

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Case No. \_\_\_\_-cr-\_\_\_\_-JLK

UNITED STATES OF AMERICA,

Plaintiff,

v.

*[DEFENDANT'S NAME]*,

Defendant.

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***/SAMPLE/* JURY INSTRUCTIONS**

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*[SECTION 1.0: INTRODUCTORY INSTRUCTIONS]*

**INSTRUCTION NO. 1.0**

**INTRODUCTION TO THE CASE AND THE TRIAL STRUCTURE**

This criminal case has been brought by the United States Government. I will sometimes refer to the Government as the prosecution. The Government is represented by *[Attorney's Name]*. The defendant, *[Defendant's Name]*, is represented by *[Attorney's Name]*. Sometimes I will refer to the lawyers as “counsel”; that’s just another way of saying lawyer or attorney.

Ms. Abiakam, who is in charge of taking care of you, is my courtroom deputy. Also in the courtroom is my court reporter, who is making stenographic notes of everything that is said, and my law clerk, who assists me in all legal matters.

An Indictment is a description of the charges made by the Government against a defendant; it is not evidence of guilt or anything else. The Indictment against *[Defendant's Name]* contains *[three]* criminal charges in separate counts: Count 1 charges him with *[conspiracy to commit bank robbery in the spring of 2014. Count 2 charges him with committing a bank robbery with a dangerous weapon. Count 3 charges him with a different conspiracy to commit a bank robbery occurring from January to March of 2015. One other person, [Coconspirator's Name], is charged in the Indictment, but he is not on trial here. You may hear evidence about that individual and his alleged involvement in these crimes, but you will not be asked to decide verdicts for him.]*

The Government alleges the following facts in support of each count.

*[Count 1: Conspiracy to Commit Bank Robbery (2014)*

- *Between in or about April 2014 and on or about June 18, 2014, [Coconspirator's Name] and [Defendant's Name] and others conspired to commit Bank Robbery by taking*

*property from Wells Fargo Bank [a bank insured by the Federal Deposit Insurance Corporation].*

- *During the Spring of 2014, [Coconspirator's Name] and [Defendant's Name] met with another member of the conspiracy who worked at Wells Fargo Bank. The third member explained to the others that one of the members would need to access the vault to get the most money from the bank and that they would get more money at a busier branch of the bank.*
- *On or about June 13, 2014, a Black Honda Element was stolen.*
- *On June 17, 2014, around 2:15 p.m., [Coconspirator's Name] and [Defendant's Name] entered the Wells Fargo Bank in Wheat Ridge, Colorado with handguns. They ordered customers and employees to get down on the floor.*
- *At gunpoint, one of the members of the conspiracy ordered the manager to open the vault by threatening harm if his orders were not obeyed. That member produced black plastic garbage bags and ordered the bank employees to place the money inside the vault into the bags. To make the employees move faster, that defendant cycled the slide on his handgun and pointed it at the manager.*
- *While that member of the conspiracy was in the vault, another member was in the lobby area of the bank controlling the other bank employees and customers who had been ordered to the floor. That member kicked one bank employee and pointed his weapon at the employee's head and asked her if she had pushed an alarm button. Customers who entered the bank during the robbery were ordered at gunpoint to the floor.*
- *After putting the money from the vault into the garbage bags, [Coconspirator's Name] and [Defendant's Name] left the bank in the stolen black Honda Element.*

*[Coconspirator's Name] and [Defendant's Name] later divided the over \$600,000 that had been stolen.*

- *On June 17, 2014, the stolen Honda Element was driven to an open space in Adams County, Colorado, about 4.5 miles from the Wells Fargo bank that had been robbed. It was set on fire, and [Coconspirator's Name] and [Defendant's Name] ran from the direction of the burning vehicle and got into a silver Jeep Cherokee.*
- *On or about June 18, 2014, one of the members of the conspiracy delivered to the third member, the Wells Fargo employee, a portion of the proceeds from the bank robbery.*

*Count 2: Armed Bank Robbery*

- *On or about June 17, 2014, [Coconspirator's Name] and [Defendant's Name] committed the bank robbery described above and risked the lives of Wells Fargo Bank employees and others during it by using a dangerous weapon.*

*Count 3: Conspiracy to Commit Bank Robbery (2015)*

- *Between in or about February 2015 and March 18, 2015, [Coconspirator's Name] and [Defendant's Name] conspired to commit Bank Robbery by taking property from a bank insured by the Federal Deposit Insurance Corporation.*
- *On March 3, 2015, [Coconspirator's Name] met with an undercover FBI agent he thought was a person employed as a driver of an armored car company that delivered money to banks. At the meeting, [Coconspirator's Name] and the FBI agent discussed robbing cash delivered by the armored car. One option they talked about was [Coconspirator's Name] and a person he said was his partner robbing a bank shortly after the armored car made a large delivery of cash to a bank. The FBI agent told [Coconspirator's Name] that he would be able to inform him and his partner when a very*

