

November, 2014

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	2:13-cr-00048
v.	)	
	)	Judge Mark R. Hornak
RAFAEL CABRERA	)	

**COURT’S FINAL INSTRUCTIONS TO THE JURY**

**MEMBERS OF THE JURY:**

1. NOW THAT YOU HAVE HEARD AND SEEN ALL OF THE TESTIMONY AND EVIDENCE PRESENTED IN THIS TRIAL, IT BECOMES MY DUTY, AS JUDGE, TO GIVE YOU INSTRUCTIONS CONCERNING THE LAW APPLICABLE TO THIS CASE. YOU WILL HAVE COPIES OF THESE INSTRUCTIONS WITH YOU IN THE JURY ROOM DURING YOUR DELIBERATIONS, SO TO THE EXTENT THAT YOU ARE TAKING NOTES DON’T FEEL COMPELLED TO TAKE NOTES DURING THESE ORAL INSTRUCTIONS, BUT YOU MAY, IF YOU CHOOSE TO.

2. YOU HAVE TWO DUTIES AS A JURY. YOUR FIRST DUTY IS TO DECIDE THE FACTS OF THIS CASE FROM THE TESTIMONY AND EVIDENCE THAT YOU HAVE HEARD AND SEEN IN COURT DURING THIS TRIAL. THAT IS YOUR JOB AND YOURS ALONE. I PLAY NO PART IN FINDING THE FACTS. YOU SHOULD NOT TAKE ANYTHING I MAY HAVE SAID OR DONE DURING THE TRIAL AS INDICATING WHAT I THINK OF THE EVIDENCE OR WHAT I MIGHT THINK ABOUT WHAT YOUR VERDICT SHOULD BE.

3. DO NOT ATTEMPT TO INTERPRET MY RULINGS ON EVIDENCE AS SOMEHOW INDICATING WHO I BELIEVE SHOULD PREVAIL IN THIS CASE. UPON ALLOWING TESTIMONY OR OTHER EVIDENCE TO BE INTRODUCED OVER THE OBJECTION OF AN ATTORNEY, THE COURT DOES NOT INDICATE ANY OPINION AS TO THE WEIGHT OR EFFECT OF SUCH EVIDENCE. AS STATED BEFORE, YOU THE JURORS ARE THE SOLE JUDGES OF THE CREDIBILITY OF ALL WITNESSES AND THE WEIGHT AND EFFECT OF ALL EVIDENCE.

4. YOUR SECOND DUTY IS TO APPLY THE LAW UPON WHICH I INSTRUCT YOU TO THE FACTS AS YOU FIND THEM TO BE. MY ROLE NOW IS TO EXPLAIN TO YOU THE LEGAL PRINCIPLES THAT MUST GUIDE YOU IN YOUR DECISION. YOU MUST APPLY MY INSTRUCTIONS CAREFULLY. EACH OF THE INSTRUCTIONS IS IMPORTANT, AND YOU MUST APPLY ALL OF THEM. YOU MUST NOT SUBSTITUTE OR FOLLOW YOUR OWN NOTION OR OPINION ABOUT WHAT THE LAW IS OR OUGHT TO BE. YOU MUST APPLY THE LAW THAT I GIVE TO YOU, WHETHER YOU AGREE WITH IT OR NOT. IT WOULD BE A VIOLATION OF YOUR SWORN DUTY AS JURORS TO BASE A VERDICT UPON ANY VIEW OF THE LAW OTHER THAN THAT GIVEN IN THESE INSTRUCTIONS OF THE COURT, JUST AS IT WOULD ALSO BE A VIOLATION OF YOUR SWORN DUTY, AS JUDGES OF THE FACTS, TO BASE A VERDICT UPON ANYTHING OTHER THAN THE PROVEN EVIDENCE IN THE CASE.

5. WHATEVER YOUR VERDICT IS, IT WILL HAVE TO BE UNANIMOUS. ALL OF YOU WILL HAVE TO AGREE ON IT OR THERE WILL BE NO VERDICT. IN THE JURY ROOM YOU ARE TO DISCUSS THE CASE AMONG YOURSELVES, BUT

ULTIMATELY EACH OF YOU WILL HAVE TO MAKE UP YOUR OWN MIND. THIS IS A RESPONSIBILITY THAT EACH OF YOU AS AN INDIVIDUAL HAS AND A RESPONSIBILITY THAT YOU CANNOT AVOID.

6. DURING YOUR DELIBERATIONS, YOU MUST NOT COMMUNICATE WITH OR PROVIDE ANY INFORMATION TO ANYONE BY ANY MEANS ABOUT THIS CASE. YOU MAY NOT USE ANY ELECTRONIC DEVICE OR MEDIA, SUCH AS THE TELEPHONE, A CELL PHONE, SMART PHONE, IPHONE, BLACKBERRY OR COMPUTER, THE INTERNET, ANY INTERNET SERVICE, ANY TEXT OR INSTANT MESSAGING SERVICE, ANY INTERNET CHAT ROOM, BLOG, OR WEBSITE SUCH AS FACEBOOK, MYSPACE, LINKEDIN, YOUTUBE OR TWITTER, TO COMMUNICATE TO ANYONE ANY INFORMATION ABOUT THIS CASE OR TO CONDUCT ANY RESEARCH ABOUT THIS CASE UNTIL I ACCEPT YOUR VERDICT. IN OTHER WORDS, YOU CANNOT TALK TO ANYONE ON THE PHONE, CORRESPOND WITH ANYONE, OR ELECTRONICALLY COMMUNICATE WITH ANYONE ABOUT THIS CASE. YOU CAN ONLY DISCUSS THE CASE IN THE JURY ROOM WITH YOUR FELLOW JURORS DURING DELIBERATIONS.

7. YOU MAY NOT USE THESE ELECTRONIC MEANS TO INVESTIGATE OR COMMUNICATE ABOUT THE CASE BECAUSE IT IS IMPORTANT THAT YOU DECIDE THIS CASE BASED SOLELY ON THE EVIDENCE PRESENTED IN THIS COURTROOM. YOU ARE ONLY PERMITTED TO DISCUSS THE CASE WITH YOUR FELLOW JURORS DURING DELIBERATIONS BECAUSE THEY HAVE SEEN AND HEARD THE SAME EVIDENCE YOU HAVE. IN OUR JUDICIAL SYSTEM, IT IS IMPORTANT THAT YOU

ARE NOT INFLUENCED BY ANYTHING OR ANYONE OUTSIDE OF THIS COURTROOM.

8. PERFORM THESE DUTIES FAIRLY AND IMPARTIALLY. DO NOT ALLOW SYMPATHY, PREJUDICE, FEAR, OR PUBLIC OPINION TO INFLUENCE YOU. YOU SHOULD ALSO NOT BE INFLUENCED BY ANY PERSON'S RACE, COLOR, RELIGION, NATIONAL ANCESTRY, GENDER, BUSINESS, OCCUPATION, OR PROFESSION.

9. DURING THE TRIAL, EACH OF YOU WAS SUPPLIED WITH A NOTEBOOK FOR THE PURPOSE OF TAKING NOTES. YOU SHOULD REMEMBER THAT NOTES TAKEN BY ANY JUROR ARE NOT EVIDENCE IN THE CASE AND MUST NOT TAKE PRECEDENCE OVER YOUR INDEPENDENT RECOLLECTION OF THE TESTIMONY AND EVIDENCE PRESENTED DURING TRIAL. NOTES ARE ONLY AN AID TO YOUR RECOLLECTION AND THEY ARE NOT ENTITLED TO ANY GREATER WEIGHT THAN THAT WHICH THE EVIDENCE ACTUALLY IS. ANY NOTES TAKEN BY ANY JUROR CONCERNING THIS CASE SHOULD NOT BE DISCLOSED TO ANYONE OTHER THAN A FELLOW JUROR.

10. YOU WERE NOT OBLIGATED TO TAKE NOTES. IF YOU DID NOT TAKE NOTES YOU SHOULD NOT BE INFLUENCED BY THE NOTES OF ANOTHER JUROR, BUT YOU SHOULD RELY UPON YOUR OWN RECOLLECTION OF THE EVIDENCE.

11. IF ANY REFERENCE BY THE COURT OR BY COUNSEL TO MATTERS OF TESTIMONY OR EXHIBITS DOES NOT COINCIDE WITH YOUR OWN RECOLLECTION OF THAT EVIDENCE, IT IS YOUR RECOLLECTION WHICH SHOULD CONTROL DURING YOUR DELIBERATIONS AND NOT THE STATEMENTS OF THE COURT OR

OF COUNSEL. YOU ARE THE SOLE JUDGES OF THE EVIDENCE RECEIVED IN THIS CASE.

12. THE WORD "EVIDENCE" HAS BEEN USED EXTENSIVELY IN THIS CASE. YOU MUST MAKE YOUR DECISION IN THIS CASE BASED ONLY ON THE TESTIMONY AND EVIDENCE THAT YOU HEARD AND SAW IN THE COURTROOM. DO NOT LET RUMORS, SUSPICIONS, OR ANYTHING ELSE THAT YOU MAY HAVE SEEN OR HEARD OUTSIDE OF COURT INFLUENCE YOUR DECISION IN ANY WAY.

13. THE EVIDENCE FROM WHICH YOU ARE TO FIND THE FACTS CONSISTS OF THE FOLLOWING:

- (A) THE TESTIMONY OF THE WITNESSES;
- (B) RECORDED CONVERSATIONS, TESTIMONY, DOCUMENTS, PHOTOGRAPHS, AND OTHER THINGS ADMITTED INTO EVIDENCE AS EXHIBITS;
- (C) ANY FACT OR OTHER WITNESS TESTIMONY THAT WAS STIPULATED; THAT IS, FORMALLY AGREED TO BY THE PARTIES; AND
- (D) ANY FACTS THAT HAVE BEEN JUDICIALLY NOTICED -- THAT IS, FACTS WHICH I SAY YOU MAY ACCEPT AS TRUE EVEN WITHOUT OTHER EVIDENCE.

14. THE FOLLOWING ARE NOT EVIDENCE:

- (A) THE INDICTMENT. PLEASE REMEMBER THAT THE INDICTMENT IS SIMPLY THE DESCRIPTION OF THE CHARGE MADE BY THE GOVERNMENT AGAINST MR. CABRERA, BUT IT IS NOT EVIDENCE

THAT HE COMMITTED A CRIME. YOU SHOULD ALSO REMEMBER THAT MR. CABRERA HAS PLEADED NOT GUILTY TO THE CHARGE.

- (B) STATEMENTS AND ARGUMENTS OF THE LAWYERS FOR THE PARTIES IN THIS CASE.
- (C) QUESTIONS BY THE LAWYERS AND QUESTIONS THAT I MIGHT HAVE ASKED.
- (D) OBJECTIONS BY LAWYERS, AND ESPECIALLY INCLUDING OBJECTIONS IN WHICH A LAWYER STATED FACTS.
- (E) ANY TESTIMONY I STRUCK OR TOLD YOU TO DISREGARD.
- (F) TRANSCRIPTS OF AUDIO RECORDINGS ARE NOT EVIDENCE. ONLY THE RECORDINGS THEMSELVES ARE EVIDENCE. TRANSCRIPTS ARE MERELY AIDS FOR YOUR CONVENIENCE.
- (G) ANYTHING YOU MAY HAVE SEEN OR HEARD ABOUT THIS CASE OUTSIDE THE COURTROOM.

15. YOU SHOULD USE YOUR COMMON SENSE IN WEIGHING THE EVIDENCE. CONSIDER IT IN LIGHT OF YOUR EVERY DAY EXPERIENCE WITH PEOPLE AND EVENTS, AND GIVE SUCH EVIDENCE WHATEVER WEIGHT YOU BELIEVE IT DESERVES. IF YOUR EXPERIENCE AND COMMON SENSE TELLS YOU THAT CERTAIN EVIDENCE REASONABLY LEADS TO A CONCLUSION, YOU MAY REACH THAT CONCLUSION.

