

November, 2014

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

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

**PRELIMINARY JURY INSTRUCTIONS**

**TO COUNSEL:** ARE YOU SATISFIED WITH THE JURY AS SELECTED?

**TO COURTROOM DEPUTY:** SWEAR IN JURY.

YOU HAVE NOW BEEN SWORN AS THE JURY TO SIT IN DETERMINATION OF THIS CRIMINAL CASE. I WANT TO TAKE A FEW MINUTES TO GIVE YOU SOME PRELIMINARY INSTRUCTIONS ABOUT YOUR DUTIES AS JURORS. AT THE END OF THE TRIAL I WILL GIVE YOU MORE DETAILED INSTRUCTIONS REGARDING THE LAW AND YOUR DECISION MAKING RESPONSIBILITIES.

I PREVIOUSLY INTRODUCED MY COURTROOM STAFF TO YOU. PLEASE DO NOT ASK THE COURT STAFF ANY QUESTIONS ABOUT THE CASE DURING THE TRIAL, EXCEPT YOU MAY ASK MR. BABIK ABOUT PERSONAL MATTERS RELATING DIRECTLY TO YOUR SERVICE AS A JUROR, SUCH AS TRANSPORTATION PROBLEMS OR THE NEED FOR SUPPLIES IN THE JURY ROOM AND THE LIKE.

YOUR ROLE AS JURORS IS TO FIND THE FACTS. UNDER OUR SYSTEM OF JUSTICE, YOU ARE THE SOLE JUDGES OF THE FACTS. YOU WILL HAVE TO DECIDE WHAT HAPPENED. YOU MUST DECIDE THE FACTS ONLY FROM THE EVIDENCE PRESENTED TO YOU IN THIS TRIAL.

YOU WILL HEAR THE TESTIMONY AND EVIDENCE, DECIDE WHAT THE FACTS ARE, AND THEN APPLY TO THOSE FACTS THE LAW THAT I WILL GIVE TO YOU IN MY FINAL INSTRUCTIONS. THAT IS HOW YOU WILL REACH YOUR VERDICT.

I PLAY NO PART IN FINDING THE FACTS. YOU SHOULD NOT TAKE ANYTHING THAT I MAY SAY OR DO DURING THE TRIAL AS INDICATING WHAT I THINK OF THE EVIDENCE OR ABOUT WHAT YOUR VERDICT SHOULD BE. MY ROLE IS TO MAKE WHATEVER LEGAL DECISIONS HAVE TO BE MADE DURING THE COURSE OF THE TRIAL AND TO EXPLAIN TO YOU THE LEGAL PRINCIPLES THAT MUST GUIDE YOU IN YOUR DECISIONS. YOU MUST NOT SUBSTITUTE OR FOLLOW YOUR OWN NOTION OR OPINION ABOUT WHAT THE LAW IS OR OUGHT TO BE. YOU MUST FOLLOW THE LAW THAT I GIVE TO YOU WHETHER YOU AGREE WITH IT OR NOT.

YOU MUST FOLLOW MY INSTRUCTIONS CAREFULLY. EACH OF THE INSTRUCTIONS IS IMPORTANT, AND YOU MUST FOLLOW ALL OF THEM.

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

AS STATED EARLIER, THIS CRIMINAL CASE HAS BEEN BROUGHT BY THE UNITED STATES GOVERNMENT AGAINST THE DEFENDANT, RAFAEL CABRERA.

THE SUPERSEDING INDICTMENT CHARGES DEFENDANT AS FOLLOWS. FROM IN AND AROUND AUGUST 2012, AND CONTINUING THEREAFTER TO ON OR ABOUT JANUARY 10, 2013, IN THE WESTERN DISTRICT OF PENNSYLVANIA AND ELSEWHERE, THE DEFENDANT, RAFAEL CABRERA, DID KNOWINGLY, INTENTIONALLY AND UNLAWFULLY CONSPIRE WITH PERSONS BOTH KNOWN AND UNKNOWN TO THE GRAND JURY TO POSSESS WITH INTENT TO DISTRIBUTE AND DISTRIBUTE 100 GRAMS OR MORE OF A MIXTURE AND SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF HEROIN, A SCHEDULE I CONTROLLED SUBSTANCE, CONTRARY TO THE PROVISIONS OF TITLE 21, UNITED STATES CODE, SECTIONS 841(A)(1) AND 841(B)(1)(B)(I).