*large deposit was about to be made.*

- *On March 5, 2015, [Coconspirator's Name] gave an undercover FBI agent a cellphone to have secure contact between them while planning the bank robbery. [Coconspirator's Name] advised the FBI agent that he would arrange to have his partner meet him.*
- *On March 9, 2015, the FBI agent met [Coconspirator's Name] and [Defendant's Name] and talked more about planning and carrying out a bank robbery at a bank where the FBI agent would deliver a large amount of cash. [Defendant's Name] advised the FBI agent that he would provide him with another untraceable cellphone to help with planning and carrying out the bank robbery.*
- *On March 11, 2015, [Defendant's Name] met with the FBI agent and told him he did not have the phone yet. They talked about the bank robbery, and [Defendant's Name] promised the FBI agent that mistakes made after a prior robbery would not happen this time. [Defendant's Name] told the FBI agent that [Coconspirator's Name] and another person would go into the bank and rob it while he was in the parking lot of the bank as a lookout. [Coconspirator's Name] arrived at the meeting and the three agreed to meet in the near future to drive around and inspect possible bank locations where a robbery might occur.*
- *Using the phone he had been given, on March 13, 2015, the FBI agent called [Coconspirator's Name] and told him that the next Tuesday or Wednesday [March 17 or 18] might be a good time to rob the bank. On March 13, [Defendant's Name] advised the member of the 2014 conspiracy who was a Wells Fargo employee that "they" were going to rob a bank next week with Julio [the undercover Name of the FBI agent].*
- *On March 15, 2015, [Coconspirator's Name] and [Defendant's Name] met with the FBI*

*agent and drove around areas in Denver to get information on the banks and the area around the banks to prepare to go into the bank and escape after the robbery. The FBI agent gave a sketch of the inside of two specific banks to [Coconspirator's Name]. [Defendant's Name] told the FBI agent he would give him a new phone on March 17, 2015, so the FBI agent could tell [Coconspirator's Name] and [Defendant's Name] the time and location of a large cash deposit to a specific bank. [Coconspirator's Name] and [Defendant's Name] talked to the FBI agent about a code on the cellphone for when the deposit would be made and a code to use if the plan should be cancelled.]*

*[Defendant's Name]* has pleaded not guilty to each count and is presumed innocent. Like the Indictment, his pleas are not evidence. The Government's charges in the Indictment and the defendant's pleas are how a criminal case ends up being decided by a jury. *[Defendant's Name]* may not be found guilty on any count unless all twelve jurors unanimously find that the Government has proved his guilt on that count beyond a reasonable doubt.

The first step in the trial is the selection of jurors. The second step is my reading of the instructions. Then come the opening statements. The Government in its opening statement will explain what evidence it intends to present. Just as the Indictment and *[Defendant's Name]*'s pleas are not evidence, neither is an opening statement. It is a road map to show what lies ahead and what the evidence will be. After the Government's opening statement, *[Defendant's Name]*'s attorney may make an opening statement, but he is not required to make one. Likewise, if made, that opening statement is not evidence, but is meant to lay out the defense against the charges.

The Government presents its evidence first. After the Government's evidence, the defendant may present evidence, but he is not required to do so. This is because *[Defendant's*

*Name]* is presumed innocent, and it is the Government that must prove his individual guilt beyond a reasonable doubt. If the defendant submits evidence, the Government may introduce rebuttal evidence, or evidence intended to contradict his evidence.

After all the evidence on both sides has been presented, the Government and the defense will each be given time for their final arguments. Again, these arguments are not evidence.

Once all of these steps are finished, I will read the instructions to be used in deciding the verdict, and the jury will go to deliberate.

A jury is the judge of the facts in the case—that means the jurors listen to the evidence in the case and apply to that evidence the law as I give it to them. That’s the short and simple of what the job is. The essential requirement for a fair trial is that the jury decide the case based on all the evidence and the law presented at trial, and only the evidence and law presented at trial.

So, from now until when you are permanently excused from this case, you should not talk about it with any witness, the defendant, any of the lawyers, or anyone else at all. Do not read or watch any news reports about this case, including on the internet or any other electronic media. You must not gather, or attempt to gather, any information or otherwise investigate this case or anything related to it.

You should also know that no one who is employed need be concerned about how their employer might react to their service on a jury during trial. There is a federal law that forbids any discrimination of any kind against anyone on account of jury service. If you need a note for your employer, please inform the jury coordinator or my courtroom deputy, and one will be provided to you.



## **INSTRUCTION NO. 1.1**

### **INTRODUCTION TO INSTRUCTIONS AND PROCEDURES FOR TRIAL**

In any trial there are, in effect, two judges. I am one of the judges; you are the other. I am the judge of the law. You, as jurors, are the judges of the facts.

It is my duty to direct the trial and decide what evidence is proper for you to consider. When I reject evidence, I am saying that evidence may not legally be considered by you. I am not telling you what is true or not true. It is your responsibility to decide that based on the evidence that you can legally consider.

It is also my duty to explain to you the law that you must follow and apply in deciding your verdicts. In explaining the law that you must follow, I will first give you some general instructions that apply in every criminal case—for example, instructions about burden of proof and insights that may help you to judge whether to believe a witness. Then, I will give you some specific laws that apply to this case, and finally, I will explain the procedures you should follow when deciding your verdicts. These instructions will be given to you for use during the trial.

As judges of the facts, you must determine the facts from the evidence presented. The evidence consists of the testimony of witnesses, documents and other things allowed into the record as exhibits, and any facts to which the Government and the defendant agree or I say must be accepted as true. You are to consider all the evidence received in this trial and only that evidence. It will be up to you to decide what evidence to believe and how much of any witness's testimony to accept or reject.