16. AS I TOLD YOU IN MY PRELIMINARY INSTRUCTIONS, THE RULES OF EVIDENCE CONTROL WHAT CAN BE RECEIVED INTO EVIDENCE. DURING THE TRIAL THE LAWYERS OBJECTED WHEN THEY THOUGHT THAT EVIDENCE WAS

BEING OFFERED THAT WAS NOT PERMITTED BY THE RULES OF EVIDENCE. THESE OBJECTIONS SIMPLY MEANT THAT THE LAWYERS WERE ASKING ME TO DECIDE WHETHER THE EVIDENCE SHOULD BE ALLOWED UNDER THE RULES.

17. YOU SHOULD NOT BE INFLUENCED BY THE FACT THAT AN OBJECTION WAS MADE. IT IS THE DUTY OF THE ATTORNEY ON EACH SIDE OF THE CASE TO OBJECT WHEN THE OTHER SIDE OFFERS TESTIMONY OR OTHER EVIDENCE WHICH THE ATTORNEY BELIEVES IS NOT PROPERLY ADMISSIBLE. YOU SHOULD NOT SHOW PREJUDICE AGAINST AN ATTORNEY OR HIS CLIENT BECAUSE THE ATTORNEY HAS MADE OBJECTIONS. YOU SHOULD ALSO NOT BE INFLUENCED BY MY RULINGS ON OBJECTIONS OR ANY SIDEBAR CONFERENCES YOU MAY HAVE OVERHEARD. WHEN I OVERRULED AN OBJECTION, THE QUESTION WAS ANSWERED OR THE EXHIBIT WAS RECEIVED AS EVIDENCE, AND YOU SHOULD TREAT THAT TESTIMONY OR EXHIBIT LIKE ANY OTHER. WHEN I ALLOWED EVIDENCE FOR A LIMITED PURPOSE ONLY, I INSTRUCTED YOU TO CONSIDER THAT EVIDENCE ONLY FOR THAT LIMITED PURPOSE AND YOU MUST DO THAT.

18. WHEN I SUSTAINED AN OBJECTION, THE QUESTION WAS NOT ANSWERED OR THE EXHIBIT WAS NOT RECEIVED AS EVIDENCE. YOU MUST DISREGARD THE QUESTION OR THE EXHIBIT ENTIRELY. DO NOT THINK ABOUT OR GUESS WHAT THE WITNESS MIGHT HAVE SAID IN ANSWER TO THE QUESTION; DO NOT THINK ABOUT OR GUESS WHAT THE EXHIBIT MIGHT HAVE SHOWN. SOMETIMES A WITNESS MAY HAVE ALREADY ANSWERED BEFORE A LAWYER OBJECTED OR BEFORE I RULED ON THE OBJECTION. IF THAT

HAPPENED AND IF I SUSTAINED THE OBJECTION, YOU MUST DISREGARD THE ANSWER THAT WAS GIVEN.

19. ALTHOUGH THE LAWYERS MAY CALL YOUR ATTENTION TO CERTAIN FACTS OR FACTUAL CONCLUSIONS THAT THEY THOUGHT WERE IMPORTANT, WHAT THE LAWYERS SAID IS NOT EVIDENCE AND IS NOT BINDING ON YOU. IT IS YOUR OWN RECOLLECTION AND INTERPRETATION OF THE EVIDENCE THAT CONTROLS YOUR DECISION IN THIS CASE. ALSO, DO NOT ASSUME FROM ANYTHING I MAY HAVE DONE OR SAID DURING THE TRIAL THAT I HAVE ANY OPINION ABOUT ANY OF THE ISSUES IN THIS CASE OR ABOUT WHAT YOUR VERDICT SHOULD BE.

20. AS I TOLD YOU IN MY PRELIMINARY INSTRUCTIONS, YOU MAY CONSIDER "DIRECT EVIDENCE" AND "CIRCUMSTANTIAL EVIDENCE." YOU MAY USE BOTH TYPES OF EVIDENCE IN REACHING YOUR VERDICT.

21. "DIRECT EVIDENCE" IS SIMPLY EVIDENCE WHICH, IF BELIEVED, DIRECTLY PROVES A FACT. AN EXAMPLE OF "DIRECT EVIDENCE" OCCURS WHEN A WITNESS TESTIFIES ABOUT SOMETHING THE WITNESS KNOWS FROM HIS OR HER OWN SENSES -- SOMETHING THE WITNESS HAS PERSONALLY EXPERIENCED, HAS INDIVIDUALLY SEEN, TOUCHED, HEARD, OR SMELLED.

22. "CIRCUMSTANTIAL EVIDENCE" IS EVIDENCE WHICH, IF BELIEVED, INDIRECTLY PROVES A FACT. IT IS EVIDENCE THAT PROVES ONE OR MORE FACTS FROM WHICH YOU COULD REASONABLY FIND OR INFER THE EXISTENCE OF SOME OTHER FACT OR FACTS. A REASONABLE INFERENCE IS SIMPLY A DEDUCTION OR CONCLUSION THAT REASON, EXPERIENCE, AND COMMON SENSE



LEAD YOU TO MAKE FROM THE EVIDENCE. A REASONABLE INFERENCE IS NOT A SUSPICION OR A GUESS. IT IS A REASONED, LOGICAL DECISION TO FIND THAT A DISPUTED FACT EXISTS ON THE BASIS OF ANOTHER FACT.

23. REMEMBER MY RAIN EXAMPLE -- ALTHOUGH YOU CAN HARDLY SEE OUTSIDE FROM THIS ROOM, IF ONE OR MORE PERSONS WALKED IN WITH A WET TRENCH COAT OR DRIPPING UMBRELLA, IT WOULD BE REASONABLE AND LOGICAL TO CONCLUDE FROM THAT CIRCUMSTANTIAL OR INDIRECT EVIDENCE THAT IT HAD BEEN RAINING OUTSIDE. YOU WOULD NOT HAVE TO FIND THAT IT WAS RAINING, BUT YOU COULD.

24. SOMETIMES DIFFERENT INFERENCES MAY BE DRAWN FROM THE SAME SET OF FACTS. THE GOVERNMENT MAY ASK YOU TO DRAW ONE INFERENCE, AND THE DEFENSE MAY ASK YOU TO DRAW ANOTHER. YOU, AND YOU ALONE, MUST DECIDE WHAT REASONABLE INFERENCES YOU WILL DRAW BASED ON ALL THE EVIDENCE AND YOUR REASON, EXPERIENCE AND COMMON SENSE.

25. YOU SHOULD CONSIDER ALL THE EVIDENCE THAT IS PRESENTED IN THIS TRIAL, DIRECT AND CIRCUMSTANTIAL. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT THAT YOU SHOULD GIVE TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT REQUIRES ONLY THAT YOU WEIGH ALL OF THE EVIDENCE AND BE CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT BEFORE YOU RETURN A VERDICT OF GUILTY. IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE ANY EVIDENCE.

26. YOUR DECISION OF THE FACTS IN THIS CASE SHOULD NOT BE DETERMINED BY THE NUMBER OF WITNESSES TESTIFYING FOR OR AGAINST A PARTY. THE NUMBER OF WITNESSES WHO TESTIFY FOR ONE SIDE OR THE OTHER IS NOT CONTROLLING. YOU MUST CONSIDER ALL OF THE EVIDENCE AND DETERMINE WHAT THE FACTS ARE AND WHETHER THE GOVERNMENT HAS PROVEN ITS CASE AND ALL OF THE ELEMENTS THEREOF, AS I WILL DEFINE THEM, BEYOND A REASONABLE DOUBT.

27. THE WEIGHT OF THE EVIDENCE TO PROVE A FACT DOES NOT NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFIED OR THE QUANTITY OF EVIDENCE THAT WAS PRESENTED. WHAT IS MORE IMPORTANT THAN NUMBERS OR QUANTITY IS HOW BELIEVABLE THE WITNESSES WERE, AND HOW MUCH WEIGHT YOU THINK THEIR TESTIMONY DESERVES.

28. IN ORDER TO ARRIVE AT THE TRUE FACTS, AND DRAW THE REASONABLE AND PROPER INFERENCES THEREFROM, YOU MUST DECIDE WHAT TESTIMONY YOU BELIEVE AND WHAT TESTIMONY YOU DO NOT BELIEVE. YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES. CREDIBILITY REFERS TO WHETHER A WITNESS IS WORTHY OF BELIEF: WAS THE WITNESS TRUTHFUL? WAS THE WITNESS' TESTIMONY ACCURATE? YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR ONLY PART OF IT, OR NONE OF IT.

29. YOU MAY DECIDE WHETHER TO BELIEVE A WITNESS BASED ON HIS OR HER BEHAVIOR AND MANNER OF TESTIFYING, THE EXPLANATIONS THE WITNESS GAVE, AND ALL THE OTHER EVIDENCE IN THE CASE, JUST AS YOU WOULD IN ANY IMPORTANT MATTER WHERE YOU ARE TRYING TO DECIDE IF A

PERSON IS TRUTHFUL, STRAIGHTFORWARD, AND ACCURATE IN HIS OR HER RECOLLECTION. IN DECIDING THE QUESTION OF CREDIBILITY, REMEMBER TO USE YOUR COMMON SENSE, YOUR GOOD JUDGMENT, AND YOUR EXPERIENCE.

30. IN DECIDING WHAT TO BELIEVE, YOU MAY CONSIDER A NUMBER OF FACTORS INCLUDING:

- (A) THE OPPORTUNITY AND ABILITY OF THE WITNESS TO SEE OR HEAR OR KNOW THE THINGS ABOUT WHICH THE WITNESS TESTIFIED;
- (B) THE QUALITY OF THE WITNESS' KNOWLEDGE, UNDERSTANDING, AND MEMORY;
- (C) THE WITNESS' APPEARANCE, BEHAVIOR, AND MANNER WHILE TESTIFYING;
- (D) WHETHER THE WITNESS HAS AN INTEREST IN THE OUTCOME OF THE CASE OR ANY MOTIVE, BIAS, OR PREJUDICE;
- (E) ANY RELATION THE WITNESS MAY HAVE WITH A PARTY IN THE CASE AND ANY EFFECT THE VERDICT MAY HAVE ON THE WITNESS;
- (F) WHETHER THE WITNESS SAID OR WROTE ANYTHING BEFORE TRIAL THAT WAS DIFFERENT FROM THE WITNESS' TESTIMONY IN COURT;
- (G) WHETHER THE WITNESS TESTIMONY WAS CONSISTENT OR INCONSISTENT WITH OTHER EVIDENCE THAT YOU BELIEVE; AND
- (H) ANY OTHER FACTORS THAT BEAR ON WHETHER THE WITNESS SHOULD BE BELIEVED.

31. INCONSISTENCIES OR DISCREPANCIES IN A WITNESS' TESTIMONY OR BETWEEN THE TESTIMONY OF DIFFERENT WITNESSES MAY OR MAY NOT

CAUSE YOU TO DISBELIEVE A WITNESS' TESTIMONY. TWO OR MORE PERSONS WITNESSING AN EVENT MAY SIMPLY SEE OR HEAR IT DIFFERENTLY. MISTAKEN RECOLLECTION, LIKE FAILURE TO RECALL, IS A COMMON HUMAN EXPERIENCE. IN WEIGHING THE EFFECT OF AN INCONSISTENCY, YOU SHOULD ALSO CONSIDER WHETHER IT WAS ABOUT A MATTER OF IMPORTANCE OR AN INSIGNIFICANT DETAIL. YOU SHOULD ALSO CONSIDER WHETHER THE INCONSISTENCY WAS INNOCENT OR INTENTIONAL.

32. YOU ARE NOT REQUIRED TO ACCEPT THE TESTIMONY OF A WITNESS EVEN IF THE TESTIMONY WAS NOT CONTRADICTED AND THE WITNESS WAS NOT IMPEACHED. YOU MAY DECIDE THAT THE WITNESS IS NOT WORTHY OF BELIEF BECAUSE OF THE WITNESS' BEARING AND DEMEANOR, OR BECAUSE OF THE INHERENT IMPROBABILITY OF THE TESTIMONY, OR FOR OTHER REASONS THAT ARE SUFFICIENT TO YOU.

33. IF YOU BELIEVE THAT A WITNESS KNOWINGLY TESTIFIED FALSELY CONCERNING ANY IMPORTANT MATTER, YOU MAY DISTRUST THE WITNESS' TESTIMONY CONCERNING OTHER MATTERS. YOU MAY REJECT ALL OF THE TESTIMONY OR MAY ACCEPT SUCH PARTS OF THE TESTIMONY THAT YOU BELIEVE ARE TRUE AND GIVE IT SUCH WEIGHT AS YOU THINK IT DESERVES.

