do not have to decide whether the effect on interstate commerce was harmful or beneficial to a particular business, or to commerce in general. The government satisfies its burden of proving an effect on interstate commerce if it proves beyond a reasonable doubt any effect, whether it was harmful or not.

The defendant need not have intended or anticipated an effect on interstate commerce. You may find the effect is a natural consequence of his actions. If you find that the

defendant intended to take certain actions – that is, he did the acts charged in the indictment in order to obtain property – and you find those actions have either caused, or would probably cause, an effect on interstate commerce, then you may find the requirements of this element have been satisfied.

If the government has proven beyond a reasonable doubt, all four of these elements as to the count you are considering, then as to that count you must return a verdict of guilty. If the government has failed to prove each of the four elements of extortion under these instructions then you cannot find the defendant guilty of that count under the theory of extortion.

Summary/Counts 3-14

As to each of Counts 3 through 14, if, as to the count you are considering, you find that each of the elements required under these instructions under either the government's theory of robbery or the government's theory of extortion or both has been established by the government with proof beyond a reasonable doubt, then as to the count you are considering you must return a verdict of guilty. If, as to the count you are considering, the government has failed to establish beyond a reasonable doubt either theory under these instructions, then as to the count you are considering you must return a verdict of not guilty.

COUNTS 38 THROUGH 50

18 U.S.C. 924(c) (35-76)

In Counts 38 through 50, the defendant is charged with using or carrying a firearm during and relation to a crime of violence, a drug trafficking crime or both.

The relevant statute on this subject is Title 18, United States Code section 924(c), which provides:

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

Limiting Instruction (35-77)

Under each of these counts, the defendant is charged with knowingly and intentionally carrying or using a firearm during and in relation to (1) the crime of drug trafficking which is charged in Counts 15, 16, 17, 18, 20, 21, 22, 23, 24, and 25 or (2) the crime of obstruction of commerce by robbery, which crimes are charged in Counts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 or (3) the crime of kidnapping which is charged in Counts 36 and 37.

If upon all of the evidence you find that the government has failed to prove the underlying drug trafficking crime or robbery or kidnapping beyond a reasonable doubt, then you will proceed no further on the count you are considering. Each of Counts 38 through 50 are to be considered only if you first find the defendant guilty of the underlying crime of drug trafficking, robbery or kidnapping charged.

In reaching your verdict as to each of Counts 38 through 50, you may consider the evidence of each of Counts 15, 16, 17, 18, 20, 21, 22, 23, 24, 25 and 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, or 14, and 36 and 37 only for the purpose of determining whether

the first element of the count you are considering has been satisfied.

Elements of the Offense (35-78)

The government must prove each of the following elements beyond a reasonable doubt in order to sustain its burden of proving the defendant guilty under Counts 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, or 50:

First, that the defendant committed the drug trafficking crime or the robbery or kidnapping in the count you are considering – a crime for which he may be prosecuted in a court of the United States.

Remember, you must be unanimous as to the specific unlying crime and if you are unable to reach unanimous agreement as to the unlying crime, the government must fail as to this element as to the count you are considering.

Second, that the defendant knowingly used or carried a firearm during and in relation to the underlying crime in the count you are considering.

Commission of the Predicate Crime
(35-79)

The first element the government must prove beyond a reasonable doubt is that the that the defendant committed a drug trafficking crime or crime of violence for which he might be prosecuted in a court of the United States.

Defendant is charged in Counts 15 through 25 of the indictment with committing a crime of possession with intent to distribute a controlled substance. I instruct you that the crime of possession of cocaine base, cocaine, or marijuana with the intent to distribute is a drug trafficking crime. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendant committed the crime of drug trafficking as charged in Counts 15, 16, 17, 18, 20, 21, 22, 23, 24, and/or 25.

Defendant is charged in Counts 3 through 14 with committing a crime of robbery in interference with interstate commerce. I instruct you that robbery in interference with interstate commerce is a crime of violence. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendant committed the crime of robbery in

interference with interstate commerce as charged in Counts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and/or 14.

Defendant is charged in Counts 36 and 37 with kidnapping. I instruct you that kidnapping is a crime of violence. However, it is for you to determine that the government has proven beyond a reasonable doubt that the defendant committed the crime of kidnapping as charged in Counts 36 and 37.

In Furtherance of a Drug Trafficking Crime
Commission of Predicate Crime (35-80)

The second element the government must prove beyond a reasonable doubt is that the defendant knowingly used or carried a firearm during or in relation to the commission of the crime charged in Counts 3 through 18; 20 through 25, and 36 and 37.

Now I will give you more detailed instructions on some of these terms.

1. To establish "use," the government must prove active employment of the firearm during and in relation to the crime charged in a given count. "Active employment" means activities such as brandishing, displaying, bartering, striking with, and most obviously, firing or attempting to fire, a firearm. "Use" also includes a person's reference to a firearm in his possession for the purpose of helping to commit the crime charged in that count. "Use" requires more than mere possession or storage.

2. "Carrying" a firearm includes carrying it on or about one's person.

3. The term “firearm” means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive. The firearm need not be loaded.

4. The term “during and in relation to” means that the firearm must have some purpose or effect with respect to the crime charged in the count; in other words, the firearm must facilitate or further, or have the potential of facilitating or furthering the crime charged in the count, and its presence or involvement cannot be the result of accident or coincidence.

