

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

CASE NO. 08-cr-00440-JLK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID LEE YOUNG,

Defendant.

**JURY INSTRUCTIONS
AND VERDICT FORM**

INSTRUCTION NO. 1

PRELIMINARY INSTRUCTION BEFORE TRIAL

Members of the Jury:

Throughout this trial I will give you detailed guidance on the law and on how you will go about reaching your decision. But now I will explain how the trial will proceed.

This criminal case has been brought by the United States government. I will sometimes refer to the government as the prosecution. The government is represented by an Assistant United States attorney, Richard Hosley, and his colleague, Assistant United States attorney Ryan Bergsieker. The defendant, David Lee Young, is represented by his attorney, Lynn A. Pierce.

The indictment charges the defendant with possession of a firearm and ammunition after having been previously convicted of a felony offense, that is a crime punishable by more than one year imprisonment. The indictment is the description of the charge made by the government against the defendant; it is not evidence of guilt or anything else. The defendant pleaded not guilty and is presumed innocent. He may not be found guilty by you unless all twelve of you unanimously find that the government has proved his guilt beyond a reasonable doubt.

The first step in the trial will be your selection as jurors. The second step is my reading of these instructions to you. Next will be the opening statements.

The government in its opening statement will tell you what evidence it intends to put before you. Just as the indictment is not evidence, neither is the opening statement.

Its purpose is to help you understand what the evidence will be. It is a road map to show you what lies ahead.

After the government's opening statement, the defendant's attorney may make an opening statement or reserve this statement until later or omit it entirely.

Evidence will be presented from which you will have to determine the facts. The evidence will consist of the testimony of the witnesses, documents and other things received into the record as exhibits, and any facts about which the lawyers agree or to which they stipulate.

The government will offer its evidence. After the government's evidence, the defendant's lawyer may present evidence, but she is not required to do so. I remind you that the defendant is presumed innocent and it is the government that must prove the defendant's guilt beyond a reasonable doubt. If the defendant submits evidence, the government may introduce rebuttal evidence. No matter who presents the evidence, however, it will always be entirely up to you to decide what evidence you accept and what evidence you reject.

At times during the trial, a lawyer may make an objection to a question asked by another lawyer, or to an answer by a witness. This means the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections or from my rulings on the objections. 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, treat the answer as any other. If I tell

you not to consider a particular statement, you may not refer to that statement in your later deliberations. Similarly, if I tell you to consider a particular piece of evidence for a specific purpose, you may consider it only for that purpose.

During the course of the trial I may interrupt the proceedings to confer with the attorneys about the rules of law that should apply. Sometimes we will talk briefly, at the bench. But if some of these conferences will take more than a few minutes, 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 conferences often actually save time overall.

You are to consider all the evidence received in this trial. It will be up to you to decide what evidence to believe and how much of any witness's testimony to accept or reject.

After you have heard all the evidence on both sides, the government and the defense will each be given time for their final arguments.

I will then instruct you once again on the rules of law which you are obligated to use in reaching your verdict.

During the course of the trial I may ask a question of a witness. If I do, that does not indicate I have any opinion about the facts in the case but am only trying to bring out testimony that you may consider.

Ordinarily, the attorneys will develop all the relevant evidence that will be necessary for you to reach your verdict. However, in rare situations, a juror may believe a

question is critical to reaching a decision on a necessary element of the case. In that exceptional circumstance, you may write out a question and provide it to the courtroom deputy at the next recess. I will then consider that question with the lawyers to determine if it can be answered. If so, I will ask it. If not, I will explain why.

During the course of the trial, you should not talk with any witness, or with the Defendant, or with any of the lawyers at all. In addition, during the course of the trial you should not talk about the trial with anyone else. Also, you should not discuss the merits of this case among yourselves 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 received and you have again heard my instructions on the controlling rules of law before you deliberate among yourselves. In other words, keep an open mind and form no opinions until you can consider all the evidence and the instructions of law together.

During the course of 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 would be a violation of your oath. Do not engage in any outside reading on this case, even including 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 confine your decisions to what takes place in this courtroom.

I wish I did not have to dwell on this topic, but recent events around the United States and the advent of new technologies require me to point out that some common

practices and habits many of you enjoy are strictly forbidden in your role as jurors. You may not, under any circumstances, have your cell phones, blackberries, iphones or the like on when court is in session. Whether you are here or away from the court during recess you may not “google, twitter, tweet, text message, blog, post” or anything else with those gadgets about or concerning anything to do with this case. To do so 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 be subject to paying all the costs of these proceedings and perhaps 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 investigate anything about it to your heart’s delight.