34. AFTER YOU MAKE YOUR OWN JUDGMENT ABOUT THE BELIEVABILITY OF A WITNESS, YOU CAN THEN ATTACH TO THE TESTIMONY OF THAT WITNESS THE IMPORTANCE OR WEIGHT THAT YOU THINK IT DESERVES.

35. ALTHOUGH THE GOVERNMENT IS REQUIRED TO PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, THE GOVERNMENT IS NOT

REQUIRED TO PRESENT ALL POSSIBLE EVIDENCE RELATED TO THE CASE OR TO PRODUCE ALL POSSIBLE WITNESSES WHO MIGHT HAVE SOME KNOWLEDGE ABOUT THE FACTS OF THE CASE. IN ADDITION, AS I HAVE EXPLAINED, THE DEFENDANT IS NOT REQUIRED TO PRESENT ANY EVIDENCE OR PRODUCE ANY WITNESSES AT ALL.

36. THE DEFENDANT, RAFAEL CABRERA, HAS PLEADED NOT GUILTY TO THE OFFENSE CHARGED. HE IS PRESUMED TO BE INNOCENT. AS I PREVIOUSLY INSTRUCTED YOU, MR. CABRERA STARTED THE TRIAL WITH A CLEAN SLATE, WITH NO EVIDENCE AGAINST HIM. THE PRESUMPTION OF INNOCENCE STAYS WITH THE DEFENDANT UNLESS AND UNTIL THE GOVERNMENT HAS PRESENTED EVIDENCE THAT OVERCOMES THAT PRESUMPTION BY CONVINCING YOU BEYOND A REASONABLE DOUBT THAT MR. CABRERA IS GUILTY OF THE OFFENSE CHARGED. THE PRESUMPTION OF INNOCENCE REQUIRES THAT YOU FIND THE DEFENDANT NOT GUILTY, UNLESS YOU ARE SATISFIED THAT THE GOVERNMENT HAS PROVEN HIS GUILT BEYOND A REASONABLE DOUBT.

37. THE PRESUMPTION OF INNOCENCE MEANS THAT MR. CABRERA HAS NO BURDEN OR OBLIGATION TO PRESENT ANY EVIDENCE AT ALL OR TO PROVE THAT HE IS NOT GUILTY. THE BURDEN OR OBLIGATION OF PROOF IS ON THE GOVERNMENT AT ALL TIMES TO PROVE THAT MR. CABRERA IS GUILTY AND THIS BURDEN STAYS WITH THE GOVERNMENT THROUGHOUT THE TRIAL.

38. IN ORDER FOR YOU TO FIND THAT MR. CABRERA IS GUILTY OF THE OFFENSE CHARGED, THE GOVERNMENT MUST CONVINCING YOU THAT THE DEFENDANT IS GUILTY BEYOND A REASONABLE DOUBT. THAT MEANS THAT

THE GOVERNMENT MUST PROVE EACH AND EVERY ELEMENT OF THE OFFENSE CHARGED BEYOND A REASONABLE DOUBT. A DEFENDANT MAY NOT BE CONVICTED BASED ON SUSPICION OR CONJECTURE, BUT ONLY ON EVIDENCE PROVING GUILT BEYOND A REASONABLE DOUBT.

39. PROOF BEYOND A REASONABLE DOUBT DOES NOT MEAN PROOF BEYOND ALL POSSIBLE DOUBT OR TO A MATHEMATICAL CERTAINTY. POSSIBLE DOUBTS OR DOUBTS BASED ON CONJECTURE, SPECULATION, OR HUNCH ARE NOT REASONABLE DOUBTS. A REASONABLE DOUBT IS A FAIR DOUBT BASED ON REASON, LOGIC, COMMON SENSE, OR EXPERIENCE. IT IS A DOUBT THAT AN ORDINARY REASONABLE PERSON WILL HAVE AFTER CAREFULLY WEIGHING ALL OF THE EVIDENCE, AND IT IS A DOUBT OF THE SORT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT IN MATTERS OF IMPORTANCE IN HIS OR HER OWN LIFE. IT MAY ARISE FROM THE EVIDENCE, OR FROM THE LACK OF EVIDENCE, OR FROM THE NATURE OF THE EVIDENCE.

40. IF, HAVING NOW HEARD ALL THE EVIDENCE, YOU ARE CONVINCED THAT THE GOVERNMENT HAS PROVEN EACH AND EVERY ELEMENT OF THE OFFENSE CHARGED BEYOND A REASONABLE DOUBT, YOU SHOULD RETURN A VERDICT OF GUILTY. HOWEVER, IF YOU HAVE A REASONABLE DOUBT AS TO ONE OR MORE OF THE ELEMENTS OF THE OFFENSE CHARGED, THEN YOU MUST RETURN A VERDICT OF NOT GUILTY.

41. DURING THE TRIAL, YOU HEARD RECORDINGS OF CONVERSATIONS WHICH ALLEGEDLY INVOLVED THE DEFENDANT WHICH WERE MADE WITHOUT

THE KNOWLEDGE OF ALL OF THE PARTIES TO THE CONVERSATIONS. I INSTRUCT YOU THAT THESE RECORDINGS WERE PROPERLY OBTAINED.

42. THE USE OF THIS PROCEDURE TO GATHER EVIDENCE IS LAWFUL AND THE RECORDINGS MAY BE USED BY EITHER PARTY.

43. THESE AUDIO RECORDINGS WERE ADMITTED INTO EVIDENCE AND YOU WERE GIVEN WRITTEN TRANSCRIPTS OF THE RECORDINGS AT THE TIME PRESENTED.

44. KEEP IN MIND THAT THE TRANSCRIPTS THEMSELVES ARE NOT EVIDENCE. THEY WILL BE PROVIDED TO YOU, BUT ONLY AS A GUIDE AND AN AID TO HELP YOU FOLLOW WHAT WAS BEING SAID. THE RECORDINGS THEMSELVES ARE THE EVIDENCE. IF YOU NOTICED ANY DIFFERENCES BETWEEN WHAT YOU HEARD ON THE RECORDINGS AND WHAT YOU READ IN THE TRANSCRIPTS, YOU MUST RELY ON WHAT YOU HEARD, NOT WHAT YOU READ. AND IF YOU COULD NOT HEAR OR UNDERSTAND CERTAIN PARTS OF THE RECORDINGS YOU MUST IGNORE THOSE PORTIONS OF THE TRANSCRIPTS AS FAR AS THOSE PARTS ARE CONCERNED.

45. FURTHER, YOU MUST DECIDE WHO YOU ACTUALLY HEARD SPEAKING IN THE RECORDING.

46. DURING YOUR DELIBERATIONS, YOU WILL BE PROVIDED A LAPTOP COMPUTER TO ASSIST YOU IF YOU CHOOSE TO REVIEW THE AUDIO AND VIDEO RECORDINGS THAT WERE ADMITTED INTO EVIDENCE DURING THE TRIAL AND WHICH HAVE BEEN RECORDED ON A CD FOR YOUR CONVENIENCE. THE LAPTOP DOES NOT HAVE THE CAPABILITY TO CONNECT WITH THE INTERNET AND DOES

NOT CONTAIN ANY OTHER DATA OR INFORMATION THAT IS RELEVANT TO YOUR DELIBERATIONS. USE OF THE LAPTOP IS SOLELY TO REVIEW THE AUDIO AND VIDEO RECORDINGS ON THE CD IF YOU SO CHOOSE TO REVIEW SUCH RECORDINGS. DO NOT USE THE LAPTOP FOR ANY OTHER PURPOSE. DO NOT ATTEMPT TO CONNECT TO THE INTERNET AND DO NOT ATTEMPT TO REVIEW ANY OTHER DATA ON THE LAPTOP. IF YOU HAVE A QUESTION ABOUT THE USE OF THE LAPTOP, PLEASE PREPARE YOUR QUESTION AND PROVIDE IT TO MR. BABIK, JUST AS YOU WOULD SUBMIT ANY OTHER QUESTION.

47. DURING THE TRIAL YOU HEARD TESTIMONY OF WITNESSES AND ARGUMENT BY COUNSEL THAT THE GOVERNMENT DID NOT USE CERTAIN SPECIFIC INVESTIGATIVE TECHNIQUES SUCH AS FINGERPRINT ANALYSIS OR VIDEOTAPE REVIEW. YOU MAY CONSIDER THESE FACTS IN DECIDING WHETHER THE GOVERNMENT HAS MET ITS BURDEN OF PROOF, BECAUSE AS I TOLD YOU, YOU SHOULD LOOK TO ALL OF THE EVIDENCE OR LACK OF EVIDENCE IN DECIDING WHETHER A DEFENDANT IS GUILTY. HOWEVER, THERE IS NO LEGAL REQUIREMENT THAT THE GOVERNMENT USE ANY OF THESE SPECIFIC INVESTIGATIVE TECHNIQUES OR ALL POSSIBLE TECHNIQUES TO PROVE ITS CASE. THERE IS NO REQUIREMENT TO ATTEMPT TO TAKE FINGERPRINTS OR OFFER FINGERPRINT EVIDENCE, OR GATHER ADDITIONAL VIDEOTAPE EVIDENCE.

48. YOUR ONLY CONCERN, AS I HAVE SAID, IS TO DETERMINE WHETHER OR NOT THE EVIDENCE ADMITTED IN THIS TRIAL PROVES THE DEFENDANTS' GUILT BEYOND A REASONABLE DOUBT.



49. YOU WILL ALWAYS BEAR IN MIND THAT THE LAW NEVER IMPOSES UPON A DEFENDANT IN A CRIMINAL CASE THE BURDEN OR DUTY OF CALLING ANY WITNESSES OR PRODUCING ANY EVIDENCE WHATSOEVER.

50. A DEFENDANT IN A CRIMINAL CASE HAS AN ABSOLUTE RIGHT UNDER OUR CONSTITUTION TO NOT TESTIFY.

51. THE GOVERNMENT AND THE DEFENDANT, RAFAEL CABRERA, ARE EQUAL BEFORE THE LAW. NO GREATER WEIGHT SHOULD BE GIVEN TO THE TESTIMONY OF A WITNESS CONNECTED WITH THE GOVERNMENT THAN TO A WITNESS WHO IS NOT.

52. THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO STATE THEIR OWN OPINIONS ABOUT IMPORTANT QUESTIONS IN A TRIAL, BUT THERE ARE EXCEPTIONS TO THESE RULES.

53. IN THIS CASE, YOU HEARD TESTIMONY FROM SPECIAL AGENT DAVID HEDGES. BECAUSE OF HIS KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION IN HIS RESPECTIVE FIELD OF DRUG INVESTIGATIONS, THIS WITNESS WAS PERMITTED TO OFFER CERTAIN OPINIONS AND THE REASONS FOR THOSE OPINIONS. YOU ALSO HEARD OPINION TESTIMONY FROM TWO (2) DEA LAB TECHNICIANS, AND A TECHNICIAN FROM THE ALLEGHENY COUNTY MEDICAL EXAMINERS OFFICE.

54. THE OPINIONS THESE WITNESSES STATED SHOULD RECEIVE WHATEVER WEIGHT YOU THINK APPROPRIATE, GIVEN ALL THE OTHER EVIDENCE IN THE CASE. IN WEIGHING THIS OPINION TESTIMONY YOU MAY CONSIDER THE WITNESS' QUALIFICATIONS, THE REASONS FOR THE WITNESS'

OPINIONS, AND THE RELIABILITY OF THE INFORMATION SUPPORTING THE WITNESS' OPINIONS, AS WELL AS THE OTHER FACTORS DISCUSSED IN THESE INSTRUCTIONS FOR WEIGHING THE TESTIMONY OF WITNESSES. YOU MAY DISREGARD THE OPINIONS ENTIRELY IF YOU DECIDE THAT THE OPINIONS ARE NOT BASED ON SUFFICIENT KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR EDUCATION. YOU MAY ALSO DISREGARD THE OPINIONS IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINIONS ARE NOT SOUND, OR IF YOU CONCLUDE THAT THE OPINIONS ARE NOT SUPPORTED BY THE FACTS SHOWN BY THE EVIDENCE, OR IF YOU THINK THAT THE OPINIONS ARE OUTWEIGHED BY OTHER EVIDENCE.