At times during the trial, a lawyer may object to a question asked by another lawyer or to an answer by a witness. This means the lawyer is requesting that I make a decision on a specific law. Do not conclude anything from any objections or my rulings on the objections. If I “sustain”

an objection to a question, the witness may not answer it. Do not attempt to guess what answer might have been given if I had allowed the answer. If I “overrule” the objection, the witness will be allowed to answer the question, and you should treat it as any other answer. If I tell you not to consider a particular statement, you may not refer to that statement in your discussions.

When I say “admitted into evidence” or “received into evidence,” I mean that the statement or exhibit may be considered by you in making the decisions you must make at the end of the case. I am not indicating in any way that you must accept it, but only that you may consider it. If I tell you to consider a particular piece of evidence for a specific purpose, you may consider it only for that purpose.

I may have to interrupt the trial at times to confer with the attorneys about the law that should apply. We may talk briefly at the bench. But, if our discussion takes more time, I will excuse you from the courtroom. I will try to avoid such interruptions whenever possible, but please be patient even if the trial seems to be moving slowly because our talks can often save time in the end.

During the course of the trial, I may ask a question of a witness. If I do, that does not mean I have any opinion about the facts in the case. I am only trying to bring out facts that you may consider. From time to time during the trial, I may also direct your attention to these instructions.

Ordinarily, the attorneys will show you all the legally allowed evidence that is necessary for you to decide your verdicts. However, in rare situations, a juror may have a question that is very important for considering a necessary element of the case. In that situation, the juror may write out a question and give it to the courtroom deputy at the next recess. I will then consider that question with the lawyers. If it is a proper and necessary question, it will be asked. If it is

not, I will tell you why and explain why you cannot consider what the answer to the question might be. Please remember that responding to your notes takes time and effort. I usually have to talk the issue over with the attorneys, consider their arguments, and decide the correct answer. In some cases, we might have to do additional research.

If you would like to take notes during the trial, you may. On the other hand, you do not have to take notes. If you decide to take notes, be careful not to get so involved in note taking that you become distracted. Remember that your notes will not necessarily reflect exactly what was said, so you should only use your notes as memory aids. You should not rely on your notes over your independent memory of the evidence. You should also not be overly influenced by the notes of other jurors. If you do take notes leave them in the jury room at night and do not discuss their contents until I send you to decide your verdicts at the end of the trial.

Although the court reporter is making stenographic notes of everything that is said, you *will not* have a typewritten copy of the testimony to use during your discussions. Exhibits admitted into evidence, though, *will* be available to you at that time.

You may not discuss the evidence in this case with each other until you have gone to the jury room to make your decision at the end of the trial. It is important that you wait until all the evidence is presented and you have again heard my instructions before you discuss the case with each other. In other words, keep an open mind and form no opinions until you can consider all the evidence and the instructions together.

During the trial, you will receive all the evidence you legally may consider to decide the case. Gathering any information on your own that you think might be helpful is against the law and violates your oath. Do not do any outside reading on this case, even in dictionaries or a bible, do not attempt to visit any places mentioned in the case, and do not in any other way try to learn

about the case outside the courtroom. Part of my job is to protect you from outside influences. Your job is to limit your decisions to what happens in this courtroom.

I wish I did not have to spend so much time on this topic, but recent events around the United States and recent technologies require me to point out that some common practices and habits many of you enjoy are strictly forbidden for you as jurors. You may not, under any circumstances, have your cell phones, blackberries, smart phones or the like on when court is in session. Whether you are here or away from the court during recess you may not Google, tweet, text message, blog, post or anything else with those gadgets about anything to do with this case. If anyone does, it could cause a mistrial, meaning all of our efforts would have been wasted and we would have to start all over again with a new trial before a new jury. If you were to cause a mistrial by violating these orders, you could have to pay all the costs of this trial and perhaps be punished for contempt of court. What you may do is advise anyone who needs to know, such as family members, employers, employees, schools, teachers, or daycare providers that you are a juror in a case and the judge has ordered you not to discuss it until you have reached a verdict and been discharged from the case. At that point you will be free to discuss this case or search for any information about it to your heart's delight.

Fairness to all concerned means that all of us connected with this case must deal with the same information and with nothing other than the same information. Your decision in this case must be made solely on the evidence presented at the trial.

## **INSTRUCTION NO. 1.2**

### **DUTY TO FOLLOW INSTRUCTIONS**

In judging the facts of the case as jurors, it is your sworn duty to follow the law as I explain it to you.

You may not ignore or give special attention to any one instruction or question the wisdom or correctness of any rule I tell you about. You must not substitute or follow your own idea or opinion as to what the law is or should be. It is your duty to apply the law as I explain it to you, regardless of the result.

In your discussions you must make sure no one else on the jury ignores the instructions or attempts to decide the case on anything other than the law that is given to you by me and the evidence that has been presented in this trial. You must remember that we are all committed to equal justice under the law. Matters of race, religious belief, color, nationality, gender, and sexual orientation have no place in this process. To the best of your ability you are to judge others as you would want others to judge you under the law I give you. The very heart of justice is that all apply the same law to the same evidence and leave our personal desires out of it.

You should not read these instructions or anything else I may have said or done as any suggestion as to what your verdicts should be. That is completely up to you.

It is also your duty to base your verdicts only on the evidence, without prejudice or sympathy. That is the promise you make and the oath you take.