5. If the Defendant carried a firearm to protect himself or intimidate others in the course of engaging in deprivation of rights involving kidnapping or attempt to kidnap, interference with interstate commerce through robbery, or possession with intent to distribute a controlled substance, or if its presence emboldened him to commit the crime, that is sufficient to show that he carried a firearm during and in relation to the crime.

6. An on-duty police officer's mere act of carrying a service weapon in accordance with police policy does not equate with the use, attempted use, or threatened use of a dangerous weapon. This is true even if the officer is engaged in conduct that violates another's constitutional rights — for example, making an arrest at a protest that is subsequently found to violate the First Amendment, or impounding a car in violation of due process. The officer's using or carrying the weapon must be during and in relation to the specified crime, as described above.

7. The term "knowingly" means voluntarily and intentionally, and not because of mistake or accident.

Summary/Counts 38-50

As to each of Counts 38 through 50, if, as to the count you are considering, you find that each of the elements required under these instructions has been established by the government with proof beyond a reasonable doubt, then as to the count you are considering you must return a verdict of guilty. If, as to the count you are considering, the government has failed to establish beyond a reasonable doubt any of the elements required under these instructions, then as to the count you are considering you must return a verdict of not guilty.

COUNT 51

Money Laundering-Financial Transaction
to Conceal Proceeds
18 U.S.C. § 1956(a)(1)(B)(i))

The crime of conducting an illegal financial transaction, as charged in Count 51 of the indictment has four essential elements, which are:

One, on or about July 21, 2005, the defendant conducted a financial transaction, that is, a payment to Garret and Associates, which in any way or degree affected interstate or foreign commerce;

Two, the defendant conducted the financial transaction that involved the proceeds of a robbery or the unlawful distribution of controlled substances;

Three, at the time the defendant conducted the financial transaction, the defendant knew money represented the proceeds of some form of a specified unlawful activity, that is, a Hobbs Act (18 U.S.C. § 1951) robbery or distribution of a controlled substance (cocaine) under Title 21, 18 U.S.C. § 841(a)(i); and

Four, the defendant conducted the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds or intended to promote the carrying on of a specified unlawful activity or both. Remember, the jury must unanimously agree on the purpose of the transaction (that is, was it to "conceal or disguise" or "intended to promote. . .unlawful activity" or both) and, if you cannot reach unanimous agreement on this element, the government must fail as to this element on the count you are considering.

The term “conducts” includes initiating, concluding, or participating in initiating or concluding a transaction.

A “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property.

The term “financial transaction” means a transaction involving a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree, or a transaction which in any way or degree affects interstate or foreign commerce and involves the movement of funds by wire or other means, or involves one or more monetary instruments, or involves the transfer of title to any real property, vehicle, vessel or aircraft.

The term “interstate or foreign commerce” means commerce between any combination of states, territories or possessions of the United States, or between the United States and a foreign country.

The term “monetary instrument” includes, among other things, coin or currency of the United States or any other country, personal checks, traveler’s checks, cashier’s checks, bank checks, money orders, and investment securities or negotiable

instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

The term “proceeds” means any property, or any interest in property, that someone has or retains as profits resulting from the commission of the specified unlawful activity. Proceeds can be any kind of property, not just money.

Summary/Count 51

As to Count 51, if you find that each of the elements required under these instructions has been established by the government with proof beyond a reasonable doubt, then as to that count you must return a verdict of guilty. If, as to Count 51, the government has failed to establish beyond a reasonable doubt any of the elements required under these instructions, then as to Count 51 you must return a verdict of not guilty.

Defining "Aiding and Abetting"

For you to find the defendant guilty of Counts 3 through 51, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is called an aider and abettor.

But for you to find the defendant guilty of Counts 3 through 51 as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

1. First, that the crime that you are considering was committed by someone.

2. Second, that the defendant helped to commit the crime that you are considering or encouraged someone else to commit the crime.

3. And third, that the defendant intended to help commit or encourage the crime that you are considering.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime that you are considering with the intent that the crime be committed.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on that charge. If you have a reasonable doubt about any one of these elements, then you cannot find the defendant guilty of that count as an aider and abettor.

Inferring Required
Mental State

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But, a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

2.04
On or About

(1) Next, I want to say a word about the date mentioned in each count.

(2) Counts 1 through 51 of the indictment charge that crimes occurred “on or about” certain dates or “in or about” certain months. The government does not have to prove that the crime happened on that exact date. But the government must prove that the crime happened reasonably close to that date.

2.06
Knowingly

The word "knowingly," as that term is used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty of the crimes set out in the indictment. The defendant is on trial only for the specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the court to determine.

You are here to determine the guilt or innocence of the accused defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused without regard to any belief you may have about guilt or innocence of any other person or persons.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges -- judges of the facts.

When you go to the jury room you should first select one of your members to act as your presiding juror. The presiding juror will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience. The verdict form will be placed in a folder and handed to you by the Court Security Officer. At any time that you are not deliberating (i.e., when at lunch or during a break in deliberations), the folder and verdict form should be delivered to the Court Security Officer who will deliver it to the courtroom Deputy Clerk for safekeeping.

[EXPLAIN VERDICT]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your presiding juror fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the Court Security Officer who will bring it to my attention. I will then respond as promptly as possible after conferring with

counsel, either in writing or by having you returned to the courtroom so that I can address you orally. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

If you feel a need to see the exhibits which are not being sent to you for further examination, advise the Court Security Officer and the requested exhibits will be delivered to you.

[ANY JURY ALTERNATES NOT ALREADY EXCUSED,
SHOULD BE EXCUSED AT THIS TIME].

You may now retire to begin your deliberations.