55. IN GENERAL, LAY WITNESSES ARE NOT PERMITTED TO STATE THEIR PERSONAL OPINIONS ABOUT QUESTIONS IN A TRIAL. HOWEVER, A WITNESS MAY BE ALLOWED TO TESTIFY TO HIS OR HER OPINION IF IT IS RATIONALLY BASED ON THE WITNESS'S PERCEPTION AND IS HELPFUL TO A CLEAR UNDERSTANDING OF THE WITNESS'S TESTIMONY OR TO THE DETERMINATION OF A FACT IN ISSUE.

56. IN THIS CASE, WITNESS LEN PICCINI WAS PERMITTED TO OFFER HIS OPINIONS BASED ON HIS BACKGROUND KNOWLEDGE, EXPERIENCE AND PERCEPTIONS. THE OPINIONS OF THIS WITNESS SHOULD RECEIVE WHATEVER WEIGHT YOU THINK APPROPRIATE, GIVEN ALL THE OTHER EVIDENCE IN THE CASE AND THE OTHER FACTORS DISCUSSED IN THESE INSTRUCTIONS FOR WEIGHING AND CONSIDERING WHETHER TO BELIEVE THE TESTIMONY OF WITNESSES.

57. YOU HAVE ALSO HEARD THE TESTIMONY OF LAW ENFORCEMENT OFFICERS. THE FACT THAT A WITNESS IS EMPLOYED AS A LAW ENFORCEMENT OFFICER DOES NOT MEAN THAT HIS TESTIMONY NECESSARILY DESERVES MORE OR LESS CONSIDERATION OR GREATER OR LESSER WEIGHT THAN THAT OF ANY OTHER WITNESS.

58. AT THE SAME TIME, IT IS QUITE LEGITIMATE FOR DEFENSE COUNSEL TO TRY TO ATTACK THE BELIEVABILITY OF A LAW ENFORCEMENT WITNESS ON THE GROUND THAT HIS TESTIMONY MAY BE COLORED BY A PERSONAL OR PROFESSIONAL INTEREST IN THE OUTCOME OF THE CASE.

59. YOU MUST DECIDE, AFTER REVIEWING ALL THE EVIDENCE, WHETHER YOU BELIEVE THE TESTIMONY OF THE LAW ENFORCEMENT WITNESS OR WITNESSES AND HOW MUCH WEIGHT, IF ANY, IT DESERVES.

60. YOU HAVE HEARD EVIDENCE THAT AVERY JOHNSON IS A MEMBER OF THE CONSPIRACY CHARGED IN THIS CASE. HE HAS ENTERED INTO A PLEA AGREEMENT WITH THE GOVERNMENT AND HOPES TO RECEIVE A SENTENCE REDUCTION RECOMMENDATION FROM THE GOVERNMENT IN EXCHANGE FOR HIS COOPERATION AND TESTIMONY IN THIS CASE.

61. THE TESTIMONY OF MR. JOHNSON WAS RECEIVED IN EVIDENCE AND MAY BE CONSIDERED BY YOU. THE GOVERNMENT IS PERMITTED TO PRESENT THE TESTIMONY OF SOMEONE WHO CONSPIRED WITH THE DEFENDANT, HAS A PLEA AGREEMENT WITH THE PROSECUTION, OR MAY RECEIVE A BENEFIT FROM THE PROSECUTION IN EXCHANGE FOR TESTIFYING, BUT YOU SHOULD CONSIDER THE TESTIMONY OF SUCH A WITNESS WITH GREAT CARE AND CAUTION. IN

EVALUATING SUCH TESTIMONY, YOU SHOULD CONSIDER THIS FACTOR ALONG WITH THE OTHERS I HAVE CALLED TO YOUR ATTENTION. WHETHER OR NOT SUCH TESTIMONY MAY HAVE BEEN INFLUENCED BY ANY PLEA AGREEMENT OR A HOPED-FOR BENEFIT IS FOR YOU TO DETERMINE. YOU MAY GIVE SUCH TESTIMONY THE WEIGHT YOU THINK IT DESERVES.

62. YOU MUST NOT CONSIDER THE GUILTY PLEA OF AVERY JOHNSON AS ANY EVIDENCE OF THE GUILT OF MR. CABRERA. THE DECISION OF THAT PARTICULAR WITNESS TO PLEAD GUILTY WAS A PERSONAL DECISION ABOUT HIS OWN GUILT. SUCH EVIDENCE IS OFFERED ONLY TO ALLOW YOU TO ASSESS THE CREDIBILITY OF THE WITNESS HIMSELF; TO ELIMINATE ANY CONCERN THAT MR. CABRERA HAS BEEN SINGLED OUT FOR PROSECUTION; AND TO EXPLAIN HOW THE WITNESS CAME TO POSSESS DETAILED FIRST-HAND KNOWLEDGE OF THE EVENTS ABOUT WHICH HE TESTIFIED. YOU MAY CONSIDER A WITNESS'S GUILTY PLEA ONLY FOR THESE PURPOSES.

63. YOU HAVE ALSO HEARD EVIDENCE THAT AVERY JOHNSON WAS PREVIOUSLY CONVICTED OF A CRIME OR CRIMES PUNISHABLE BY MORE THAN ONE YEAR IN JAIL. YOU MAY CONSIDER THIS EVIDENCE, ALONG WITH OTHER PERTINENT EVIDENCE, IN DECIDING WHETHER OR NOT TO BELIEVE THE WITNESS AND HOW MUCH WEIGHT TO GIVE TO HIS TESTIMONY.

64. YOU'VE HEARD TESTIMONY AND EVIDENCE THAT IN THE INSTANT INDICTMENT, IT WAS ALLEGED THAT RAFAEL CABRERA DID KNOWINGLY, INTENTIONALLY, AND UNLAWFULLY CONSPIRE WITH PERSONS BOTH KNOWN AND UNKNOWN TO THE GRAND JURY TO DISTRIBUTE AND POSSESS WITH

INTENT TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF A MIXTURE AND SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF HEROIN IN VIOLATION OF FEDERAL LAW. NOW, SOME OF THE PEOPLE WHO MAY HAVE BEEN INVOLVED IN THESE EVENTS ARE NOT PRESENTLY ON TRIAL. THIS DOES NOT MATTER. YOU ARE HERE TO DETERMINE WHETHER THE GOVERNMENT HAS PROVEN THE GUILT OF THE DEFENDANT FOR THE CHARGE IN THE INDICTMENT BEYOND A REASONABLE DOUBT. YOU ARE NOT CALLED UPON TO RETURN A VERDICT AS TO THE GUILT OR INNOCENCE OF ANY OTHER PERSON OR PERSONS. SO, IF THE EVIDENCE IN THE CASE CONVINCES YOU BEYOND A REASONABLE DOUBT OF THE GUILT OF MR. CABRERA FOR THE CRIME CHARGED IN THE INDICTMENT, YOU SHOULD SO FIND, EVEN THOUGH YOU MAY BELIEVE THAT ONE OR MORE OTHER UNINDICTED PERSONS ARE ALSO GUILTY. BUT IF ANY REASONABLE DOUBT REMAINS IN YOUR MINDS AFTER IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE IN THE CASE, IT IS YOUR DUTY TO FIND MR. CABRERA NOT GUILTY, NO MATTER WHAT YOU BELIEVE ABOUT THE INVOLVEMENT OF ANY OTHER PERSON. THERE IS NO REQUIREMENT THAT ALL MEMBERS OF A CONSPIRACY BE CHARGED AND PROSECUTED, OR TRIED TOGETHER IN ONE PROCEEDING. THEREFORE, YOU ARE TO FOCUS SOLELY ON THE TESTIMONY AND EVIDENCE RELATED TO MR. CABRERA.

65. NOR IS THERE ANY REQUIREMENT THAT THE NAMES OF THE OTHER CONSPIRATORS BE KNOWN. AN INDICTMENT CAN CHARGE A DEFENDANT WITH A CONSPIRACY INVOLVING PEOPLE WHOSE NAMES ARE NOT KNOWN, AS LONG AS THE GOVERNMENT CAN PROVE THAT ONE OR BOTH OF THESE DEFENDANTS

CONSPIRED WITH ONE OR MORE OF THEM. WHETHER THEY ARE NAMED OR NOT DOES NOT MATTER.

66. MR. CABRERA DID NOT TESTIFY AND DID NOT PRESENT EVIDENCE IN THIS CASE. A DEFENDANT HAS AN ABSOLUTE CONSTITUTIONAL RIGHT NOT TO TESTIFY OR TO PRESENT ANY EVIDENCE. THE BURDEN OF PROOF REMAINS WITH THE GOVERNMENT THROUGHOUT THE ENTIRE TRIAL AND NEVER SHIFTS TO THE DEFENDANT. A DEFENDANT IS NEVER REQUIRED TO PROVE THAT HE IS INNOCENT. YOU MUST NOT ATTACH ANY SIGNIFICANCE TO THE FACT THAT MR. CABRERA DID NOT TESTIFY. YOU MUST NOT DRAW ANY ADVERSE INFERENCE AGAINST HIM BECAUSE HE DID NOT TAKE THE WITNESS STAND. DO NOT CONSIDER, FOR ANY REASON AT ALL, THE FACT THAT MR. CABRERA DID NOT TESTIFY. DO NOT DISCUSS THAT FACT DURING YOUR DELIBERATIONS OR LET IT INFLUENCE YOUR DECISION IN ANY WAY.

67. MR. CABRERA IS NOT ON TRIAL FOR COMMITTING ANY OTHER ACTS. YOU MAY NOT CONSIDER THE EVIDENCE OF OTHER ACTS AS A SUBSTITUTE FOR PROOF THAT HE COMMITTED THE CRIME CHARGED. YOU MAY NOT CONSIDER SUCH EVIDENCE AS PROOF THAT MR. CABRERA HAS A BAD CHARACTER OR ANY PROPENSITY TO COMMIT CRIMES. SPECIFICALLY, YOU MAY NOT USE SUCH EVIDENCE TO CONCLUDE THAT BECAUSE MR. CABRERA MAY HAVE COMMITTED SOME OTHER ACT, HE MUST ALSO HAVE COMMITTED THE ACTS CHARGED IN THE INDICTMENT.

68. REMEMBER THAT MR. CABRERA IS ON TRIAL HERE ONLY FOR A CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE

HEROIN FROM IN OR AROUND AUGUST 2012, TO ON OR ABOUT JANUARY 10, 2013. DO NOT RETURN A GUILTY VERDICT AGAINST MR. CABRERA UNLESS THE GOVERNMENT HAS PROVEN THE CRIME AS CHARGED IN THE INDICTMENT BEYOND A REASONABLE DOUBT.

69. AS YOU KNOW, THE DEFENDANT, RAFAEL CABRERA, IS CHARGED IN THE APPLICABLE INDICTMENT WITH VIOLATING FEDERAL LAW, SPECIFICALLY WITH CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF HEROIN, FROM IN OR AROUND AUGUST 2012 TO ON OR ABOUT JANUARY 10, 2013. MR. CABRERA HAS ENTERED A PLEA OF NOT GUILTY TO THIS CHARGE IN THAT INDICTMENT. THE GOVERNMENT DOES NOT HAVE TO PROVE WITH CERTAINTY THE EXACT DATE OF THE ALLEGED OFFENSE. IT IS SUFFICIENT IF THE GOVERNMENT PROVES BEYOND A REASONABLE DOUBT THAT THE OFFENSE WAS COMMITTED ON A DATE OR DATES REASONABLY NEAR THE DATES CHARGED.