### INSTRUCTION NO. 1.3

#### **PRESUMPTION OF INNOCENCE—BURDEN OF PROOF—REASONABLE DOUBT**

The Indictment against *[Defendant's Name]* is not evidence of guilt. The defendant is presumed by the law to be innocent. The law does not require *[Defendant's Name]* to prove his innocence or present any evidence at all. As to each count, the Government has the burden of proving he is guilty beyond a reasonable doubt, and if it does not, you must find *[Defendant's Name]* not guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. It is only required that the Government's proof remove any reasonable doubt of the defendant's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and unbiased consideration of all the evidence in the case. It is a doubt based on the evidence and not on a hunch, a guess, or a whim.

If, based on your consideration of the evidence, you are firmly convinced that *[Defendant's Name]* is guilty of the crime charged, you should find him guilty. If on the other hand, you think there is a real possibility that the Government did not prove his guilt, you must give him the benefit of the doubt and find him not guilty.

## **INSTRUCTION NO. 1.4**

### **EVIDENCE—DEFINED**

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

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allow into evidence, anything the defendant and the Government agree to, and the facts that I judicially notice. Judicial notice is when I accept into evidence well-known facts such as time, date and place, or legal matters like existing Government regulations. Judicial notice may not happen in this trial.

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

During the trial, I may not let you hear the answers to some of the questions that the lawyers ask. I may also rule that you cannot see some of the exhibits that the lawyers want you to see. And sometimes I may order you to ignore things that you saw or heard. I may strike things from the record, which means you cannot consider that piece of evidence. Do not even think about it. Do not guess what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

## **INSTRUCTION NO. 1.5**

### **EVIDENCE—DIRECT AND CIRCUMSTANTIAL—INFERENCES**

Generally speaking, there are two types of evidence. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, a chain of facts which point to the existence or non-existence of other facts.

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

An inference is a conclusion that reason and common sense may lead you to make based on facts which have been proved. While you must consider only the evidence in this case, you can make reasonable inferences from the testimony and exhibits, inferences you think are justified by common experience.

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



**INSTRUCTION NO. 1.6**  
**CREDIBILITY OF WITNESSES**

It is your job to decide whether the Government has proved *[Defendant's Name]*'s guilt beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true.

You are the only judges of the credibility or "believability" of each witness and the weight to be given to the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testify in this case. This includes the testimony of the defendant, if he chooses to testify.

You should think about the testimony of each witness you hear and decide whether you believe all or any part of what each witness has to say and how important that testimony is. In making that decision, I suggest that you ask yourself a few questions: Did the witness seem to be honest? Did the witness have any reason not to tell the truth? Did the witness have a personal interest in the outcome of this case? Did the witness have any relationship with either the Government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he or she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? When weighing the conflicting testimony, you should consider whether the conflict has to do with a significant fact or with an unimportant detail. And you should keep in mind that an innocent failure to remember is not uncommon.

If the defendant testifies, his testimony should be weighed and his credibility evaluated in the same way as that of any other witness.

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

**INSTRUCTION NO. 1.7**

**IMPEACHMENT BY PRIOR INCONSISTENCIES**

You may hear the testimony of witnesses who, before this trial, made statements that are different from their testimony here in court.

These earlier statements will be brought to your attention only to help you decide on the credibility of these witnesses. You cannot use the earlier statements as proof of anything else.

You can only use them as one way of evaluating the witnesses' testimony here in court.

## **INSTRUCTION NO. 1.8**

### **DEFENDANT'S CHOICE ON TESTIFYING**

The defendant, *[Defendant's Name]*, has the right to testify or not testify and this is a basic right the law respects and protects. If the defendant chooses not to testify, you cannot consider his decision as evidence of guilt. The Constitution of the United States grants to a defendant the right to remain silent and that right is strongly protected. That means the right not to testify, so you cannot use the fact that a defendant does not take the witness stand and testify or call any witnesses as proof that he is guilty. The burden is always on the Government to prove beyond a reasonable doubt each and every significant part of each and every charge, and that burden never shifts to the defendant. If the defendant chooses to testify, you must judge him using the same standards of credibility as you do any other witness. If the defendant chooses not to testify, you may not hold that against him in any way.

## **INSTRUCTION NO. 1.9**

### **ACCOMPLICE TESTIMONY**

An accomplice is someone who joined with another person in committing a crime, willingly and with the same purpose. The Government will likely call as one of its witnesses an alleged accomplice and member of the conspiracy, *[Accomplice's Name]*. The Government has entered into a plea agreement with him, agreeing to fewer charges against him and asking for a lesser sentence. Plea bargaining is lawful, and the rules of this court specifically allow it.

An alleged accomplice and member of the conspiracy, including one who has entered into a plea agreement with the Government, can still testify. The testimony of an alleged accomplice and member of the conspiracy may even by itself support a guilty verdict. You should listen to this type of testimony with caution and weigh it with great care. You should never convict a defendant based on the unsupported testimony of an alleged accomplice, unless you believe that testimony beyond a reasonable doubt. The fact that an accomplice has entered a guilty plea is not evidence of the guilt of any other person.

## **INSTRUCTION NO. 1.10**

### **INFORMANT TESTIMONY**

An informant is someone who provides evidence against someone else for a personal reason or advantage. Just as with an accomplice, the testimony of an informant alone may by itself support a guilty verdict. This is true even if it is not supported by other evidence, but only if you believe it beyond a reasonable doubt. You must weigh an informant's testimony with greater care than the testimony of an ordinary witness. You must decide whether the informant's testimony has been affected by his or her self-interest, by an agreement he or she has with the Government, by his or her own interest in the outcome of the case, or by prejudice against the defendant.