WHAT THIS MEANS, EFFECTIVELY, IS THAT IT IS CHARGED BY THE GRAND JURY AND ALLEGED BY THE GOVERNMENT THAT FROM APPROXIMATELY AUGUST, 2012 THROUGH JANUARY 10, 2013, DEFENDANT HAD AN AGREEMENT WITH AT LEAST ONE OTHER PERSON, AND DEFENDANT AGREED WITH THAT PERSON OR PERSONS TO POSSESS WITH THE INTENT TO DISTRIBUTE AND/OR DISTRIBUTE HEROIN, IN AN AMOUNT GREATER THAN 100 GRAMS. THE GOVERNMENT ALLEGES THAT THIS CONSPIRACY OPERATED AS FOLLOWS: DEFENDANT, WHO LIVED IN NEW JERSEY, BROUGHT LARGE QUANTITIES OF HEROIN TO CARLISLE, PENNSYLVANIA, WHERE HE WOULD MEET WITH A PERSON, AVERY JOHNSON, WHO WOULD THEN DRIVE THIS PROVIDED HEROIN BACK TO PITTSBURGH, WHERE IT WOULD THEN BE RESOLD. THE GOVERNMENT

ALLEGES THAT THE MONEY FROM THESE HEROIN SALES WOULD, IN TURN, BE FUNNELED BACK TO DEFENDANT, WHO WOULD PROVIDE JOHNSON WITH ADDITIONAL HEROIN, AND THAT THESE EXCHANGES OCCURRED ON APPROXIMATELY FOUR OR FIVE OCCASIONS IN THE FALL/WINTER OF 2012/13.

**TO ESTABLISH CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE 100 GRAMS OR MORE OF HEROIN**, THE GOVERNMENT MUST PROVE ALL OF THE FOLLOWING ELEMENTS OF THE CRIME BEYOND A REASONABLE DOUBT:

1. THAT TWO OR MORE PERSONS AGREED TO DISTRIBUTE AND POSSESS WITH THE INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE.
2. THAT RAFAEL CABRERA WAS A PARTY TO OR MEMBER OF THAT AGREEMENT.
3. THAT RAFAEL CABRERA JOINED THE AGREEMENT OR CONSPIRACY KNOWING OF ITS OBJECTIVE TO DISTRIBUTE AND POSSESS WITH THE 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 RAFAEL CABRERA AND AT LEAST ONE OTHER ALLEGED CONSPIRATOR SHARED A UNITY OF PURPOSE AND THE INTENT TO ACHIEVE THAT OBJECTIVE.
4. THAT HEROIN IS A SCHEDULE I CONTROLLED SUBSTANCE.

5. THAT THE CONSPIRACY HAD THE SPECIFIC UNLAWFUL PURPOSE OF DISTRIBUTING AND/OR POSSESSING WITH INTENT TO DISTRIBUTE 100 GRAMS OR MORE OF A MIXTURE AND SUBSTANCE CONTAINING A DETECTABLE AMOUNT OF HEROIN.

AS PREVIOUSLY STATED, THE CHARGE AGAINST THE DEFENDANT IS SET FORTH IN AN INDICTMENT, WHICH IS SIMPLY THE DESCRIPTION OF THE CHARGES MADE BY THE GOVERNMENT AGAINST THE DEFENDANT, BUT THE INDICTMENT IS NOT EVIDENCE THAT THE DEFENDANT COMMITTED A CRIME OR CRIMES. THE DEFENDANT HAS PLED NOT GUILTY TO THE CHARGE. A DEFENDANT IS PRESUMED TO BE INNOCENT AND MAY NOT BE FOUND GUILTY BY YOU UNLESS ALL TWELVE OF YOU UNANIMOUSLY FIND THAT THE GOVERNMENT HAS PROVED THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THIS IS ANTICIPATED TO BE A TRIAL LASTING APPROXIMATELY 1 WEEK. EVEN THOUGH TOMORROW IS AN ELECTION DAY, WE WILL BE IN SESSION. SHOULD THE TRIAL NOT BE CONCLUDED THIS WEEK, WE WILL NOT BE IN SESSION NEXT MONDAY, MEMORIAL DAY. WE WILL START TRIAL EACH DAY AT APPROXIMATELY 9:15 A.M. AND WE'LL TAKE A LUNCH RECESS BETWEEN 12:00 P.M. - 12:30 P.M. RESUMING AT 1:30 P.M. WE WILL TAKE A 10 TO 15-MINUTE RECESS DURING THE MORNING AND THE AFTERNOON SESSIONS OF COURT WE WILL ADJOURN FOR THE DAY AT APPROXIMATELY 4:30 P.M.

IT IS IMPORTANT, LADIES AND GENTLEMEN, THAT EACH OF YOU ARRIVE NO LATER THAN 9:00 A.M. SO THAT WE MAY BEGIN PROMPTLY. WE CAN'T BEGIN

UNTIL EVERYONE IS HERE, BECAUSE ALL JURORS MUST HEAR ALL OF THE EVIDENCE IN THE CASE. IF ANYONE IS LATE, THE OTHER JURORS, THE PARTIES, THE LAWYERS, THE WITNESSES AND THE COURT MUST WAIT UNTIL ALL JURORS ARE HERE. THEREFORE, YOU ARE REQUIRED TO BE HERE ON TIME FOR EACH MORNING AND AFTERNOON SESSION.

THE FIRST STEP IN THE TRIAL WILL BE THE ATTORNEYS' OPENING STATEMENTS. THE GOVERNMENT IN ITS OPENING STATEMENT WILL TELL YOU ABOUT THE EVIDENCE WHICH IT INTENDS TO PRESENT TO YOU, SO THAT YOU WILL HAVE AN IDEA OF WHAT THE GOVERNMENT'S CASE IS GOING TO BE. JUST AS THE INDICTMENT ITSELF IS NOT EVIDENCE, NEITHER IS THE OPENING STATEMENT EVIDENCE. ITS PURPOSE IS ONLY TO HELP YOU UNDERSTAND WHAT THE EVIDENCE WILL BE AND WHAT THE GOVERNMENT WILL ATTEMPT TO PROVE.