70. AS I HAVE ALREADY INSTRUCTED YOU, IN CERTAIN INSTANCES EVIDENCE MAY BE ADMITTED ONLY FOR A PARTICULAR PURPOSE AND NOT GENERALLY FOR ALL PURPOSES. YOU HEARD EVIDENCE THAT APPROXIMATELY 700 BRICKS OF HEROIN WERE ALLEGEDLY RECOVERED FROM DEFENDANT ON OR ABOUT FEBRUARY 11, 2013. THE HEROIN TRAFFICKING CONSPIRACY, AS CHARGED IN THE INDICTMENT, EXTENDS ONLY UNTIL JANUARY 10, 2013, WHICH IS APPROXIMATELY ONE MONTH PRIOR TO THIS SEIZURE. THE EVIDENCE OF THE FEBRUARY 11, 2013 SEIZURE OF HEROIN, WHICH WAS SEIZED AFTER THE CHARGED CONSPIRACY HERE ENDED, WAS OFFERED AND ADMITTED INTO

EVIDENCE ONLY IN AN EFFORT TO SHOW THE IDENTITY OF THE DEFENDANT, THE DEFENDANT'S PARTICIPATION IN THE CHARGED CONSPIRACY, TO CORROBORATE THE TESTIMONY OF WITNESSES, AND THAT THE HEROIN TRAFFICKING CONSPIRACY OF WHICH DEFENDANT IS CHARGED WITH BEING A MEMBER TRAFFICKED IN LARGE VOLUMES OF HEROIN. AS WITH ALL OTHER FACTUAL MATTERS IN THIS CASE, YOU AS THE JURY WILL DECIDE WHAT IT WAS THAT HAPPENED, AND WHETHER THE EVIDENCE OFFERED DOES OR DOES NOT TEND TO PROVE THE MATTERS FOR WHICH IT IS OFFERED.

71. YOU MAY NOT, HOWEVER, CONSIDER THE FEBRUARY 11, 2013 SEIZURE OF HEROIN AS PROOF THAT THE CONSPIRACY CHARGED HERE INVOLVED MORE THAN 100 GRAMS OF HEROIN. WHAT I MEAN BY THAT IS THAT YOU CANNOT USE THAT HEROIN ITSELF, OR THE WEIGHT OF THAT HEROIN, AS PART OF ANY CALCULATION TO DETERMINE WHETHER THE CHARGED CONSPIRACY INVOLVED HEROIN AT ALL, OR GREATER THAN 100 GRAMS OF HEROIN. YOU MAY, HOWEVER, CONSIDER THE SUBSTANCE AND QUANTITY SEIZED ON FEBRUARY 11, 2013 IN DETERMINING WHETHER PRIOR AMOUNTS OF HEROIN ALLEGED TO HAVE BEEN DELIVERED DURING THE TIME PERIOD OF THE CONSPIRACY CONTAINED THE AMOUNT OF HEROIN AS CLAIMED BY THE GOVERNMENT.

72. YOU ARE INSTRUCTED THAT, AS A MATTER OF LAW, HEROIN IS A SCHEDULE I CONTROLLED SUBSTANCE, THAT IS, SOME KIND OF PROHIBITED DRUG.



73. IT IS SOLELY FOR YOU, HOWEVER, TO DECIDE WHETHER THE GOVERNMENT HAS PROVED BEYOND A REASONABLE DOUBT THAT MR. CABRERA CONSPIRED TO DISTRIBUTE OR POSSESS WITH THE INTENT TO DISTRIBUTE A MIXTURE OR SUBSTANCE CONTAINING HEROIN.

74. AS I EXPLAINED AT THE BEGINNING OF THIS TRIAL, AN INDICTMENT IS SIMPLY A DESCRIPTION OF THE CHARGE AGAINST A DEFENDANT. IT IS AN ACCUSATION ONLY. AN INDICTMENT IS NOT EVIDENCE OF ANYTHING, AND YOU SHOULD NOT GIVE ANY WEIGHT TO THE FACT THAT RAFAEL CABRERA HAS BEEN INDICTED IN MAKING YOUR DECISION IN THIS CASE.

75. BEFORE I DISCUSS THE ELEMENTS OF THE OFFENSE CHARGED IN THE INDICTMENT, I WANT TO INSTRUCT YOU IN THE MEANING OF THE WORD "AND" WHEN IT IS USED IN STATUTES OR INDICTMENTS.

76. IT IS NOT UNCOMMON THAT A GIVEN CRIMINAL STATUTE WILL PROHIBIT NOT MERELY ONE FORM OF ACTION BUT SEVERAL RELATED FORMS OF ACTION IN WHAT LAWYERS CALL "THE DISJUNCTIVE," THAT IS, SEPARATED BY THE WORD "OR." FOR EXAMPLE, THE FEDERAL DRUG STATUTE, 21 U.S.C. § 841(A)(1), MAKES IT ILLEGAL TO KNOWINGLY OR INTENTIONALLY MANUFACTURE, DISTRIBUTE, OR DISPENSE, OR POSSESS WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DISPENSE, A CONTROLLED SUBSTANCE. THIS STATUTE PROHIBITS SIX DIFFERENT ACTIONS: (1) MANUFACTURING, (2) DISTRIBUTING, (3) DISPENSING, (4) POSSESSING WITH INTENT TO MANUFACTURE, (5) POSSESSING WITH INTENT TO DISTRIBUTE, AND (6) POSSESSING WITH INTENT

TO DISPENSE. ALL SIX OF THESE CRIMES ARE SEPARATED BY THE WORD "OR" IN THE STATUTE.

77. IT IS PERMISSIBLE FOR THE GOVERNMENT TO CHARGE ONE OR MORE OF THESE CRIMES AND TO SEPARATE THEM WITH THE WORD "AND." THIS, HOWEVER, DOES NOT MEAN THAT IF THE GOVERNMENT DOES SO, IT MUST PROVE THAT THE DEFENDANT VIOLATED THE DRUG STATUTE IN ALL SUCH WAYS. IF ONLY ONE OF THOSE ALTERNATIVES IS PROVED BEYOND A REASONABLE DOUBT, THAT IS SUFFICIENT FOR CONVICTION. THUS, FOR EXAMPLE, IF THE EVIDENCE PROVES THAT A DEFENDANT CONSPIRED TO POSSESS WITH THE INTENT TO DISTRIBUTE HEROIN, IT IS IRRELEVANT WHETHER OR NOT HE ALSO CONSPIRED TO DISTRIBUTE IT.

78. I WILL NOW TELL YOU THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED AGAINST THE DEFENDANT IN THE APPLICABLE INDICTMENT.

79. IT CHARGES THAT FROM IN AND AROUND AUGUST 2012, AND CONTINUING THEREAFTER TO ON OR ABOUT JANUARY 10, 2013, IN THE WESTERN DISTRICT OF PENNSYLVANIA AND ELSEWHERE, RAFAEL CABRERA AGREED OR CONSPIRED TOGETHER WITH ONE OR MORE OTHER PERSONS TO DISTRIBUTE AND POSSESS WITH THE INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE, WHICH IN THIS CASE WAS ONE HUNDRED (100) GRAMS OR MORE OF HEROIN.

80. IT IS A FEDERAL CRIME FOR TWO OR MORE PERSONS TO AGREE OR CONSPIRE TO COMMIT ANY OFFENSE AGAINST THE UNITED STATES, EVEN IF THEY NEVER ACTUALLY ACHIEVE THEIR OBJECTIVE. A CONSPIRACY IS A KIND OF CRIMINAL PARTNERSHIP.

81. IN ORDER FOR YOU TO FIND MR. CABRERA GUILTY OF CONSPIRACY TO DISTRIBUTE OR TO POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE, YOU MUST FIND THAT THE GOVERNMENT PROVED BEYOND A REASONABLE DOUBT EACH OF THE FOLLOWING ELEMENTS:

82. FIRST: THAT TWO OR MORE PERSONS AGREED TO DISTRIBUTE AND/OR POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE;

83. SECOND: THAT MR. CABRERA WAS A PARTY TO OR MEMBER OF THAT AGREEMENT; AND

84. THIRD: THAT MR. CABRERA JOINED THE AGREEMENT OR CONSPIRACY KNOWING ITS OBJECTIVE TO DISTRIBUTE OR POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE AND INTENDING TO JOIN TOGETHER WITH AT LEAST ONE OTHER ALLEGED CONSPIRATOR TO ACHIEVE THAT OBJECTIVE; THAT IS, THAT MR. CABRERA AND AT LEAST ONE OTHER ALLEGED CONSPIRATOR SHARED A UNITY OF PURPOSE AND THE INTENT TO ACHIEVE THAT OBJECTIVE.

85. THE INDICTMENT ALLEGES THAT SOME ACT IN FURTHERANCE OF THE OFFENSE CHARGED OCCURRED HERE IN THE WESTERN DISTRICT OF PENNSYLVANIA. THERE IS NO REQUIREMENT THAT THE ENTIRE CONSPIRACY TAKE PLACE HERE IN THE WESTERN DISTRICT OF PENNSYLVANIA. BUT FOR YOU TO RETURN A GUILTY VERDICT, THE GOVERNMENT MUST CONVINCED YOU THAT SOME ACT IN FURTHERANCE OF THE CRIME CHARGED, EITHER THE AGREEMENT, OR ONE OF THE OVERT ACTS, TOOK PLACE HERE IN THE WESTERN DISTRICT OF PENNSYLVANIA.

86. YOU HAVE HEARD ABOUT A NUMBER OF LOCATIONS DURING THIS TRIAL. THOSE IN THE WESTERN DISTRICT OF PENNSYLVANIA ARE AS FOLLOWS: MONROEVILLE, THE NORTH SIDE, OBSERVATORY HILL, THE SOUTH SIDE, GARFIELD, HOMEWOOD, AND LARIMER. ON THE OTHER HAND, CARLISLE, LOVE'S TRUCK STOP, AND HARRISBURG ARE NOT LOCATED IN THE WESTERN DISTRICT OF PENNSYLVANIA.

87. UNLIKE ALL OF THE OTHER ELEMENTS THAT I HAVE DESCRIBED, THIS FACT OF LOCATION IN THE WESTERN DISTRICT ONLY HAS TO BE PROVED BY A PREPONDERANCE OF THE EVIDENCE. THIS MEANS THE GOVERNMENT ONLY HAS TO CONVINCEN YOU THAT IT IS MORE LIKELY THAN NOT THAT PART OF THE CONSPIRACY TOOK PLACE IN THIS DISTRICT.

88. REMEMBER THAT THE GOVERNMENT MUST PROVE ALL OF THE OTHER ELEMENTS I HAVE DESCRIBED, AND WILL DESCRIBE, BEYOND A REASONABLE DOUBT.

89. MOTIVE IS NOT AN ELEMENT OF THE OFFENSES WITH WHICH MR. CABRERA IS CHARGED. PROOF OF BAD MOTIVE IS NOT REQUIRED. FURTHER, PROOF OF BAD MOTIVE ALONE DOES NOT ESTABLISH THAT A DEFENDANT IS GUILTY AND PROOF OF GOOD MOTIVE ALONE DOES NOT ESTABLISH THAT A DEFENDANT IS NOT GUILTY. EVIDENCE OF A DEFENDANT'S MOTIVE MAY, HOWEVER, HELP YOU FIND A DEFENDANT'S INTENT. INTENT AND MOTIVE ARE DIFFERENT CONCEPTS. MOTIVE IS WHAT PROMPTS A PERSON TO ACT. INTENT REFERS ONLY TO THE STATE OF MIND WITH WHICH THE PARTICULAR ACT IS DONE.

90. PERSONAL ADVANCEMENT AND FINANCIAL GAIN, FOR EXAMPLE, ARE MOTIVES FOR MUCH OF HUMAN CONDUCT. HOWEVER, THESE MOTIVES MAY PROMPT ONE PERSON TO INTENTIONALLY DO SOMETHING PERFECTLY ACCEPTABLE WHILE PROMPTING ANOTHER PERSON TO INTENTIONALLY DO AN ACT THAT IS A CRIME.

91. I WILL NOW DEFINE AND EXPLAIN SOME OF THE TERMS USED IN THESE INSTRUCTIONS.

92. TO "POSSESS" A CONTROLLED SUBSTANCE MEANS TO HAVE IT WITHIN A PERSON'S CONTROL. THE GOVERNMENT DOES NOT HAVE TO PROVE THAT A PERSON PHYSICALLY HELD THE CONTROLLED SUBSTANCE, THAT IS, HAD ACTUAL POSSESSION OF IT TO ESTABLISH CONTROL. AS LONG AS THE CONTROLLED SUBSTANCE WAS WITHIN A PERSON'S CONTROL, THAT PERSON POSSESSED IT. CONTROL IS ESTABLISHED IF THE PERSON HAD ACTUAL POSSESSION OF THE CONTROLLED SUBSTANCE OR HAD THE POWER AND INTENTION TO EXERCISE CONTROL OVER IT, EVEN THOUGH IT WAS NOT IN A PERSON'S PHYSICAL POSSESSION - THAT IS, THAT A PERSON HAD THE ABILITY TO TAKE ACTUAL POSSESSION OF THE SUBSTANCE WHEN THAT PERSON WANTED TO DO SO. THIS SUFFICES TO PROVE POSSESSION. POSSESSION MAY BE MOMENTARY OR FLEETING. PROOF OF OWNERSHIP IS NOT REQUIRED.