If during the course of the trial you believe there is anything you need to know, please write down your request and give it to the courtroom deputy. She will give it to me and we will do our best to attend to it.

Fairness to all concerned requires that all of us connected with this case deal with the same information and with nothing other than the same information. The reason for this is that your decision in this case must be made solely on the evidence presented at the trial.

Finally, I note that the court reporter is making stenographic notes of everything

that is said. This is basically to assist any appeals. You will *not* have a typewritten copy or transcript of the testimony available for your use during deliberations. On the other hand, any exhibits admitted at trial will be available to you during your deliberations.

INSTRUCTION NO. 2

NOTE-TAKING BY JURORS

If you would like to take notes during the trial, you may. On the other hand, you are not required to take notes.

If you decide to take notes, be careful not to get so involved in note taking that you become distracted, and remember that your notes will not necessarily reflect exactly what was said, so your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors. If you do take notes leave them in the jury room at night and do not discuss the contents of your notes until you begin deliberations.

INSTRUCTION NO. 3

INTRODUCTION TO THE JURY INSTRUCTIONS

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

It is my duty to preside over the trial and decide what evidence is proper for your consideration. When I exclude 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 rules of law that you must follow and apply in arriving at your verdicts. In explaining the rules of 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 the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts you may return. These instructions will be with you throughout the trial.

INSTRUCTION NO. 4

DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences. However, you should not read into these instructions, or anything else I may have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

It is always your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took.

INSTRUCTION NO. 5

**PRESUMPTION OF INNOCENCE, BURDEN OF PROOF,
AND REASONABLE DOUBT**

I instruct you that you must presume the defendant, David Lee Young, to be innocent of the crime charged. Thus the defendant, although accused of crime in the indictment, begins the trial with a “clean slate” -- with no evidence against him. The indictment, as you already know, is not evidence of any kind. The defendant is, of course, not on trial for any act or crime not contained in the indictment. The law permits nothing but legal evidence presented before you in court to be considered in support of any charge against the defendant. The presumption of innocence alone therefore, is sufficient to acquit any defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

It is not required that the government prove guilt beyond all possible doubt, as there are very few things in this world that we know with absolute certainty. The test is one of reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant’s guilt. A “reasonable doubt” is a doubt based upon common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. Unless the government proves, beyond a reasonable doubt, that the defendant David Young committed each and every element of the offenses charged in the indictment, you must find him not guilty of the offense. If the inference of guilt is stronger than the inference of innocence but not strong enough to be beyond a reasonable doubt, then you must acquit.

INSTRUCTION NO. 6

Stipulations.

The Government and the Defendant, through their respective counsel, have stipulated and agreed that the facts below are proven true and cannot be disproved, disputed or contradicted by either party during trial:

1. On September 26, 2008, the defendant, David Lee Young, was a felon and prohibited person. Young was previously convicted of a felony offense, that is, an offense punishable by more than one year imprisonment. Specifically, Young was convicted of felony unlawful possession of over 1 gram of a schedule 2 controlled substance on July 26, 2007 in Denver, Colorado.

2. The Lorcin, 9 mm firearm, marked Government Exhibit #1, was not manufactured in the State of Colorado. It was manufactured in California. Therefore, it traveled from another state into Colorado (“interstate commerce”), before September 26, 2008.

3. The parties have stipulated in this case that on September 26, 2008, the Lorcin, 9 mm firearm, marked as Government Exhibit #1, was operational and functioned as designed, in that it could expel a projectile by the action of an explosive.

4. The five rounds of Winchester, 9 mm caliber ammunition, and the five rounds of Remington Peters, 9 mm caliber ammunition, marked as Government Exhibit #2, were not manufactured in the State of Colorado. Therefore, the ammunition traveled from another state into Colorado (“interstate commerce”), before September 26, 2008.

5. The Lorcin, 9 mm firearm, marked as Government Exhibit #1, was examined for fingerprints by the Denver Police Department, Forensic Laboratory, Fingerprint Section on January 16, 2009. There were no images observed or developed that contained sufficient quality and quantity of friction ridge detail to be of value for a fingerprint analysis.