NEXT, THE ATTORNEY FOR THE DEFENDANT MAY MAKE AN OPENING STATEMENT OR MAY RESERVE HIS RIGHT TO DO SO UNTIL AFTER THE GOVERNMENT HAS PRESENTED ALL ITS EVIDENCE IN PROSECUTION OF THE CASE.

NEXT, THE GOVERNMENT WILL OFFER WITNESSES AND EXHIBITS AS EVIDENCE THAT IT CONTENDS WILL PROVE THE CHARGES AGAINST THE DEFENDANT. THE GOVERNMENT'S EVIDENCE MAY CONSIST OF THE TESTIMONY OF WITNESSES AS WELL AS DOCUMENTS, REPORTS, PHOTOGRAPHS, RECORDINGS AND OTHER THINGS INTRODUCED FOR YOUR CONSIDERATION AS EXHIBITS.

SOME OF YOU HAVE PROBABLY HEARD THE TERMS "DIRECT EVIDENCE" AND "CIRCUMSTANTIAL EVIDENCE." DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT WHAT THE WITNESS ACTUALLY KNOWS, SAID OR HEARD OR SAW OR DID. CIRCUMSTANTIAL EVIDENCE OR INDIRECT EVIDENCE IS SIMPLY PROOF OF ONE OR MORE FACTS FROM WHICH YOU COULD FIND ANOTHER FACT. FOR 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 INDIRECT OR CIRCUMSTANTIAL EVIDENCE THAT IT HAD BEEN RAINING OUTSIDE. YOU ARE TO CONSIDER ALL THE DIRECT AND CIRCUMSTANTIAL EVIDENCE PRESENTED IN THIS TRIAL AND GIVE SUCH EVIDENCE THE WEIGHT YOU THINK IT DESERVES.

AFTER THE GOVERNMENT HAS PRESENTED ALL OF ITS EVIDENCE, THE ATTORNEY FOR THE DEFENDANT MAY PRESENT TESTIMONY AND/OR OTHER EVIDENCE ON THE DEFENDANT'S BEHALF, BUT THE DEFENDANT IS NOT REQUIRED TO DO SO. YOU MUST KNOW THAT THE DEFENDANT AT ALL TIMES IS PRESUMED TO BE INNOCENT AND THAT THE GOVERNMENT MUST PROVE THE GUILT OF A DEFENDANT BEYOND A REASONABLE DOUBT. A DEFENDANT DOES NOT HAVE TO PROVE HIS INNOCENCE AND HAVE NO LEGAL OBLIGATION TO TESTIFY OR TO PRESENT ANY OTHER TESTIMONY OR EVIDENCE WHATSOEVER. IN FACT, UNDER THE LAW, NO INFERENCE OR SUGGESTION OF GUILT CAN BE DRAWN BY YOU FROM THE FACT THAT A DEFENDANT DID NOT TESTIFY OR

PRESENT ANY EVIDENCE WHATSOEVER. IF THE DEFENDANT DOES DECIDE TO PRESENT EVIDENCE, THE GOVERNMENT MAY INTRODUCE REBUTTAL EVIDENCE.

THE DIRECT EXAMINATION OF EACH WITNESS IS CONDUCTED BY THE ATTORNEY WHO CALLED THE WITNESS TO THE WITNESS STAND AND EACH WITNESS MAY BE CROSS-EXAMINED BY OPPOSING COUNSEL. I MAY ASK QUESTIONS OF A WITNESS IN ORDER TO OBTAIN INFORMATION OR BRING OUT SOME FACTS NOT FULLY DEVELOPED BY THE TESTIMONY. HOWEVER, YOU ARE NOT PERMITTED TO ASK QUESTIONS OF WITNESSES.

YOU MAY ALSO HEAR FROM ONE OR MORE WITNESSES WHO WILL GIVE OPINIONS ABOUT MATTERS REQUIRING SPECIAL KNOWLEDGE OR SKILL. YOU SHOULD JUDGE THIS TESTIMONY IN THE SAME WAY THAT YOU JUDGE THE TESTIMONY OF ANY OTHER WITNESS. THE FACT THAT SUCH PERSON HAS GIVEN AN OPINION DOES NOT MEAN THAT YOU ARE REQUIRED TO ACCEPT IT. GIVE THE TESTIMONY WHATEVER WEIGHT YOU THINK IT DESERVES, CONSIDERING THE REASONS GIVEN FOR THE OPINION, THE WITNESS'S QUALIFICATIONS, AND ALL OF THE OTHER EVIDENCE IN THE CASE.