93. THE LAW ALSO RECOGNIZES THAT POSSESSION MAY BE SOLE OR JOINT. IF ONE PERSON ALONE POSSESSES A CONTROLLED SUBSTANCE, THAT IS SOLE POSSESSION. HOWEVER, MORE THAN ONE PERSON MAY HAVE THE POWER AND INTENTION TO EXERCISE CONTROL OVER A CONTROLLED SUBSTANCE.

THIS IS CALLED JOINT POSSESSION. AS I WILL FURTHER EXPLAIN, IN A CONSPIRACY THE GOVERNMENT IS NOT REQUIRED TO PROVE THAT THE DEFENDANT OR COCONSPIRATOR POSSESSED ANY CONTROLLED SUBSTANCE. BUT PROOF OF POSSESSION OF A CONTROLLED SUBSTANCE MAY BE USED AS EVIDENCE OF THE EXISTENCE OF THE CONSPIRACY.

94. "DISTRIBUTE," AS USED IN THE INDICTMENT, MEANS DELIVER OR TRANSFER POSSESSION OR CONTROL OF A CONTROLLED SUBSTANCE FROM ONE PERSON TO ANOTHER.

95. "DISTRIBUTE" INCLUDES THE SALE OF A CONTROLLED SUBSTANCE BY ONE PERSON TO ANOTHER, BUT DOES NOT REQUIRE A SALE. "DISTRIBUTE" ALSO INCLUDES A DELIVERY OR TRANSFER WITHOUT ANY FINANCIAL COMPENSATION, SUCH AS A GIFT OR TRADE.

96. TO ACT "KNOWINGLY," AS USED IN THE INDICTMENT, MEANS THAT THE PERSON WAS CONSCIOUS AND AWARE THAT HE WAS ENGAGED IN THE ACT CHARGED AND KNEW OF THE SURROUNDING FACTS AND CIRCUMSTANCES THAT MAKE OUT THE OFFENSE. KNOWINGLY DOES NOT REQUIRE THAT MR. CABRERA KNEW THAT THE ACTS CHARGED AND SURROUNDING FACTS AMOUNTED TO A CRIME.

97. TO ACT "INTENTIONALLY," AS USED IN THE INDICTMENT, MEANS TO ACT DELIBERATELY AND NOT BY ACCIDENT. INTENTIONALLY DOES NOT REQUIRE AN INTENT TO VIOLATE THE LAW.

98. THE PHRASE "KNOWINGLY OR INTENTIONALLY," AS USED IN THE INDICTMENT, REQUIRES THE GOVERNMENT TO PROVE BEYOND A REASONABLE

DOUBT THAT MR. CABRERA KNEW THAT WHAT HE CONSPIRED TO DISTRIBUTE OR TO POSSESS WITH INTENT TO DISTRIBUTE WAS A CONTROLLED SUBSTANCE. IN ADDITION, THE GOVERNMENT MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE CONTROLLED SUBSTANCE WAS IN FACT HEROIN AND THAT THE WEIGHT OF THE CONTROLLED SUBSTANCE WAS ONE HUNDRED (100) GRAMS OR MORE. HOWEVER, IF YOU FIND THAT THE GOVERNMENT PROVED BEYOND A REASONABLE DOUBT THAT MR. CABRERA KNEW THAT WHAT HE DISTRIBUTED OR CONSPIRED TO DISTRIBUTE OR WHAT HE POSSESSED WITH INTENT TO DISTRIBUTE WAS A CONTROLLED SUBSTANCE, YOU NEED NOT FIND THAT MR. CABRERA KNEW THAT THE CONTROLLED SUBSTANCE WAS HEROIN OR THE WEIGHT OF ANY PARTICULAR QUANTITY OF THE CONTROLLED SUBSTANCE.

99. IN DECIDING WHETHER MR. CABRERA ACTED "KNOWINGLY OR INTENTIONALLY," YOU MAY CONSIDER EVIDENCE ABOUT WHAT HE SAID, OR DID OR FAILED TO DO, HOW HE ACTED, AND ALL THE OTHER FACTS AND CIRCUMSTANCES SHOWN BY THE EVIDENCE THAT MAY PROVE WHAT WAS IN HIS MIND AT THE RELEVANT TIME.

100. THE FIRST ELEMENT OF THE CRIME OF CONSPIRACY IS THE EXISTENCE OF AN AGREEMENT. THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT TWO OR MORE PERSONS KNOWINGLY AND INTENTIONALLY ARRIVED AT A MUTUAL UNDERSTANDING OR AGREEMENT, EITHER SPOKEN OR UNSPOKEN, TO WORK TOGETHER TO ACHIEVE THE OVERALL OBJECTIVE OF THE CONSPIRACY.

101. THE GOVERNMENT DOES NOT HAVE TO PROVE THE EXISTENCE OF A FORMAL OR WRITTEN AGREEMENT, OR AN EXPRESSLY STATED ORAL AGREEMENT SPELLING OUT THE DETAILS OF THE UNDERSTANDING. THE GOVERNMENT ALSO DOES NOT HAVE TO PROVE THAT ALL THE MEMBERS OF THE CONSPIRACY DIRECTLY MET, OR DISCUSSED AMONG THEMSELVES THEIR UNLAWFUL OBJECTIVE, OR AGREED TO ALL THE DETAILS, OR AGREED AS TO WHAT THE MEANS WERE BY WHICH THE OBJECTIVE WOULD BE ACCOMPLISHED. THE GOVERNMENT IS NOT EVEN REQUIRED TO PROVE THAT ALL THE PEOPLE NAMED IN THE INDICTMENT WERE, IN FACT, PARTIES TO THE AGREEMENT, OR THAT ALL MEMBERS OF THE ALLEGED CONSPIRACY WERE NAMED, OR THAT ALL MEMBERS OF THE CONSPIRACY ARE EVEN KNOWN. WHAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT IS THAT TWO OR MORE PERSONS IN SOME WAY OR MANNER ARRIVED AT SOME TYPE OF AGREEMENT, MUTUAL UNDERSTANDING, OR MEETING OF THE MINDS TO TRY TO ACCOMPLISH A COMMON AND UNLAWFUL OBJECTIVE.

102. YOU MAY CONSIDER BOTH DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE IN DECIDING WHETHER THE PROSECUTION HAS PROVED BEYOND A REASONABLE DOUBT THAT AN AGREEMENT OR MUTUAL UNDERSTANDING EXISTED. YOU MAY FIND THE EXISTENCE OF A CONSPIRACY BASED ON REASONABLE INFERENCES DRAWN FROM THE ACTIONS AND STATEMENTS OF THE ALLEGED MEMBERS OF THE CONSPIRACY, FROM THE CIRCUMSTANCES SURROUNDING THE SCHEME, AND FROM EVIDENCE OF RELATED FACTS AND CIRCUMSTANCES WHICH PROVE THAT THE ACTIVITIES OF



THE PARTICIPANTS IN A CRIMINAL VENTURE COULD NOT HAVE BEEN CARRIED OUT EXCEPT AS THE RESULT OF A PRECONCEIVED AGREEMENT, SCHEME, OR UNDERSTANDING.

103. IF YOU FIND THAT A CRIMINAL AGREEMENT OR CONSPIRACY EXISTED, THEN IN ORDER TO FIND MR. CABRERA GUILTY OF CONSPIRACY YOU MUST ALSO FIND THAT THE GOVERNMENT PROVED BEYOND A REASONABLE DOUBT THAT MR. CABRERA KNOWINGLY AND INTENTIONALLY JOINED THAT AGREEMENT OR CONSPIRACY DURING ITS EXISTENCE. THE GOVERNMENT MUST PROVE THAT MR. CABRERA KNEW THE GOAL OR OBJECTIVE OF THE AGREEMENT OR CONSPIRACY AND VOLUNTARILY JOINED IT DURING ITS EXISTENCE, INTENDING TO ACHIEVE THE COMMON GOAL OR OBJECTIVE AND TO WORK TOGETHER WITH ONE OR MORE OF THE OTHER ALLEGED CONSPIRATORS TOWARD THAT GOAL OR OBJECTIVE.

104. AN ACCUSED'S PRESENCE AT THE SCENE OF A CRIME, HIS ASSOCIATION WITH PERSONS INVOLVED IN A CRIME, AND/OR HIS KNOWLEDGE THAT A CRIME IS BEING COMMITTED ARE NOT ALONE SUFFICIENT TO ESTABLISH THE DEFENDANT'S GUILT. LIKEWISE, AN ACCUSED'S ASSOCIATION WITH PERSONS INVOLVED IN A CRIMINAL ENTERPRISE IS NOT BY ITSELF SUFFICIENT TO PROVE HIS PARTICIPATION OR MEMBERSHIP IN A CRIMINAL ENTERPRISE. THEREFORE, YOU MAY NOT INFER THAT THE DEFENDANT IS A MEMBER OF THE CONSPIRACY MERELY FROM THE FACT THAT HE WAS PRESENT AT THE TIME AND PLACE WHEN THE CONSPIRACY WAS BEING CARRIED ON AND HAD KNOWLEDGE THAT IT WAS BEING CARRIED ON.

105. THE GOVERNMENT NEED NOT PROVE THAT MR. CABRERA KNEW EVERYTHING ABOUT THE CONSPIRACY OR THAT HE KNEW EVERYONE INVOLVED IN IT, OR THAT HE WAS A MEMBER FROM THE BEGINNING. THE GOVERNMENT ALSO DOES NOT HAVE TO PROVE THAT MR. CABRERA PLAYED A MAJOR OR SUBSTANTIAL ROLE IN THE CONSPIRACY.

106. YOU MAY CONSIDER BOTH DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE IN DECIDING WHETHER MR. CABRERA JOINED THE CONSPIRACY, KNEW OF ITS CRIMINAL OBJECTIVE, AND INTENDED TO FURTHER THE OBJECTIVE. EVIDENCE WHICH SHOWS THAT MR. CABRERA ONLY KNEW ABOUT THE CONSPIRACY, OR ONLY KEPT "BAD COMPANY" BY ASSOCIATING WITH MEMBERS OF THE CONSPIRACY, OR WAS ONLY PRESENT WHEN IT WAS DISCUSSED OR WHEN A CRIME WAS COMMITTED, IS NOT SUFFICIENT TO PROVE THAT MR. CABRERA WAS A MEMBER OF THE CONSPIRACY EVEN IF MR. CABRERA APPROVED OF WHAT WAS HAPPENING OR DID NOT OBJECT TO IT. LIKEWISE, EVIDENCE SHOWING THAT MR. CABRERA MAY HAVE DONE SOMETHING THAT HAPPENED TO HELP A CONSPIRACY DOES NOT NECESSARILY PROVE THAT HE JOINED THE CONSPIRACY. YOU MAY, HOWEVER, CONSIDER THIS EVIDENCE, WITH ALL THE OTHER EVIDENCE, IN DECIDING WHETHER THE GOVERNMENT PROVED BEYOND A REASONABLE DOUBT THAT MR. CABRERA JOINED THE CONSPIRACY.

107. TO FIND THAT MR. CABRERA OR A CO-CONSPIRATOR HAD CONSPIRED TO DISTRIBUTE OR POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE, YOU MUST FIND THAT MR. CABRERA OR A CO-

CONSPIRATOR HAD SOME AGREEMENT TO DELIVER OR TRANSFER POSSESSION OR CONTROL OVER A CONTROLLED SUBSTANCE TO SOMEONE ELSE.