## **INSTRUCTION NO. 1.11**

### **EXPERT WITNESS TESTIMONY**

Scientific, technical, or other specialized knowledge may assist you in understanding the evidence or in finding a fact to be true or not true. A witness who has special knowledge, skill, experience, training, or education, may testify and state his or her opinion based on that background.

You do not have to accept expert opinions. You should consider opinion testimony just as you consider other testimony in this trial. Give opinion testimony as much weight as you think it deserves, considering the education and experience of the witness, the reasons given for the opinion, and other evidence in the trial.

**INSTRUCTION NO. 1.12**

**JURY'S RECOLLECTION CONTROLS**

If any reference by me or by the lawyers to testimony or exhibits does not match your memory of that evidence, it is your memory that should control during your discussions with the other jurors and not my statements or statements of the lawyers. You are the only judges of the evidence in this case.



*[SECTION 2.0: INSTRUCTIONS FOR USE DURING TRIAL (e.g., LIMITING INSTRUCTIONS)]*

**INSTRUCTION NO. 2.0**

**CHARTS AND SUMMARIES**

Charts or summaries that are not received in evidence are known as demonstratives, while charts or summaries that are received in evidence are exhibits.

The only purpose of a demonstrative chart or summary is to help explain the evidence in the case. The demonstrative is not evidence itself and does not prove any fact.

Some charts or summaries, however, are evidence because they accurately and reliably summarize complex or voluminous evidence in a manner that may assist you in understanding that evidence. Such a summary or chart exhibit is only as valid and reliable as the underlying evidence it summarizes and is not independent evidence on its subject matter.

*[SECTION 3.0: SUBSTANTIVE INSTRUCTIONS]*

**INSTRUCTION NO. 3.0**

**INTRODUCTION TO THE CHARGED CRIMES**

*[Defendant's Name]* has been charged in the indictment with *[three counts]* of alleged crimes. Each count charges a separate crime, so you should consider each count, and the evidence related to it, separately. The fact that you may find *[Defendant's Name]* guilty or not guilty of one of the counts should not control your verdict for any other crime charged.

In order for the Government to prove that *[Defendant's Name]* committed the alleged crimes, it must prove the elements of each crime beyond a reasonable doubt. I will now tell you what those elements are for each count.

### **INSTRUCTION NO. 3.1**

#### ***[COUNT 1: CONSPIRACY TO COMMIT BANK ROBBERY (2014)]***

*[[Defendant's Name] is charged in Count 1 with violating 18 United States Code, Section 371. This law makes it a crime for a person to conspire with another person or persons to break the laws of the United States, which includes bank robbery of a federally insured institution.*

*To find [Defendant's Name] guilty of the crime alleged in Count 1, you must be convinced that the Government has proved each of the following elements beyond a reasonable doubt:*

*First: Between in or about April 2014 and on or about June 18, 2014, [Defendant's Name] agreed with at least one other person to commit Bank Robbery;*

*Second: At least one member of the conspiracy engaged in at least one overt act furthering the conspiracy's purpose;*

*Third: [Defendant's Name] knew that the purpose of the conspiracy was to rob a bank through the use of force and violence or by intimidation;*

*Fourth: [Defendant's Name] knowingly and voluntarily participated in the conspiracy;*

*Fifth: There was interdependence among the members of the conspiracy; that is the members, in some way, intended to act together to help carry out a common, illegal goal.*

#### ***Conspiracy—Agreement***

*A conspiracy is an agreement between two or more persons to carry out an illegal purpose. It is a kind of "partnership in crime" in which each member is the agent or partner of every other member. Once a person is a member of a conspiracy, he is legally responsible for the other members' actions carrying out the conspiracy, even if he was not there or did not know what the other members were doing. An agreement to break the law can be inferred by the way the parties act and the facts of the case. Likewise, you may infer that an accused person is a*

*knowing and voluntary member of a conspiracy when he or she acts to help the conspiracy's purpose. But the fact people may have known each other, may have acted similarly, and/or may have gotten together and talked about common goals and interests does not alone prove that there is a conspiracy.*

*The evidence in the case does not have to show that the members entered into any stated or formal agreement. And it is not necessary that the evidence show that the members stated to each other what their purpose was or any details, or how the purpose was going to be carried out. In order to prove that there was a conspiracy, the evidence must show beyond a reasonable doubt that the members in some way, or through some plan, stated or unstated, came to an understanding with each other to try to carry out an illegal plan they all had.*

### **Overt Acts**

*The Government must prove that at least one member of the conspiracy carried out at least one overt act. An overt act is an act done to help the conspiracy. The overt act itself does not have to be illegal. A legal act may be an overt act of a conspiracy if it was done to help the conspiracy. The Government does not have to prove that each member of the conspiracy personally did one overt act. The Government only has to prove that at least one of the members of the conspiracy, including members of the conspiracy whom the Government has not charged with crimes, did at least one overt act to help the conspiracy.*

### **Membership in Conspiracy**

*If you conclude the Government proved beyond a reasonable doubt that there was a conspiracy, then you have to decide whether [Defendant's Name] was a member of that conspiracy, meaning that he took part in the conspiracy with knowledge of its illegal purpose and to help its illegal purpose. You cannot base whether [Defendant's Name] was a member of*