INSTRUCTION NO. 7

EVIDENCE—DEFINED

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

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence, the stipulations that the lawyers agreed to, and the facts that I have judicially noticed.

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

During the trial, I 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 disregard things that you saw or heard, or that I struck from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

INSTRUCTION NO. 8

EVIDENCE—DIRECT AND CIRCUMSTANTIAL—INFERENCES

There are, generally speaking, two types of evidence from which you may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts.

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

While you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you feel are justified in the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts which have been proved.

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

INSTRUCTION NO. 9

CREDIBILITY OF WITNESSES

It is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses, including the Defendant, who testify in this case. You should think about the testimony of each witness heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he/she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses? When weighing the conflicting testimony, you should consider whether the discrepancy has to

do with a material fact or with an unimportant detail. And you should keep in mind that innocent misrecollection - like failure of recollection - is not uncommon.

The testimony of the Defendant should be weighed and his credibility evaluated in the same way as that of any other witness.

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

INSTRUCTION NO. 10

[To be given at conclusion of case]

IMPEACHMENT BY PRIOR INCONSISTENCIES

You have heard the testimony of the defendant. You have also heard that, before this trial, he made a statement that may be different from his testimony here in court.

This earlier statement was brought to your attention only to help you decide how believable his testimony in this trial was. You cannot use it as proof of anything else.

You can only use it as one way of evaluating his testimony here in court.

INSTRUCTION NO. 11

IMPEACHMENT BY PRIOR CONVICTION

The testimony of a witness may be discredited or impeached by showing that the witness previously has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years or of a crime of dishonesty or false statement. A prior conviction does not mean that a witness is not qualified to testify, but is merely one circumstance that you may consider in determining the credibility of the witness. You may decide how much weight to give any prior felony conviction or crime of dishonesty that was used to impeach a witness.

INSTRUCTION NO. 12

EXPERT WITNESS

During the trial you will hear the testimony of Detective Holly Kaye will express opinions concerning the fingerprint analysis of the firearm in question. In some cases, such as this one, scientific, technical, or other specialized knowledge may assist you in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training or education, may testify and state an opinion concerning such matters.

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

INSTRUCTION NO. 13

FLIGHT AS EVIDENCE OF CONSCIOUSNESS OF GUILT

Intentional flight by a defendant after he is suspected of the crime for which he is now on trial, may be considered by you in light of all the other evidence in the case.

The burden is upon the government to prove intentional flight. Intentional flight is not alone sufficient to conclude that he is guilty. Flight does not create a presumption of guilt. At most, it may provide the basis for an inference of consciousness of guilt. But flight may not always reflect feelings of guilt. Moreover, feelings of guilt, which are present in many innocent people, do not necessarily reflect actual guilt. In your consideration of the evidence of flight, you should consider that there may be reasons for the defendant's actions that are fully consistent with innocence.

It is up to you as members of the jury to determine whether or not evidence of intentional flight shows a consciousness of guilt and the weight or significance to be attached to any such evidence.

INSTRUCTION NO. 14

"KNOWINGLY" -- DEFINED

The term "knowingly", as used in these instructions to describe the alleged state of mind of the defendant, means that he was conscious and aware of his actions, realized what he was doing or what was happening around him, and did not act because of ignorance, mistake, or accident.

INSTRUCTION NO. 15

CAUTION - CONSIDER ONLY CRIME CHARGED

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

It is not up to you to decide whether anyone who is not on trial in this case should be prosecuted for the crimes charged. The fact that another person *also* may be guilty is no defense to a criminal charge.

The question of the possible guilt of others should not enter your thinking as you decide whether this defendant has been proved guilty of the crimes charged.

INSTRUCTION NO. 16

CAUTION—PUNISHMENT

If you find the defendant guilty, it will be my duty to decide what the punishment will be. You should not discuss or consider the possible punishment in any way while deciding your verdict.

INSTRUCTION NO. 17

**POSSESSION OF A FIREARM BY A CONVICTED FELON 18 U.S.C. §
922(g)(1)**

The defendant is charged in Count 1 of the indictment with a violation of 18 U.S.C. § 922(g)(1). This law makes it a crime for any person who has been previously convicted in any court of a felony to knowingly possess any firearm, in or affecting interstate commerce.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: the defendant knowingly possessed a firearm;

Second: the defendant was convicted of a felony, that is, a crime punishable by imprisonment for a term exceeding one year, before he possessed the firearm; and

Third: before the defendant possessed the firearm, the firearm had moved at some time from one state to another.