108. THE GOVERNMENT IS NOT REQUIRED TO PROVE THAT ANY OF THE MEMBERS OF THE CONSPIRACY WERE SUCCESSFUL IN ACHIEVING ANY OR ALL OF THE OBJECTIVES OF THE CONSPIRACY. YOU MAY FIND MR. CABRERA GUILTY OF CONSPIRACY IF YOU FIND THAT THE GOVERNMENT PROVED BEYOND A REASONABLE DOUBT THE ELEMENTS I HAVE EXPLAINED, EVEN IF YOU FIND THAT THE GOVERNMENT DID NOT PROVE THAT ANY OF THE CONSPIRATORS ACTUALLY DISTRIBUTED A CONTROLLED SUBSTANCE OR POSSESSED A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE IT. CONSPIRACY IS A CRIMINAL OFFENSE SEPARATE FROM THE OFFENSE THAT WAS THE OBJECTIVE OF THE CONSPIRACY; CONSPIRACY IS COMPLETE WITHOUT THE COMMISSION OF THAT OFFENSE.

109. TO PROVE THE CRIME OF CONSPIRACY, THE GOVERNMENT IS NOT REQUIRED TO PROVE THAT ANY OVERT ACTS WERE PERFORMED. UNDER THE LAW, THE AGREEMENT TO COMMIT THE OFFENSE IS ALONE SUFFICIENT TO PROVE A CHARGE OF CONSPIRACY AGAINST A DEFENDANT, IF YOU FIND THAT THAT DEFENDANT INTENTIONALLY BECAME A MEMBER OF THE CONSPIRACY. PROOF OF THE COMMISSION OF OVERT ACTS IS MERELY EVIDENCE FROM WHICH YOU MAY INFER THE EXISTENCE OF THE CONSPIRACY.

110. A CONSPIRACY ENDS WHEN THE OBJECTIVE OF THE CONSPIRACY HAS BEEN ACHIEVED OR WHEN ALL MEMBERS OF THE CONSPIRACY HAVE WITHDRAWN FROM IT. HOWEVER, A CONSPIRACY MAY BE A CONTINUING

CONSPIRACY AND IF IT IS, IT LASTS UNTIL THERE IS SOME AFFIRMATIVE SHOWING THAT IT HAS ENDED OR THAT ALL ITS MEMBERS HAVE WITHDRAWN. A CONSPIRACY MAY BE A CONTINUING ONE IF THE AGREEMENT INCLUDES AN UNDERSTANDING THAT THE CONSPIRACY WILL CONTINUE OVER TIME. ALSO, A CONSPIRACY MAY HAVE A CONTINUING PURPOSE OR OBJECTIVE AND, THEREFORE, MAY BE A CONTINUING CONSPIRACY.

111. EVIDENCE HAS BEEN ADMITTED IN THIS CASE THAT AVERY JOHNSON, WHO IS ALLEGED TO BE A CO-CONSPIRATOR OF MR. CABRERA, DID OR SAID CERTAIN THINGS. THE ACTS OR STATEMENTS OF ANY MEMBER OF A CONSPIRACY ARE TREATED AS THE ACTS OR STATEMENTS OF ALL THE MEMBERS OF THE CONSPIRACY, IF THESE ACTS OR STATEMENTS WERE PERFORMED OR SPOKEN DURING THE EXISTENCE OF THE CONSPIRACY AND TO FURTHER THE OBJECTIVES OF THE CONSPIRACY.

112. THEREFORE, YOU MAY CONSIDER AS EVIDENCE AGAINST MR. CABRERA ANY ACTS DONE OR STATEMENTS MADE BY ANY OTHER MEMBERS OF THE CONSPIRACY, DURING THE EXISTENCE OF AND TO FURTHER THE OBJECTIVES OF THE CONSPIRACY. YOU MAY CONSIDER THESE ACTS AND STATEMENTS EVEN IF THEY WERE DONE AND MADE IN MR. CABRERA'S ABSENCE AND WITHOUT EITHER OF THEIR KNOWLEDGE. AS WITH ALL THE EVIDENCE PRESENTED IN THIS CASE, IT IS FOR YOU TO DECIDE WHETHER YOU BELIEVE THIS EVIDENCE AND HOW MUCH WEIGHT TO GIVE IT.

113. ACTS DONE OR STATEMENTS MADE BY AN ALLEGED CO-CONSPIRATOR BEFORE A DEFENDANT JOINED THE ALLEGED CONSPIRACY MAY

ALSO BE CONSIDERED BY YOU AS EVIDENCE AGAINST THAT DEFENDANT. HOWEVER, ACTS DONE OR STATEMENTS MADE BEFORE THE ALLEGED CONSPIRACY BEGAN OR AFTER IT ENDED MAY ONLY BE CONSIDERED BY YOU AS EVIDENCE AGAINST THE PERSON WHO PERFORMED THAT ACT OR MADE THAT STATEMENT.

114. THE OBJECT OF THE CONSPIRACY CHARGED WAS TO DISTRIBUTE OR POSSESS WITH THE INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE. THE FOCUS OF THE CONSPIRACY CHARGED IS WHETHER THE DEFENDANT AND OTHERS AGREED TO DISTRIBUTE OR POSSESS WITH THE INTENT TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF HEROIN, AND NOT WHETHER ANY SUCH DISTRIBUTION OR POSSESSION WITH THE INTENT TO DISTRIBUTE ACTUALLY OCCURRED.

115. THE ELEMENTS OF POSSESSION WITH THE INTENT TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF HEROIN ARE AS FOLLOWS. THESE INSTRUCTIONS APPLY TO THE CONSPIRACY IN THAT THEY DEFINE WHAT THE GOVERNMENT ALLEGES THE DEFENDANT WAS AGREEING TO DO.

116. FIRST: THAT MR. CABRERA OR A CO-CONSPIRATOR AGREED TO POSSESS A MIXTURE OR SUBSTANCE CONTAINING A CONTROLLED SUBSTANCE;

117. SECOND: THAT THIS POSSESSION WAS KNOWING OR INTENTIONAL;

118. THIRD: THAT MR. CABRERA OR A CO-CONSPIRATOR INTENDED TO DISTRIBUTE THE CONTROLLED SUBSTANCE;

119. FOURTH: THAT THE CONTROLLED SUBSTANCE WAS HEROIN; AND,

120. FIFTH: THAT THE WEIGHT OF THE MIXTURE OR SUBSTANCE CONTAINING A CONTROLLED SUBSTANCE WAS ONE HUNDRED (100) GRAMS OR MORE.

121. THE ELEMENTS OF DISTRIBUTION OF ONE HUNDRED (100) GRAMS OR MORE OF HEROIN ARE AS FOLLOWS. THESE INSTRUCTIONS APPLY TO THE CONSPIRACY IN THAT THEY DEFINE WHAT THE GOVERNMENT ALLEGES THE DEFENDANT IN THE CONSPIRACY WAS AGREEING TO DO.

122. FIRST: THAT MR. CABRERA OR A CO-CONSPIRATOR AGREED TO DISTRIBUTE A MIXTURE OR SUBSTANCE CONTAINING A CONTROLLED SUBSTANCE;

123. SECOND: THAT THIS AGREEMENT TO DISTRIBUTE A CONTROLLED SUBSTANCE WAS KNOWINGLY OR INTENTIONALLY ENTERED INTO;

124. THIRD: THAT THE CONTROLLED SUBSTANCE WAS HEROIN, AND;

125. FOURTH: THAT THE WEIGHT OF THE MIXTURE OR SUBSTANCE CONTAINING THE CONTROLLED SUBSTANCE WAS ONE HUNDRED (100) GRAMS OR MORE.

126. AS EXPLAINED ABOVE, THE GOVERNMENT DOES NOT HAVE TO PROVE THAT MR. CABRERA AGREED TO BOTH POSSESS WITH THE INTENT TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF HEROIN AND ALSO AGREED TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF HEROIN. RATHER, AN AGREEMENT FOR EITHER POSSESSION WITH THE INTENT TO DISTRIBUTE OR FOR DISTRIBUTION OF ONE HUNDRED (100) GRAMS OR MORE OF

HEROIN WILL SUFFICE TO FIND MR. CABRERA GUILTY OF THE CONSPIRACY CHARGE.

127. I HAVE JUST EXPLAINED WHAT THE GOVERNMENT HAS TO PROVE FOR YOU TO FIND MR. CABRERA GUILTY OF THE OFFENSE CHARGED IN THE INDICTMENT -- CONSPIRACY TO DISTRIBUTE AND/OR POSSESS WITH THE INTENT TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF HEROIN. THE LAW ALSO PERMITS THE JURY TO DECIDE WHETHER THE GOVERNMENT HAS PROVEN MR. CABRERA GUILTY OF ANOTHER, LESSER OFFENSE WHICH IS, BY ITS VERY NATURE, NECESSARILY INCLUDED IN THE OFFENSE OF CONSPIRACY TO DISTRIBUTE AND/OR POSSESS WITH THE INTENT TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF HEROIN THAT IS CHARGED IN THE INDICTMENT. THE OFFENSE OF CONSPIRACY TO DISTRIBUTE AND/OR POSSESS WITH THE INTENT TO DISTRIBUTE ONE HUNDRED (100) GRAMS OR MORE OF HEROIN, AS CHARGED IN THE INDICTMENT, NECESSARILY INCLUDES THE LESSER OFFENSE OF CONSPIRACY TO DISTRIBUTE AND/OR POSSESS WITH THE INTENT TO DISTRIBUTE LESS THAN ONE HUNDRED (100) GRAMS OF HEROIN. IN ORDER TO FIND MR. CABRERA GUILTY OF THIS LESSER INCLUDED OFFENSE, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT ALL OF THE ELEMENTS OF THE CONSPIRACY CHARGING THE INVOLVEMENT OF ONE HUNDRED (100) GRAMS OR MORE OF HEROIN, EXCEPT AS TO AMOUNT.

128. THE DIFFERENCE BETWEEN THE OFFENSE CHARGED IN THE INDICTMENT AND THE LESSER OFFENSE IS THAT FOR THE OFFENSE CHARGED IN THE INDICTMENT, THE GOVERNMENT MUST PROVE THAT THE AMOUNT OF

HEROIN INVOLVED IN THE CONSPIRACY WAS ONE HUNDRED (100) GRAMS OR MORE, BUT IT DOES NOT HAVE TO DO SO TO PROVE THE LESSER INCLUDED OFFENSE. RATHER, ANY QUANTITY OF HEROIN, NO MATTER HOW SMALL, WILL SUFFICE FOR THE LESSER INCLUDED OFFENSE, AS LONG AS THE PARTIES AGREED TO DISTRIBUTE THIS HEROIN OR POSSESS WITH THE INTENT TO DISTRIBUTE THE HEROIN.

129. IF YOU FIND UNANIMOUSLY THAT THE GOVERNMENT HAS PROVED BEYOND A REASONABLE DOUBT EACH OF THE ELEMENTS OF THE OFFENSE OF THE CRIME OF CONSPIRACY TO POSSESS WITH THE INTENT TO DISTRIBUTE AND/OR DISTRIBUTION OF ONE HUNDRED (100) GRAMS OR MORE OF A MIXTURE OR SUBSTANCE CONTAINING HEROIN, AS CHARGED IN THE INDICTMENT, THEN YOU SHOULD FIND MR. CABRERA GUILTY OF THAT OFFENSE AND YOUR FOREPERSON SHOULD NOTE "GUILTY" IN THE SPACE PROVIDED ON THE VERDICT FORM FOR THAT OFFENSE. YOUR CONSIDERATION OF THE CHARGE IN THIS CASE IS THEN CONCLUDED, AND YOU SHOULD SIGN AND DATE THE VERDICT FORM, AND SIGNAL THAT YOU HAVE REACHED A VERDICT.