*the conspiracy on the acts or statements of other members of the conspiracy. You can only consider [Defendant's Name]'s acts and statements. He cannot be tied to the acts or statements of other members until the Government has proved that a conspiracy existed and that he was one of its members. The fact that [Defendant's Name] knew members of the conspiracy or spent time with them is not enough. However, you may decide there was a conspiracy from [Defendant's Name]'s actions and other indirect evidence showing that the members worked together.*

### ***Interdependence***

*To be a member of the conspiracy, [Defendant's Name] did not have to know all of the other members or all of the details of the conspiracy. He also did not have to know exactly how their goal was going to be carried out. Each member of the conspiracy could perform separate and different acts. For [Defendant's Name] to be a member of the conspiracy, however, the Government must prove beyond a reasonable doubt that he was aware of the common purpose of the conspiracy and willingly took part in order to help that purpose. In other words, while [Defendant's Name] did not have to be part of all the acts or statements by the other members of the conspiracy, the acts or statements must be interdependent so that each member of the conspiracy depends upon the acts and statements of the other members of the conspiracy to make the conspiracy succeed.*

### ***Extent of Participation***

*How big of a role [Defendant's Name] played in the conspiracy is not relevant to whether he is guilty or not guilty. A person may be convicted as member of the conspiracy even though he plays a minor part in the conspiracy.*

### ***Unanimity of Theory***

*Verdicts must be unanimous, meaning that each and every one of you agrees on each and*

*every verdict. Count 1 of the indictment accuses [Defendant's Name] and [Coconspirator's Name] of committing several overt acts to help the conspiracy. Based on the Second element above, the Government does not have to prove all of these different acts for you to return a guilty verdict on Count 1.*

*In order to return a guilty verdict, all twelve of you must agree that at least one of the members of the conspiracy committed at least one of the acts listed AND must agree which specific act of the listed acts [Defendant's Name] and/or the other members of the conspiracy committed.]*

## INSTRUCTION NO. 3.2

### ***[COUNT 2: ARMED BANK ROBBERY]***

*[[Defendant's Name] is charged in Count 2 with a violation of 18 United States Code, Section 2113[a] and [d] and Section 2. This law makes it a crime for a person to rob a bank insured by the federal Government through the use of force and violence or intimidation and the use of a dangerous weapon that puts the lives of bank employees or others in jeopardy or to have aided and abetted another person to do so.*

*To find [Defendant's Name] guilty of Armed Bank Robbery, you must be convinced that the Government has proved each of the following elements beyond a reasonable doubt:*

*First: On or about June 17, 2014, [Defendant's Name] did knowingly, by the use of force and violence, or by intimidation;*

*Second: Take from the person or presence of another;*

*Third: Money belonging to or in the care, custody control, management or possession of Wells Fargo Bank;*

*Fourth: The monies and deposits of Wells Fargo Bank were then insured by the Federal Deposit Insurance Corporation;*

*Fifth: During the commission of the above acts, the lives of Wells Fargo Bank employees or others were put in jeopardy by the bank robber[s] by the use of a dangerous weapon;*

*or;*

*[Defendant's Name] did aid and abet another person who the Government proved had committed Armed Bank Robbery based on the five elements above.*

*The term "dangerous weapon" means [1] an object that could cause death or serious bodily injury; or [2] an object that could not cause death or serious bodily injury but [a] is a lot*

*like such an object; or [b] was used in a way that made it seem like it was such an object.*

*If you are convinced that the Government has proved all of these elements beyond a reasonable doubt, you should find [Defendant's Name] guilty of Armed Bank Robbery. If you have a reasonable doubt about any of these elements, then you must find him not guilty.]*



### INSTRUCTION NO. 3.3

#### ***[LESSER INCLUDED CRIME—BANK ROBBERY]***

*[If you all agree that [Defendant's Name] is not guilty of Armed Bank Robbery, or if after all reasonable efforts, you cannot agree on a verdict for that crime, then you must decide whether he is guilty or not guilty of Bank Robbery. The difference between these two crimes is that, to convict a person of Bank Robbery, the Government does not have to prove the Fifth element noted in Instruction No. 3.2—that the lives of Wells Fargo Bank employees or others were put in jeopardy by the use of a dangerous weapon by the bank robber[s]. This Fifth element is an element of the Armed Bank Robbery but not an element of Bank Robbery.*

*For you to find [Defendant's Name] guilty of Bank Robbery, the Government must prove each of the following elements beyond a reasonable doubt:*

*First: On or about June 17, 2014, [Defendant's Name] did knowingly, by the use of force and violence, or by intimidation;*

*Second: Take from the person or presence of another;*

*Third: Money belonging to or in the care, custody, control, management or possession of Wells Fargo Bank;*

*Fourth: The monies and deposits of Wells Fargo Bank were then insured by the Federal Deposit Insurance Corporation;*

*or;*

*[Defendant's Name] did aid and abet another person who the Government proved committed Bank Robbery based on the four elements above.*

*If you are convinced that the Government has proved all of these elements beyond a reasonable doubt, you should find [Defendant's Name] guilty of Bank Robbery. If you have a reasonable doubt about any of these elements, then you must find him not guilty.]*