The parties have stipulated in this case that Defendant David Lee Young, on September 26, 2008, was a felon and had been previously convicted of a felony punishable by more than one year imprisonment. (*See* Instruction No. 6.)

The parties have also stipulated that the Lorcin, 9 mm firearm, marked Government Exhibit #1, was not manufactured in the state of Colorado. Therefore, it

traveled from another state into Colorado (“interstate commerce”), prior to September 26, 2008. (*See* Instruction No. 6.)

The term “firearm” means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive. The term “firearm” also includes the frame or receiver of any such weapon, or any firearm muffler or firearm silencer, or destructive device. The parties have stipulated in this case that on September 26, 2008, the Lorcin, 9 mm firearm, marked as Government Exhibit #1, was operational and functioned as designed, in that it could expel a projectile by the action of an explosive. (*See* Instruction No. 6.)

The defendant’s knowledge that he was not allowed to possess a firearm is not an element of the offense and need not be proved by the government.

INSTRUCTION NO. 18

**POSSESSION OF AMMUNITION BY A CONVICTED FELON 18 U.S.C. §
922(G)(1)**

The defendant is charged in Count 2 of the indictment with a violation of 18 U.S.C. section 922(g)(1). This law makes it a crime for any person who has been previously convicted in any court of a felony to knowingly possess any ammunition, in or affecting interstate commerce.

To find the defendant guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: the defendant knowingly possessed ammunition;

Second: the defendant was convicted of a felony, that is, a crime punishable by imprisonment for a term exceeding one year, before he possessed the ammunition; and

Third: before the defendant possessed the ammunition, the ammunition had moved at some time from one state to another.

The parties have stipulated in this case that Defendant David Lee Young, on September 26, 2008, was a felon and had been previously convicted of a felony punishable by more than one year imprisonment. (*See* Instruction No. 6.)

The parties have also stipulated that the five rounds of Winchester, 9 mm caliber ammunition, and the five rounds of Remington Peters, 9 mm caliber ammunition,

marked as Government Exhibit #2, were not manufactured in the state of Colorado. Therefore, the ammunition traveled from another state into Colorado (“interstate commerce”), prior to September 26, 2008. (*See* Instruction No. 6.)

“Ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

The defendant’s knowledge that he was not allowed to possess ammunition is not an element and need not be proved by the government.

INSTRUCTION NO. 19

ACTUAL OR CONSTRUCTIVE POSSESSION

The law recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over an object or thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has the power at a given time to exercise dominion or control over an object, either directly or through another person or persons, is then in constructive possession of it.

INSTRUCTION NO. 20

ON OR ABOUT

You will note the indictment charges that the crime was committed on or about September 26, 2008. The government need not prove that the offense occurred on that exact date; but it must prove beyond a reasonable doubt that the defendant committed the crime reasonably near September 26, 2008.

INSTRUCTION NO. 21

IDENTIFICATION TESTIMONY

The government must prove, beyond a reasonable doubt, that the offenses charged in this case were actually committed and that it was the defendant who committed them. Thus, the identification of the defendant as the person who committed the offenses charged is a necessary and important part of the government's case. You should evaluate the credibility of any witness making an identification in the same manner as you would any other witness. You should also consider at least the following questions:

Did the witness have the ability and an adequate opportunity to observe the person who committed the offenses charged? You should consider, in this regard, such matters as the length of time the witness had to observe the person in question, the lighting conditions at that time, the prevailing visibility, the distance between the witness and the person observed, and whether the witness had known or observed the person before.

Is the testimony about an identification made after the commission of the crimes the product of the witness's own recollection? In this regard, you should consider very carefully the circumstances under which the later identification was made, including the manner in which the defendant was presented to the witness for identification and the length of time that elapsed between the crimes and the witness's subsequent

identification.

If, after examining all of the testimony and evidence in this case, you have a reasonable doubt as to the identity of the defendant as the person who committed the offense(s) charged, you must find the defendant not guilty.

INSTRUCTION NO. 22

Jury - Deliberations

After the parties have made their closing arguments and I have instructed you for the final time, a court official will escort you to the jury room so you can begin your deliberations. You will have a copy of the instructions and verdict form that I will have just read, and any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you must elect your Presiding Juror. He or she will preside over your deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether it is guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it with your fellow jurors, and listened to the views of your fellow jurors. I offer some suggestions on how you might do this in the next jury instruction, entitled “Jury - The Deliberations Process.”