130. HOWEVER, IF YOU FIND UNANIMOUSLY THAT THE GOVERNMENT HAS NOT PROVED BEYOND A REASONABLE DOUBT EACH ELEMENT OF THE OFFENSE OF CONSPIRACY TO POSSESS WITH THE INTENT TO DISTRIBUTE AND/OR DISTRIBUTION OF ONE HUNDRED (100) GRAMS OR MORE OF A MIXTURE OR SUBSTANCE CONTAINING HEROIN, AS CHARGED IN THE INDICTMENT, THEN YOU MUST FIND MR. CABRERA NOT GUILTY OF THAT OFFENSE AND YOUR FOREPERSON SHOULD NOTE "NOT GUILTY" IN THE SPACE PROVIDED FOR THAT



OFFENSE ON THE VERDICT FORM. YOU SHOULD THEN CONSIDER WHETHER THE GOVERNMENT HAS PROVED BEYOND A REASONABLE DOUBT ALL THE ELEMENTS OF THE LESSER OFFENSE OF POSSESSION WITH THE INTENT TO DISTRIBUTE AND/OR DISTRIBUTION OF LESS THAN ONE HUNDRED (100) GRAMS OF A MIXTURE OR SUBSTANCE CONTAINING HEROIN, INCLUDED IN THE OFFENSE OF CONSPIRACY TO POSSESS WITH THE INTENT TO DISTRIBUTE AND/OR DISTRIBUTION OF ONE HUNDRED (100) GRAMS OR MORE OF A MIXTURE OR SUBSTANCE CONTAINING HEROIN AS CHARGED IN THE INDICTMENT. IF YOU FIND UNANIMOUSLY THAT THE GOVERNMENT HAS PROVED BEYOND A REASONABLE DOUBT EACH OF THE ELEMENTS OF THIS LESSER INCLUDED OFFENSE, THEN YOU SHOULD FIND MR. CABRERA GUILTY OF THIS LESSER INCLUDED OFFENSE AND YOUR FOREPERSON SHOULD NOTE "GUILTY" IN THE SPACE PROVIDED FOR THIS LESSER INCLUDED OFFENSE ON THE VERDICT FORM. HOWEVER, IF YOU FIND UNANIMOUSLY THAT THE GOVERNMENT HAS NOT PROVED BEYOND A REASONABLE DOUBT EACH ELEMENT OF THIS LESSER INCLUDED OFFENSE, THEN YOU MUST FIND MR. CABRERA NOT GUILTY OF THIS OFFENSE AND YOUR FOREPERSON SHOULD NOTE "NOT GUILTY" IN THE SPACE PROVIDED FOR THIS LESSER INCLUDED OFFENSE ON THE VERDICT FORM. YOU SHOULD REMEMBER THAT THE BURDEN IS ALWAYS ON THE GOVERNMENT TO PROVE, BEYOND A REASONABLE DOUBT, EACH AND EVERY ELEMENT OF THE OFFENSE CHARGED IN THE INDICTMENT OR OF ANY LESSER INCLUDED OFFENSE.

131. REMEMBER, MR. CABRERA IS NOT ON TRIAL FOR ANY ACT OR CONDUCT NOT SPECIFICALLY CHARGED IN THE INDICTMENT. YOUR JOB IS LIMITED TO DECIDING WHETHER THE GOVERNMENT HAS PROVED BEYOND A REASONABLE DOUBT THE CRIME CHARGED IN THE INDICTMENT OR OF ANY LESSER INCLUDED OFFENSE

132. IF, AFTER CONSIDERING ALL THE EVIDENCE, YOU FIND THAT THE GOVERNMENT HAS FAILED TO ESTABLISH ANY ONE OF THE ESSENTIAL ELEMENTS OF THE CHARGED CRIME BEYOND A REASONABLE DOUBT, THEN YOU SHOULD FIND MR. CABRERA NOT GUILTY. HOWEVER, IF YOU FIND THE GOVERNMENT HAS PROVED ALL OF THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED AGAINST MR. CABRERA BEYOND A REASONABLE DOUBT, THEN YOU SHOULD FIND THE DEFENDANT GUILTY.

133. IF MR. CABRERA IS FOUND GUILTY, IT WILL BE MY DUTY TO DECIDE WHAT THE PUNISHMENT WILL BE. YOU SHOULD NOT BE CONCERNED WITH PUNISHMENT OF MR. CABRERA OR ANY OTHER PERSON INVOLVED IN THIS MATTER IN ANY WAY. IT SHOULD NOT ENTER YOUR CONSIDERATION OR DISCUSSION.

134. IN CONDUCTING YOUR DELIBERATIONS AND RETURNING YOUR VERDICT, THERE ARE CERTAIN RULES YOU MUST FOLLOW.

135. FIRST, WHEN YOU RETIRE I SUGGEST THAT YOU ELECT A FOREPERSON TO AID AND DIRECT YOUR DELIBERATIONS IN A BUSINESSLIKE MANNER IN ORDER TO DETERMINE THE ISSUES OF FACT IN THIS CASE USING THESE INSTRUCTIONS AS YOUR GUIDE.

136. THEN ENGAGE IN A RATIONAL DISCUSSION OF THE EVIDENCE WHICH YOU HAVE HEARD AND SEEN FOR THE PURPOSE OF REACHING A UNANIMOUS VERDICT.

137. YOUR VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. IN ORDER TO RETURN A VERDICT, IT IS NECESSARY THAT EACH JUROR AGREE TO IT. IN OTHER WORDS, YOUR VERDICT MUST BE UNANIMOUS.

138. IF DURING YOUR DELIBERATIONS YOU DETERMINE THAT YOU HAVE THE NEED TO COMMUNICATE WITH ME, PLEASE REDUCE YOUR MESSAGE OR QUESTION TO WRITING SIGNED BY THE FOREPERSON, AND THEN FLIP THE SIGNALING BUTTON IN THE JURY ROOM AND GIVE THAT NOTE TO MR. BABIK, MY COURTROOM DEPUTY, WHO WILL BRING IT TO MY ATTENTION. I WILL THEN CONFER WITH THE ATTORNEYS REGARDING YOUR INQUIRY, AND I WILL THEN RESPOND TO YOU AS REASONABLY SOON AS POSSIBLE, EITHER IN WRITING OR BY HAVING YOU RETURN TO THE COURTROOM SO THAT I CAN SPEAK TO PERSONALLY.

139. I CAUTION YOU, HOWEVER, WITH REGARD TO ANY MESSAGE OR QUESTION YOU MIGHT SEND, THAT YOU SHOULD NEVER STATE, SPECIFY OR EVEN HINT AT ANY NUMERICAL VOTE DIVISION WHICH MAY EXIST AMONG YOU AT THE TIME.

140. SECOND, IT IS YOUR DUTY AS JURORS TO CONSULT WITH ONE ANOTHER AND TO DELIBERATE IN AN EFFORT TO REACH AGREEMENT IF YOU CAN DO SO WITHOUT VIOLENCE TO INDIVIDUAL JUDGMENT. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER AN IMPARTIAL

CONSIDERATION OF THE EVIDENCE IN THE CASE WITH YOUR FELLOW JURORS. IN THE COURSE OF YOUR DELIBERATIONS, DO NOT HESITATE TO RE-EXAMINE YOUR OWN VIEWS AND CHANGE YOUR OPINION IF YOU BECOME CONVINCED THAT IT IS ERRONEOUS. BUT DO NOT SURRENDER YOUR HONEST CONVICTION AS TO THE WEIGHT OR EFFECT OF THE EVIDENCE SOLELY BECAUSE OF THE OPINION OF YOUR FELLOW JURORS, OR FOR THE MERE PURPOSE OF RETURNING A VERDICT.

141. REMEMBER AT ALL TIMES, YOU ARE NOT PARTISANS. YOU ARE JUDGES -- JUDGES OF THE FACTS. YOUR SOLE INTEREST IS TO SEEK THE TRUTH FROM THE EVIDENCE PRESENTED IN THE CASE.

142. THIRD, YOUR VERDICT MUST BE BASED SOLELY ON THE EVIDENCE AND ON THE LAW WHICH I HAVE GIVEN TO YOU IN MY INSTRUCTIONS. I REPEAT, YOU CANNOT RETURN A VERDICT WHETHER GUILTY OR NOT GUILTY UNLESS IT IS AGREED TO BY ALL OF YOU -- UNANIMOUSLY.

143. FINALLY, THE VERDICT SLIP FORM IS SIMPLY THE WRITTEN NOTICE OF THE DECISION THAT YOU REACH IN THIS CASE. THERE IS SPACE FOR TWELVE SIGNATURES ON THE VERDICT SLIP AND ALL OF YOU MUST SIGN IT. THE QUESTIONS YOU WILL BE ASKED ARE AS FOLLOWS:

**(READ FROM VERDICT FORM)**

144. IT IS PROPER TO ADD THE CAUTION THAT NOTHING SAID IN THESE INSTRUCTIONS AND NOTHING IN THE VERDICT SLIP PREPARED FOR YOUR CONVENIENCE IS MEANT TO SUGGEST OR CONVEY IN ANY WAY OR MANNER

ANY INTIMATION AS TO WHAT VERDICT I THINK YOU SHOULD FIND. WHAT THE VERDICT SHALL BE IS YOUR SOLE AND EXCLUSIVE DUTY AND RESPONSIBILITY.

145. IF YOU HAVE NOT REACHED A VERDICT BY 4:30 P.M. TODAY, YOU MAY CONTINUE TO DELIBERATE LATER, BUT ONLY IF ALL OF YOU UNANIMOUSLY AGREE AND YOUR FOREPERSON SO ADVISES ME IN WRITING.

146. IF YOU DO NOT UNANIMOUSLY AGREE TO CONTINUE DELIBERATIONS, THEN YOU MAY LEAVE AT 4:30 P.M. AND REPORT TO THE JURY ROOM TUESDAY AT 9:00 A.M.

147. YOU ARE INSTRUCTED THAT DURING DELIBERATIONS YOU ARE NOT PERMITTED TO ENGAGE IN ANY RESEARCH ON YOUR OWN. YOU SHOULD NOT SEEK INFORMATION REGARDING ANY ASPECT OF THIS TRIAL FROM ANY SOURCE OUTSIDE OF THE COURTROOM. IT WOULD BE IMPROPER FOR YOU TO DISCUSS ANY OF THE ISSUES OF THIS CASE WITH ANY PERSON, INCLUDING MEMBERS OF YOUR FAMILY, UNTIL YOUR DELIBERATIONS HAVE CONCLUDED.

148. PLEASE REMEMBER MY INSTRUCTION TO NOT READ ABOUT THE CASE SHOULD THERE BE ANY ARTICLES IN THE NEWSPAPER AND NOT LISTEN TO ANY RADIO BROADCASTS OR TELEVISION BROADCASTS SHOULD THERE BE ANY CONCERNING THIS CASE.

149. YOU WILL NOTE FROM THE OATH TAKEN BY MY COURTROOM DEPUTY, MR. BABIK, THAT HE TOO, AS WELL AS ALL OTHERS, ARE FORBIDDEN TO COMMUNICATE IN ANY WAY OR MANNER WITH ANY MEMBER OF THE JURY ON ANY SUBJECT TOUCHING THE MERITS OF THE CASE.

150. DURING YOUR DELIBERATIONS, YOU MUST CONTINUE TO OBSERVE ALL THE RESTRICTIONS I HAVE INSTRUCTED YOU ON THROUGHOUT THE TRIAL. DO NOT SPEAK AT ALL WITH ANY OF THE PARTIES, THE WITNESSES, OR THE ATTORNEYS. DO NOT PERMIT ANYONE TO DISCUSS THE CASE WITH YOU. DO NOT EVEN REMAIN IN THE PRESENCE OF ANYONE DISCUSSING THE CASE. IF ANYONE APPROACHES YOU AND TRIES TO TALK TO YOU ABOUT THE CASE, PLEASE REPORT THAT TO ME, THROUGH MY COURTROOM DEPUTY, IMMEDIATELY.

151. WHILE I DO NOT KNOW WHETHER THERE IS ANY NEWS COVERAGE OF THIS CASE, DO NOT WATCH OR LISTEN TO ANY NEWS REPORTS CONCERNING THIS TRIAL ON TELEVISION OR RADIO AND DO NOT READ ANY NEWS ACCOUNTS OF THIS TRIAL IN A NEWSPAPER OR ON THE INTERNET. DO NOT USE THE INTERNET TO SEARCH FOR INFORMATION ABOUT THE PARTIES, WITNESSES, LAWYERS, OR ANYTHING ELSE ASSOCIATED WITH THE TRIAL. DO NOT VISIT THE SCENE OF THE ALLEGED OFFENSE OR CONDUCT ANY KIND OF INVESTIGATION OF YOUR OWN. THE ONLY INFORMATION YOU ARE ALLOWED TO CONSIDER IN DECIDING THIS CASE IS WHAT YOU LEARNED IN THIS COURTROOM DURING THE TRIAL.

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