THE EVIDENCE IN THIS CASE WILL CONSIST NOT ONLY OF TESTIMONY FROM THE WITNESSES AND DOCUMENTS WHICH WILL BE SHOWN TO YOU, BUT EVIDENCE ALSO INCLUDES SUCH FAIR AND REASONABLE INFERENCES AS MAY PROPERLY FLOW FROM FACTS WHICH ARE NOT DISPUTED OR WHICH YOU BELIEVE TO BE TRUE. YOU SHOULD CONSIDER BOTH KINDS OF EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. YOU ARE TO DECIDE HOW MUCH



WEIGHT TO GIVE ANY EVIDENCE. IN OTHER WORDS, YOU, LADIES AND GENTLEMEN OF THE JURY, MAY DRAW UPON YOUR OWN EXPERIENCES IN LIFE AND YOUR OWN COMMON SENSE IN INTERPRETING THE FACTS WHICH WILL BE PRESENTED TO YOU BY THE PARTIES IN THIS CASE.

AFTER ALL THE WITNESS TESTIMONY AND EVIDENCE FROM BOTH SIDES HAS BEEN PRESENTED, THE ATTORNEYS WILL MAKE THEIR CLOSING ARGUMENTS TO YOU. IN THESE ARGUMENTS, THE ATTORNEYS WILL GIVE YOU THEIR VIEWS OF THAT WHICH THE EVIDENCE PROVES ON THE QUESTIONS THAT YOU HAVE TO DECIDE. THESE ARGUMENTS SHOULD BE GIVEN DUE CONSIDERATION, BUT THE ARGUMENTS THEMSELVES AGAIN ARE NOT EVIDENCE. ONLY TESTIMONY AND EVIDENCE WHICH HAS BEEN ADMITTED THROUGH THE WITNESS CHAIR DURING THE TRIAL CAN BE CONSIDERED BY YOU IN DETERMINING THE FACTS OF THIS MATTER.

IN THE FINAL PHASE OF THE TRIAL I WILL INSTRUCT YOU ABOUT THE RULES OF LAW WHICH YOU ARE TO APPLY IN REACHING YOUR VERDICT. AFTER HEARING MY INSTRUCTIONS, YOU WILL LEAVE THE COURTROOM TOGETHER AND PROCEED TO THE JURY DELIBERATION ROOM TO MAKE YOUR DECISION. YOUR DELIBERATIONS WILL BE SECRET. YOU WILL NEVER HAVE TO EXPLAIN YOUR VERDICT TO ANYONE.

DURING THE TRIAL I WILL DECIDE WHICH RULES OF LAW APPLY TO THIS CASE. THESE DECISIONS WILL BE IN RESPONSE TO ISSUES RAISED BY THE ATTORNEYS AS WE GO ALONG AND ALSO IN THE FINAL INSTRUCTIONS GIVEN

TO YOU AFTER THE EVIDENCE AND ARGUMENTS ARE COMPLETED. I MAY ALSO GIVE YOU CERTAIN INSTRUCTIONS DURING THE COURSE OF THE TRIAL.

THE ADMISSION OF EVIDENCE IN COURT IS GOVERNED BY RULES OF LAW. DURING THE TRIAL, THE ATTORNEYS MAY DEEM IT NECESSARY TO MAKE OBJECTIONS TO CERTAIN TESTIMONY OR EVIDENCE AND IT THEN BECOMES MY DUTY TO RULE ON THOSE OBJECTIONS AND TO DECIDE WHETHER CERTAIN TESTIMONY OR OTHER EVIDENCE MAY BE PERMITTED FOR YOUR CONSIDERATION. YOU MUST NOT CONCERN YOURSELF WITH THE OBJECTIONS OR THE REASONS FOR MY RULINGS. YOU MUST NOT CONSIDER TESTIMONY OR EXHIBITS TO WHICH I HAVE SUSTAINED AN OBJECTION, OR WHICH I HAVE ORDERED STRICKEN FROM THE RECORD. NONE OF MY RULINGS SHOULD BE REGARDED AS AN INDICATION OF MY OPINION AS TO WHAT YOUR FINDINGS SHOULD BE.

YOU ARE NOT TO CONSIDER THE FACT THAT AN ATTORNEY OBJECTS TO CERTAIN EVIDENCE AS BEING AN ATTEMPT BY THAT ATTORNEY OR HIS CLIENT TO WITHHOLD ANY EVIDENCE FROM YOU WHICH YOU NEED TO PROPERLY DETERMINE THE CASE. THE ONLY WAY THAT I CAN RULE ON THE LEGAL EFFECT OF CERTAIN EVIDENCE IS IF THE ATTORNEY RAISES AN OBJECTION. IF THE ATTORNEY DOES NOT RAISE AN OBJECTION AT THE APPROPRIATE TIME, THE ATTORNEY IS NOT FULFILLING HIS DUTY TO THE CLIENT OR TO THE COURT. THEREFORE, YOU SHOULD NOT HOLD IT AGAINST AN ATTORNEY OR THE ATTORNEY'S CLIENT IF OBJECTIONS TO EVIDENCE ARE MADE.