One thing you should do in your deliberations is follow these jury instructions and the verdict form. Not only will your deliberations be more productive if you understand the legal principles on which any verdict must be based, but for a verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law stated

in these instructions.

Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you need to communicate with me during your deliberations, the Presiding Juror should write a message 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. Under no circumstances should you reveal to me, the Court Security Officer or anyone else not on the jury where you stand or what your vote might be until you have reached a verdict or I have discharged you.

Please bear in mind that a response takes considerable time and effort. I must first notify the attorneys to return to court. Then I must confer with them, consider their arguments and, decide upon the correct answer. In some instances further research might be required.

A verdict form has been prepared for your convenience. The Presiding Juror will write the unanimous answer of the jury in the space provided on the verdict form. At the conclusion of your deliberations, the Presiding Juror should date and sign the verdict form, and then all the other jurors should sign the verdict form. The Presiding Juror should then advise the Court Security Officer stationed outside the jury room that you have reached a verdict.

INSTRUCTION NO. 23

Jury - The Deliberations Process

Once you have elected your Presiding Juror as directed by the previous instruction, you are free to proceed as you agree is appropriate. Therefore, I am not directing you how to proceed, but I offer the following suggestions that other juries have found helpful so that you can proceed in an orderly fashion, allowing full participation by each juror, and arrive at a verdict that is satisfactory 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 willing and able to facilitate productive discussions even when disagreements and controversy arise.

Second, the Presiding Juror should let each of you speak and be heard before expressing his or her own views.

Third, the Presiding Juror should never attempt to promote nor permit anyone else to promote his or her personal opinions by coercion or intimidation or bullying of others.

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

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

After you select a Presiding Juror you should consider electing a secretary who will tally the votes, help keep track of who has or hasn't spoken on the various issues, make certain that all of you are present whenever deliberations are under way and otherwise assist the Presiding Juror.

Some juries are tempted to start by holding a preliminary vote on the case to "see where we stand." It is most advisable, however, that no vote be taken before a full discussion is had on the issue to be voted on, otherwise you might lock yourself into a certain view before considering alternative and possibly more reasonable interpretations of the evidence. Experience has also shown that such early votes frequently lead to disruptive, unnecessarily lengthy, inefficient debate and ineffective decision-making.

Instead, I suggest the Presiding Juror begin your deliberations by directing the discussion to establishing informal ground rules for how you will proceed. These rules should assure that you will focus upon, analyze and evaluate the evidence fairly and efficiently and that the viewpoints of each of you is 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 presented in the special verdict form or in chronological order or according to the testimony of each witness. Whatever order you select, however, it is advisable to be consistent and not jump from one topic to another.

To move the process of deliberation along in the event you reach a controversial issue, it is wise to pass it temporarily and move on to the 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, but certainly not required of you, that all votes be taken by secret ballot. This will help you focus on the issues and not be overly influenced by personalities. Each of you should also consider any disagreement you have with another juror or jurors as an opportunity for improving the quality of your decision and therefore 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.

Each of you should listen attentively 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 number 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 individual opinion, but you should be open to persuasion. 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.

Misunderstanding can undermine your efforts. Seek 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 reached agreement.

In spite of all your efforts, it is indeed possible that serious disagreements may arise. In that event, recognize 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 toward what may be an emerging decision. Such a belief 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 slower is usually faster. There is a tendency to set deadlines and seek to force decisions. Providing a break or more time and space, however, often helps to shorten the overall process.

You may wish from time to time to express your mutual respect and repeat your resolve to work through any differences. With such a commitment and mutual respect, you will most likely render a verdict that leaves each of you satisfied that you have indeed rendered justice.

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

Case No. 08-cr-00440-JLK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID LEE YOUNG,

Defendant.

VERDICT FORM

COUNT 1

We, the jury, upon our oaths, unanimously find the defendant, DAVID LEE YOUNG, in Count 1 of the indictment:

_____ Not Guilty

_____ Guilty

COUNT 2

We, the jury, upon our oaths, unanimously find the defendant, DAVID LEE
YOUNG, in Count 2 of the indictment:

____ Not Guilty

____ Guilty

PRESIDING JUROR

Dated this ____ day of May, 2009.