### **INSTRUCTION NO. 3.4**

#### ***[COUNT 3: CONSPIRACY TO COMMIT BANK ROBBERY (2015)]***

*[[Defendant's Name] is charged in Count 3 with a violation of 18 United States Code, Section 371. This law makes it a crime for a person to conspire with another person or persons to commit a crime against the laws of the United States, in this case Bank Robbery.*

*To find [Defendant's Name] guilty of the crime alleged in Count 3, you must be convinced that the Government has proved each of the following elements beyond a reasonable doubt:*

*First: Between in or about February 2015 and on or about March 18, 2015, [Defendant's Name] agreed with another person to commit a bank robbery;*

*Second: At least one member of the conspiracy engaged in at least one overt act furthering the conspiracy's purpose;*

*Third: [Defendant's Name] knew the essential purpose of the conspiracy, to rob a bank through the use of force and violence or by intimidation;*

*Fourth: [Defendant's Name] knowingly and voluntarily participated in the conspiracy;*

*Fifth: There was interdependence among the members of the conspiracy; that is the members, in some way, intended to act together to help carry out a common, illegal goal.*

*It is not necessary that a bank robbery occurred in order to find [Defendant's Name] guilty of conspiracy to commit bank robbery.*

*The definitions and legal concepts relating to conspiracy described in Instruction No. 3.1 also apply to the conspiracy alleged in Count 3.]*

### INSTRUCTION NO. 3.5

#### ***[AIDING AND ABETTING—ACCOMPLICE LIABILITY]***

*[If you decide that [Defendant's Name] did not personally commit Armed Bank Robbery as described in Instruction No. 3.4 or the lesser crime of Bank Robbery as described in Instruction No. 3.5, he may still be legally responsible for those crimes as an accomplice, known as aiding and abetting. If an accused person aids, abets, counsels, commands, induces or procures another person to commit a crime, then the law holds that person equally responsible for the acts of other individuals just as though the accused person committed the acts himself. Participation in the crime may be proven by indirect evidence and the level of participation by the accused person may be minimal.]*

*In order to be found guilty as an “aider and abettor”, the Government must prove:*

*First: Someone other than [Defendant's Name] committed the charged crime;*

*Second: [Defendant's Name] associated himself with the crime;*

*Third: [Defendant's Name] participated in the crime as in something that he wished to have happen; and*

*Fourth: that he tried through his actions to make the crime successful.*

*To be guilty of aiding and abetting, [Defendant's Name] does not have to do the criminal act, be present when it is done, or know about the details of how it was committed. But, [Defendant's Name] having a general feeling that an illegal act may occur or that a crime is happening is not enough for him to be guilty. Similarly, just being at the scene of a crime and knowing that a crime is being committed are also not enough to find him guilty of aiding and abetting.]*

### **INSTRUCTION NO. 3.6**

#### **ON OR ABOUT**

*[Defendant's Name]* is charged with having committed the crimes “on or about” or “in or about” a certain date. This means that the Government must prove beyond a reasonable doubt that the crimes were committed reasonably near the dates charged.

**INSTRUCTION NO. 3.7**

**“KNOWING”—DEFINED**

The term “knowing,” as used in these instructions to describe the alleged state of mind of *[Defendant’s Name]*, means that he was conscious and aware of his actions, realized what he was doing or what was happening around him, and his actions were not due to ignorance, mistake, or accident.

### **INSTRUCTION NO. 3.8**

#### **PROOF OF KNOWLEDGE OR INTENT**

The intent of a person or the knowledge that a person has at any given time may not usually be proved directly because there is no way of directly seeing the workings of the human mind. In deciding the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other evidence which may help you in deciding that person's knowledge or intent.

You may infer, but do not have to infer, that a person intends for the natural and probable consequences of any acts he knowingly does. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

### INSTRUCTION NO. 3.9

#### CAUTION—CONSIDER ONLY THE CRIME CHARGED

You are here to decide whether the Government has proved beyond a reasonable doubt that *[Defendant's Name]* is guilty of each of the crimes with which he is charged. He is not on trial for any act, conduct, or crime that is not listed as a count in the indictment.

It is not up to you to decide whether anyone who is not on trial in this case should also be charged with crimes. The fact that another person *also* may be guilty is not a defense to a crime.

You should not think about the possible guilt of others as you decide whether the Government has proved *[Defendant's Name]* guilty.



**INSTRUCTION NO. 3.10**

**CAUTION—PUNISHMENT**

If you find [*Defendant's Name*] guilty on one or more of the counts in the Indictment, it will be my duty to decide what his punishment will be. You should not talk or think about the possible punishment in any way while deciding your verdicts.

### **INSTRUCTION NO. 3.11**

#### **MULTIPLE COUNTS**

A separate crime is charged against *[Defendant's Name]* in each count of the Indictment. You must separately consider the evidence against him on each count and return a separate verdict. Your verdict for any count, whether it is guilty or not guilty, should not influence your verdict for any other counts.

*[SECTION 4.0: FINAL INSTRUCTIONS]*

**INSTRUCTION NO. 4.0**

**JURY—PROCEDURES**

After the Government and the defendant have made their closing arguments and I have read you the final instructions, you will be taken to the jury room so you can make your decisions. You will have a copy of the instructions and verdicts form, and any exhibits I allowed will also be in the jury room for you to review.

When you go to the jury room, you must choose one of you to serve as your Presiding Juror. He or she will direct your discussions and speak for you here in court. You will then talk about the case with your fellow jurors to try to reach agreement. You all must completely agree on each verdict, whether it is guilty or not guilty.