FROM TIME TO TIME, THERE MAY BE CONFERENCES AT WHAT WE CALL "SIDE BAR." THE ATTORNEYS AND I WILL MEET AT THE FAR END OF THE BENCH TO DISCUSS LEGAL POINTS WHICH MAY BE INVOLVED IN THE EVIDENCE. AGAIN, THIS IS NOT AN ATTEMPT TO WITHHOLD INFORMATION FROM YOU WHICH YOU SHOULD HAVE, BUT RATHER, IT IS A MEANS OF INSURING THAT YOU HEAR ONLY THE LEGALLY ADMISSIBLE EVIDENCE UPON WHICH YOU ARE TO BASE YOUR DECISION.

I MAY NOT ALWAYS GRANT AN ATTORNEY'S REQUEST FOR A CONFERENCE. DO NOT CONSIDER MY GRANTING OR DENYING A REQUEST FOR A CONFERENCE AS ANY INDICATION OF MY OPINION OF THE CASE OR OF WHAT YOUR VERDICT SHOULD BE.

IT WILL BE YOUR JOB AS JURORS TO FIND AND DETERMINE THE FACTS OF THIS MATTER. IF AT ANY TIME I SHOULD MAKE ANY COMMENT REGARDING THE FACTS, YOU ARE AT LIBERTY TO DISREGARD IT. MOREOVER, YOU SHOULD NOT TAKE ANY QUESTIONS THAT I MAY ASK WITNESSES AS AN INDICATION OF MY OPINION AS TO HOW YOU SHOULD DETERMINE THE ISSUES OF FACT. ANY OPINION WHICH YOU THINK I MAY HAVE AS TO THE FACTS WOULD NOT BE AT ALL IMPORTANT, BECAUSE YOU AND YOU ALONE, ARE THE SOLE JUDGES OF THE FACTS.

THE EVIDENCE FROM WHICH YOU ARE TO FIND THE FACTS CONSISTS OF THE FOLLOWINGS:

1. THE TESTIMONY OF THE WITNESS;
2. DOCUMENTS AND OTHER THINGS RECEIVED AS EXHIBITS;

3. ANY FACTS THAT ARE STIPULATED—THAT IS, FORMALLY AGREED TO BY THE PARTIES; AND

4. ANY FACTS THAT ARE JUDICIALLY NOTICED—THAT IS, FACTS I SAY YOU MUST ACCEPT AS TRUE EVEN WITHOUT OTHER EVIDENCE.

THE FOLLOWING THINGS ARE NOT EVIDENCE:

A. STATEMENTS, ARGUMENTS, AND QUESTIONS OF THE LAWYERS FOR THE PARTIES IN THIS CASE;

B. OBJECTIONS BY LAWYERS;

C. ANY TESTIMONY I TELL YOU TO DISREGARD; AND

D. ANYTHING YOU MAY SEE OR HEAR ABOUT THIS CASE OUTSIDE THE COURTROOM.

YOU MUST MAKE YOUR DECISION BASED ONLY ON THE EVIDENCE THAT YOU SEE AND HEAR IN COURT. DO NOT LET RUMORS, SUSPICIONS, OR ANYTHING ELSE THAT YOU MAY SEE OR HEAR OUTSIDE OF COURT INFLUENCE YOUR DECISION IN ANY WAY.

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

ALSO, CERTAIN TESTIMONY OR OTHER EVIDENCE MAY BE ORDERED STRUCK FROM THE RECORD AND YOU WILL BE INSTRUCTED TO DISREGARD THIS EVIDENCE. DO NOT CONSIDER ANY TESTIMONY OR OTHER EVIDENCE THAT

GETS STRUCK OR EXCLUDED. DO NOT SPECULATE ABOUT WHAT A WITNESS MIGHT HAVE SAID OR WHAT AN EXHIBIT MIGHT HAVE SHOWN.

IT WILL BE YOUR JOB AS JURORS TO FIND AND DETERMINE THE FACTS DILIGENTLY AND CONSCIENTIOUSLY, FOR ORDINARILY THERE IS NO MEANS OF CORRECTING AN ERRONEOUS DETERMINATION OF THE FACTS BY A JURY.

YOU WILL HAVE TO DECIDE WHAT TESTIMONY YOU BELIEVE AND WHAT TESTIMONY YOU DON'T BELIEVE; THAT'S KNOWN AS CREDIBILITY OR BELIEVABILITY. YOU SHOULD DECIDE WHETHER YOU BELIEVE WHAT EACH WITNESS HAS TO SAY, AND HOW IMPORTANT THAT TESTIMONY IS. IN MAKING THAT DECISION, I SUGGEST THAT YOU ASK YOURSELF A FEW QUESTIONS: DID THE WITNESS 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 OF THE CASE? DID THE WITNESS SEEM TO HAVE A GOOD MEMORY? DID THE WITNESS HAVE THE OPPORTUNITY AND ABILITY TO OBSERVE ACCURATELY THE THINGS THE WITNESS TESTIFIED ABOUT? DID THE WITNESS APPEAR TO UNDERSTAND THE QUESTIONS CLEARLY AND ANSWER THEM DIRECTLY? DID THE WITNESS' TESTIMONY DIFFER FROM THE TESTIMONY OF OTHER WITNESSES? THESE ARE A FEW OF THE CONSIDERATIONS THAT WILL HELP YOU DETERMINE THE ACCURACY OF WHAT EACH WITNESS WILL SAY.

ALSO, YOU DON'T HAVE TO BELIEVE SOMETHING IS TRUE SIMPLY BECAUSE MORE WITNESSES SAID IT IS TRUE THAN SAID IT IS NOT TRUE. YOU MAY FIND THAT THE TESTIMONY OF A SMALLER NUMBER OF WITNESSES ABOUT

AN EVENT IS MORE BELIEVABLE THAN THE TESTIMONY OF A LARGER NUMBER OF WITNESSES.

DURING THE TRIAL YOU MAY BE TOLD THAT THE PARTIES AGREE, OR STIPULATE, TO WHAT A WITNESS'S TESTIMONY WOULD BE IF THE WITNESS WERE CALLED AT TRIAL. YOU WILL CONSIDER THAT STIPULATION TO BE THE TESTIMONY OF THAT WITNESS AS IF THE WITNESS WAS TESTIFYING. LIKEWISE, YOU MAY BE TOLD THAT THE PARTIES AGREE, OR STIPULATE, TO A CERTAIN FACT. YOU SHOULD ACCEPT THAT FACT AS TRUE EVEN THOUGH NOTHING MORE IS SAID ABOUT IT. HOWEVER, YOU ARE NOT DUTY-BOUND TO ACCEPT A STIPULATION AS YOU ARE THE SOLE DETERMINERS OF THE FACTS OF THIS CASE.

NO TRANSCRIPT OF THE WITNESS TESTIMONY IN COURT WILL BE FURNISHED TO YOU AT THE TIME YOU BEGIN YOUR DELIBERATIONS. YOU ARE REQUIRED TO REMEMBER THE EVIDENCE AS YOU HEARD IT FROM THE WITNESSES. YOU CAN SEE, THEREFORE, THAT IT IS IMPORTANT THAT YOU HEAR AND LISTEN TO ALL OF THE EVIDENCE. IF ANY WITNESS DOES NOT SPEAK LOUDLY OR CLEARLY ENOUGH TO BE HEARD BY YOU OR YOU DO NOT HEAR THE QUESTION OF COUNSEL, PLEASE LET ME KNOW AND WE WILL SEE TO IT THAT THE WITNESS OR ATTORNEY REPEATS THE MATERIAL WHICH YOU DID NOT HEAR. DURING THE TRIAL, YOU MAY HEAR CERTAIN AUDIO RECORDINGS. YOU WILL BE PROVIDED WITH TRANSCRIPTS OF SUCH RECORDINGS TO ASSIST YOU IN DISCERNING THEIR CONTENT. I WILL INSTRUCT YOU THAT TO THE

EXTENT YOU BELIEVE THERE IS ANY DIFFERENCE BETWEEN THE RECORDING AND ITS TRANSCRIPT, YOU ARE TO RELY ON THE RECORDING.

YOU MAY TAKE NOTES DURING THE TRIAL. OF COURSE IF YOU PREFER NOT TO TAKE NOTES, YOU DO NOT HAVE TO TAKE ANY. THE DECISION ABOUT WHETHER OR NOT TO TAKE NOTES IS A MATTER FOR EACH OF YOU INDIVIDUALLY TO DECIDE. IF YOU DO DECIDE TO TAKE NOTES, BE CAREFUL NOT TO GET SO INVOLVED IN NOTE TAKING THAT YOU BECOME DISTRACTED FROM THE ONGOING PROCEEDINGS. ADDITIONALLY, I CAUTION YOU THAT THERE MAY BE A TENDENCY TO ATTACH UNDUE IMPORTANCE TO MATTERS THAT ONE HAS WRITTEN DOWN. TESTIMONY THAT IS CONSIDERED UNIMPORTANT AT THE TIME PRESENTED, HOWEVER, AND THUS NOT WRITTEN DOWN, MAY TAKE ON GREATER IMPORTANCE LATER IN THE TRIAL IN LIGHT OF ALL THE EVIDENCE PRESENTED. THEREFORE, YOU ARE INSTRUCTED THAT YOUR NOTES ARE ONLY A TOOL TO AID YOUR OWN INDIVIDUAL MEMORY AND YOU SHOULD NOT COMPARE YOUR NOTES WITH OTHER JURORS' NOTES IN DETERMINING THE CONTENT OF ANY TESTIMONY OR IN EVALUATING THE IMPORTANCE OF ANY EVIDENCE.