Each of you must decide the case for yourself, but only after you have considered all of the evidence, discussed it with the other jurors, and listened to the views of the other jurors. I suggest how you might want to do this in Instruction No. 4.1 “Jury—Deliberations.”

One thing you should do in your discussions is to follow these jury instructions and the verdicts form. Not only will you be more productive if you understand the legal standards, but for a verdict to be valid, you must follow the instructions during your discussions. Remember, you are judges of the facts, but you have to obey your oath to follow the law stated in these instructions. Your talks will be secret. You will never have to explain your verdicts to anyone.

Once again, if you have questions during your discussions, the Presiding Juror should write the message down and give it to the Court Security Officer. I will reply in writing or bring you back into the court to respond to your message. You should never reveal to me, the Court Security Officer, or anyone else not on the jury, where you stand or what your vote might be until

after you have reached your verdicts or I have let you go.

To assist you, we have given you a verdicts form. The Presiding Juror will mark the answer agreed to by each and every juror in the spaces on the verdicts form. Then, the Presiding Juror should date and sign the verdicts form, and the rest of you should sign the form. When you are done, the Presiding Juror should tell the Court Security Officer who is outside the jury room that you have reached your verdicts.

## **INSTRUCTION NO. 4.1**

### **JURY—DELIBERATIONS**

After you have elected your Presiding Juror as Instruction No. 4.0 tells you to, you can move forward as you agree you should. I am not telling you how to proceed, but I make the following suggestions that other juries have found useful. They should help you move forward in an orderly way with each juror fully taking part so that you can arrive at verdicts that are agreeable to each of you.

First, it is the responsibility of the Presiding Juror to encourage good communication and participation by all jurors and to maintain fairness and order. Your Presiding Juror should be able to make your discussions useful even when jurors cannot agree.

Second, the Presiding Juror should let each of you speak and listen before stating his or her own views.

Third, the Presiding Juror should not try to promote or permit anyone else to promote his or her personal opinions by pressuring, intimidating, or bullying others.

Fourth, the Presiding Juror should make certain that the discussions are not rushed to reach a conclusion.

If the Presiding Juror you select does not meet these standards, he or she should willingly step down or should be replaced by a majority vote.

After you select a Presiding Juror you should think about choosing a secretary to tally the votes, to help keep track of who has or hasn't spoken on each issue, to make sure everyone is there during the discussions, and to otherwise help the Presiding Juror.

Some juries are tempted to start by voting on the case right away to "see where we stand." It is better, however, not to vote until you have had a full discussion on the issue,

otherwise you might lock yourself into a certain view before thinking about the other and possibly more reasonable interpretations of the evidence. Experience has also shown that such early votes often cause disruptive, inefficient debate and ineffective decision-making.

Instead, I suggest the Presiding Juror begin your discussions by getting you to create informal rules for how you will proceed. These rules should assure that you will focus on, analyze, and evaluate the evidence fairly and efficiently and that the views of each of you will be heard and considered before any decisions are made. No one should be ignored. You may agree to discuss the case in the order of the questions in the verdicts form or in chronological order or based on the testimony of each witness. Whatever order you choose, it is advisable to be consistent and not jump from one topic to another.

To move the process along in the event you reach a controversial issue, it is wise to pass it temporarily and move on to less controversial ones and then come back to it. You should then continue through each issue in the order you have agreed upon unless a majority of you agrees to change the order.

It is very helpful, for all votes to be taken by secret ballot. This will help you focus on the issues and not be overly influenced by others. Each of you should also consider any disagreement you have with another juror or jurors as an opportunity to improve your decision. You should treat each other with respect. Any differences in your views should be discussed calmly and, if a break is needed for that purpose, it should be taken. As I mentioned at the beginning of this trial, each of you is responsible for making sure that no juror bases a decision on matters that are not evidence.

Each of you should listen carefully and openly to one another before making any judgment. This is sometimes called “active listening” and it means that you should not listen

with only one ear while thinking about a response. Only after you have heard and understood what the other person is saying should you think about a response. Obviously, this means that, unlike TV talk shows, you should try very hard not to interrupt. If one of your members is going on and on, it is the Presiding Juror who should suggest that the point has been made and it is time to hear from someone else.

You each have a right to your own opinion, but you should be open to others. When you focus your attention and best listening skills, others will feel respected and, even while they may disagree, they will respect you. It helps if you are open to the possibility that you might be wrong or at least that you might change your mind about some issues after listening to other views.

Not understanding each other can hurt your efforts. Ask for clarification if you do not understand or if you think others are not talking about the same thing. From time to time the Presiding Juror should set out the items on which you agree and those on which you have not yet agreed.

Even with all your efforts, it is still possible that there may be serious disagreements. If that happens, realize and accept that “getting stuck” is often part of the decision-making process. It is easy to fall into the trap of believing that there is something wrong with someone who is not ready to move on. Thinking that way is not helpful. It can lead to focusing on personalities rather than the issues. It is best to be patient with one another. At such times, moving slower actually ends up being faster. There is a tendency to set deadlines and try to force decisions. Taking a break or more time, however, often helps to shorten the overall process.

Every once in a while, it is a good idea for you all to express your respect for each other and to repeat your commitment to work through any differences. Then, you will most likely decide verdicts that leave each of you satisfied that you have achieved justice.