YOUR NOTES ARE NOT EVIDENCE, AND WILL BY NO MEANS BE A COMPLETE OUTLINE OF THE PROCEEDINGS OR A COMPREHENSIVE LIST OF THE HIGHLIGHTS OF THE TRIAL. ABOVE ALL, YOUR MEMORY SHOULD BE YOUR GREATEST ASSET WHEN IT COMES TIME TO DELIBERATE AND RENDER A DECISION IN THIS CASE. YOU MAY NOT TAKE YOUR NOTES BEYOND THE COURTROOM AND JURY ROOM VICINITY. BEFORE YOU LEAVE THIS AREA FOR

ANY REASON, YOUR NOTES MUST BE LEFT IN THE JURY ROOM. WHEN YOU LEAVE AT NIGHT, YOUR NOTES WILL BE LOCKED UP SECURELY AND NOT READ BY ANYONE. AT THE END OF THE TRIAL, YOUR NOTES WILL BE COLLECTED AND DESTROYED. NO ONE, NOT THE LAWYERS, MY STAFF, NEWSPAPER REPORTERS, NOR I WILL BE PERMITTED TO READ YOUR NOTES. THEY ARE AND WILL REMAIN PRIVATE.

FINALLY, THERE ARE THREE BASIC RULES ABOUT A CRIMINAL TRIAL WHICH YOU MUST KEEP IN MIND.

FIRST, THE DEFENDANT IS PRESUMED TO BE INNOCENT UNLESS PROVEN GUILTY. THE INDICTMENT BROUGHT BY THE GOVERNMENT AGAINST THE DEFENDANT IS ONLY AN ACCUSATION, NOTHING MORE. IT IS NOT PROOF OF GUILT OR ANYTHING ELSE. THE DEFENDANT THEREFORE STARTS OUT WITH A CLEAN SLATE WHICH YOU MUST RECOGNIZE.

SECOND, THE BURDEN OF PROOF IS ON THE GOVERNMENT FROM THE VERY BEGINNING TO THE VERY END OF THE TRIAL. THE DEFENDANT HAS NO BURDEN OR REQUIREMENT TO PROVE HIS INNOCENCE, OR TO PRESENT ANY EVIDENCE, OR TO TESTIFY. SINCE THE DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, IN ARRIVING AT YOUR VERDICT THE LAW PROHIBITS YOU FROM GIVING ANY CONSIDERATION TO THE FACT THAT A DEFENDANT MAY NOT HAVE TESTIFIED.

THIRD, THE GOVERNMENT MUST PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT. I WILL GIVE YOU FURTHER INSTRUCTIONS ON



THIS POINT LATER, BUT BEAR IN MIND THAT IN THIS RESPECT A CRIMINAL CASE IS MUCH DIFFERENT FROM A CIVIL CASE.

I CAUTION YOU TO USE THESE PRELIMINARY INSTRUCTIONS ONLY FOR THE PURPOSE OF UNDERSTANDING THE EVIDENCE AND TO NOT MAKE A DETERMINATION OF THE OUTCOME OF THIS CASE BEFORE ALL OF THE EVIDENCE IS PRESENTED. THE INSTRUCTIONS GIVEN TO YOU AT THE END OF THE PRESENTATION OF ALL OF THE EVIDENCE WILL FURTHER DETAIL THE LAW AND CLARIFY HOW YOU SHOULD APPLY THE LAW TO THE FACTS OF THIS CASE.

AGAIN, AS I PREVIOUSLY TOLD YOU, YOU ARE TO DECIDE THIS CASE ONLY UPON CONSIDERATION OF THE TESTIMONY AND EVIDENCE THAT YOU RECEIVE IN THIS COURTROOM DURING THE TRIAL. FOR THAT REASON, YOU MUST NOT READ ABOUT THE CASE IN THE NEWSPAPERS OR WATCH OR LISTEN TO TELEVISION OR RADIO REPORTS OF WHAT IS HAPPENING HERE. YOU ARE NOT TO VISIT ANY SCENE OR CONDUCT ANY INDEPENDENT RESEARCH EITHER IN A LIBRARY OR ON THE INTERNET. YOU ARE TO DECIDE THE CASE ONLY UPON THE EVIDENCE PRESENTED AT TRIAL. IN OTHER WORDS, YOU SHOULD NOT CONSULT DICTIONARIES OR REFERENCE MATERIALS, SEARCH THE INTERNET, WEBSITES, BLOGS, OR USE ANY OTHER ELECTRONIC TOOLS TO OBTAIN INFORMATION ABOUT THIS CASE OR TO HELP YOU DECIDE THE CASE. PLEASE DO NOT TRY TO FIND OUT INFORMATION FROM ANY SOURCE OUTSIDE THE CONFINES OF THIS COURTROOM. NO GOOGLING!

INFORMATION THAT YOU RECEIVE FROM OUTSIDE THE COURTROOM WOULD BE IMPROPER TO CONSIDER IN DELIBERATING ON THIS CASE AND

ATTEMPTS BY PARTIES TO INFLUENCE YOUR DECISION OUTSIDE OF THE COURTROOM WOULD BE IN VIOLATION OF THE LAW.

I KNOW THAT MANY OF YOU USE CELL PHONES, iPADS, IPHONES, BLACKBERRIES, THE INTERNET AND OTHER TOOLS OF TECHNOLOGY. YOU MUST ALSO NOT TALK TO ANYONE AT ANY TIME ABOUT THIS CASE OR USE THESE TOOLS TO COMMUNICATE ELECTRONICALLY WITH ANYONE ABOUT THE CASE. THIS INCLUDES YOUR FAMILY AND FRIENDS. YOU MAY NOT COMMUNICATE WITH ANYONE ABOUT THE CASE ON YOUR CELL PHONE, THROUGH EMAIL, BLACKBERRY, IPHONE , TEXT MESSAGING, OR ON TWITTER, THROUGH ANY BLOG OR WEBSITE, INCLUDING FACEBOOK, GOOGLE+, MY SPACE, LINKED IN, OR YOU-TUBE. YOU MAY NOT USE ANY SIMILAR TECHNOLOGY OF SOCIAL MEDIA, EVEN IF I HAVE NOT SPECIFICALLY MENTIONED IT HERE. I EXPECT YOU WILL INFORM ME AS SOON AS YOU BECOME AWARE OF YOUR (OR ANOTHER JUROR'S) VIOLATION OF THESE INSTRUCTIONS, EVEN IF IT IS INADVERTENT.

YOU ARE NOT TO CONCERN YOURSELF IN ANY WAY WITH THE SENTENCE WHICH THE DEFENDANT MIGHT RECEIVE IF YOU SHOULD FIND HIM GUILTY. YOUR FUNCTION IS SOLELY TO DECIDE WHETHER THE GOVERNMENT HAS SUSTAINED OR CARRIED ITS BURDEN OF PROVING THE CHARGES TO YOU BEYOND A REASONABLE DOUBT. IF, AND ONLY IF, YOU FIND THE DEFENDANT GUILTY OF THE CHARGE WILL IT BECOME THE DUTY OF THE COURT TO PRONOUNCE SENTENCE AT A LATER DATE.

THE ATTORNEYS ARE NOT PERMITTED TO DISCUSS THE CASE WITH YOU OTHER THAN IN THE COURTROOM IN THE COURSE OF THE TRIAL. THEY ARE

NOT EVEN PERMITTED TO BE SOCIABLE WITH YOU OUTSIDE OF THE COURTROOM. SO IF YOU SEE THEM IN THE CORRIDORS OR ELEVATORS AND THEY DON'T SPEAK TO YOU, DON'T THINK THEY ARE TRYING TO SLIGHT OR SNUB YOU. THEY ARE SIMPLY OBSERVING THE RESTRICTIONS WHICH THE COURT PLACES ON THEM NOT TO TALK TO YOU UNLESS IT IS IN THE COURTROOM.

FROM THIS POINT ON, DO NOT DISCUSS THIS CASE WITH ANYONE. ALSO, PLEASE DO NOT DISCUSS THIS CASE AMONG YOURSELVES UNTIL SUCH TIME AS YOU HAVE HEARD ALL OF THE EVIDENCE, THE CLOSING ARGUMENTS OF COUNSEL, AND THE FINAL INSTRUCTIONS ON THE LAW AS I WILL GIVE THEM TO YOU AT THE CONCLUSION OF THE CASE.

I PREVIOUSLY INTRODUCED MY COURTROOM STAFF TO YOU. PLEASE DO NOT ASK THE COURT STAFF ANY QUESTIONS ABOUT THE CASE DURING THE TRIAL, EXCEPT YOU MAY ASK MR. BABIK (OR ANOTHER COURT STAFF MEMBER) ABOUT PERSONAL MATTERS RELATING DIRECTLY TO YOUR SERVICE AS A JUROR, SUCH AS TRANSPORTATION ISSUES OR THE NEED FOR SUPPLIES IN THE JURY ROOM AND THE LIKE. MR. BABIK WILL PROVIDE YOU WITH CONTACT INFORMATION TO USE IF YOU HAVE AN EMERGENCY, AND FOR YOU TO USE TO OBTAIN INFORMATION IN THE EVENT OF BAD WEATHER. WE WILL ALSO HAVE YOUR CONTACT INFORMATION IN THE EVENT WE NEED TO CONTACT THE JURY AFTER HOURS DUE TO A CHANGE IN SCHEDULE OR OTHER UNFORESEEN CIRCUMSTANCES. YOU WILL BE PROVIDED WATER AND COFFEE/TEA IN THE JURY ROOM. YOU MAY BRING ANY SOFT DRINK INTO THE COURTROOM, SO

LONG AS IT HAS A MECHANICAL LID, SUCH AS A SCREW ON LID – NO DISPOSABLE CUPS AND LIDS.

FINALLY, THERE IS ONE QUESTION THAT WOULD BE ON MY MIND IF I WERE A JUROR; THAT IS, WHAT IF I HAVE A NEED FOR AN IMMEDIATE BREAK? NO PROBLEM – PLEASE SIMPLY MAKE THIS “BREAK” SIGN (DEMONSTRATE), AND I WILL CALL A BREAK AS SOON AS IS POSSIBLE. IF IT IS AN EMERGENCY, PLEASE JUST RAISE YOUR HAND. IF THIS HAPPENS, PLEASE DO NOT BE SELF-CONSCIOUS, AS WE HAVE ALL BEEN THERE.

NOW WE WILL HEAR FROM THE GOVERNMENT’S ATTORNEY WITH HIS OPENING STATEMENT, AND I ASK THAT YOU GIVE COUNSEL YOUR CLOSE ATTENTION.

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