Court Exhibit 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

JURY CHARGE

-against-

16-CR-457-1 (NGG)

MARK JOHNSON,

Defendant.
----------X
NICHOLAS G. GARAUFIS, United States District Judge.

Now that the evidence in this case has been presented and the attorneys for the Government and the Defendant have concluded their closing arguments, it is my responsibility to instruct you as to the law that governs this case. My instructions will be in three parts:

First: I will instruct you regarding the general rules that define and govern the duties of a jury in a criminal case;

Second: I will instruct you regarding the legal elements of the crimes charged in the Indictment—that is, the specific elements that the Government must prove beyond a reasonable doubt to warrant a finding of guilt as to each crime; and

Third: I will give you some general rules regarding your deliberations.

PART I

The Role of the Court

Members of the jury, you now have heard all of the evidence in the case as well as the final arguments of the lawyers for the Government and the Defendant.

My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as stating the law on its own. Instead, you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be or ought to be, it would violate your sworn duty to base your verdict upon any view of the law other than that which I give you.

The Duties of the Jury

It is your duty to find the facts from all the evidence in this case. You are the sole judges of the facts. Therefore, it is for you and you alone to decide the weight of the evidence, to resolve such conflicts that may have appeared in the evidence, and to draw such inferences that you deem to be reasonable and warranted from the evidence or lack of evidence in this case.

With respect to any question concerning the facts, it is your recollection of the evidence that controls.

You must apply the law in accordance with my instructions to the facts as you find them. While the lawyers may have commented on some of the legal rules, you must be guided only by my instructions about the rules. You must follow all of the rules as I explain them to you. You may not follow some of the rules and ignore the others. Even if you disagree with the rules or do not understand the reasons for them, you are bound to follow the legal rules that I describe.

Parties are Equal Before the Court

The fact that this prosecution is brought in the name of the United States Government does not entitle the United States to any greater consideration than the Defendant. By the same token, it is entitled to no less consideration. The parties, the United States Government and the Defendant are equal before this court, and they are entitled to equal consideration. Neither the Government nor the Defendant is entitled to any sympathy or favor.

At times during the trial, I may have found it necessary to admonish the lawyers. You should not, however, let that prejudice you toward a lawyer or that lawyer's client because I have found it necessary to correct him or her. To the contrary, each attorney in this trial has professionally and competently served his or her client, and the court has great respect for all the attorneys in this courtroom.

Presumption of Innocence

The Indictment that was filed against the Defendant is the means by which the Government gave him notice of the charges against him and brought him before the court. It is nothing more. The Indictment is only an accusation. The Indictment is not evidence and you are to give it no weight in arriving at your verdict.

The Defendant pleaded "not guilty" in response to the Indictment. He is presumed to be innocent unless and until his guilt has been proven beyond a reasonable doubt based on your unanimous verdict. Thus the case against the defendant begins as a clean slate and may only be proven by the evidence presented to you at trial. Unless and until the Government meets its burden of proof beyond a reasonable doubt, the presumption of innocence remains with the Defendant regardless of the fact that he is charged with a crime, regardless of what is said about him at trial, regardless of whether the jurors believe he is likely guilty, and regardless of whether he is actually guilty. The presumption of innocence attaches to those who are actually innocent and to those who are actually guilty alike through all stages of the trial unless and until the Government meets its burden of proof.

I therefore instruct you that the Defendant is to be presumed by you to be innocent throughout your deliberations on each count in which he is charged until such time, if ever, that you as a jury are unanimously satisfied that the Government has proved him guilty beyond a reasonable doubt on that count. The presumption of innocence alone, unless overcome, is sufficient to require acquittal of the Defendant unless and until you the jurors unanimously are convinced that the Government has proven his guilt beyond a reasonable doubt. The Defendant is on trial only for the crimes charged in the Indictment, and not for anything else.

Burden of Proof on Government

Because the law presumes the Defendant to be innocent, the burden of proving his guilt beyond a reasonable doubt is on the Government throughout the trial. The Defendant is presumed to be innocent of every crime with which he has been charged, and he never has the burden of proving his innocence or of producing any evidence at all. The facts that defense counsel have cross-examined witnesses called by the government, called defense witnesses, presented evidence, and that the Defendant testified do not shift the burden of proof on any issue in the case. Again, the burden of proof remains on the government at all times.

Proof Beyond a Reasonable Doubt

For each crime with which the Defendant is charged, the Government must prove each element of that crime beyond a reasonable doubt, and your verdict must be unanimous. I will explain the elements of the crimes that the Indictment charges later on, but now I will address the phrase "reasonable doubt."

Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. Yet proof beyond a reasonable doubt does not mean proof beyond all possible doubt. The Government is not required to prove the Defendant's guilt to a mathematical certainty.

A reasonable doubt is a doubt based on reason and on common sense. This means that if, after you have considered all of the evidence and lack of evidence in this case, you have a doubt that is based on your own experience, judgment, and common sense, you must find the Defendant not guilty of the crime in question. A lack of evidence may provide a reasonable doubt upon which a jury can find a defendant not guilty.

A reasonable doubt, however, is not a doubt that arises out of whim or speculation. Nor is a reasonable doubt an excuse to avoid performing an unpleasant duty. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

You should consider all of the proof presented at trial, or any lack of proof, in determining whether you have a reasonable doubt. In considering each count in the Indictment, unless the Government proves beyond a reasonable doubt that the Defendant has committed each and every element of the offense charged in the count, you must find the Defendant not guilty of that offense.

You should consider each count of the Indictment separately. It is thus possible for you to find the Defendant guilty on one count and not guilty on another count. Conversely, you might find the Defendant guilty of each crime charged in the Indictment, or you might find him not guilty of all of the crimes charged in the Indictment.

On any count of the Indictment, if, after fair and impartial consideration of all the evidence and lack of evidence, you honestly conclude that you have such a doubt that would cause a prudent person to hesitate to act in matters of importance in his or her own life, then you have a reasonable doubt. In that event, it is your duty to acquit the Defendant on that count. For the same reason, if you view the evidence in the case as reasonably permitting a finding of either guilt or innocence as to a particular count, you must acquit the Defendant on that count.

If, on the other hand, after fair and impartial consideration of all the evidence, you do not have such a doubt, then you have no reasonable doubt and, in that circumstance, you should convict the Defendant on that count.

Dates Approximate

The Indictment charges "in or about" and "on or about" and "between" certain dates. The proof need not establish with certainty the exact date of an alleged offense. It is sufficient if the evidence establishes beyond a reasonable doubt that an offense was committed on a date reasonably near the dates alleged.

The Evidence

What is Evidence

I now wish to instruct you as to what is evidence and how you should consider it. The evidence you will use to decide what the facts are comes in three forms:

(1) sworn testimony of witnesses, both on direct and cross-examination;

(2) exhibits that have been received by the court in evidence; and

(3) stipulations that have been entered into by the parties.

The attorneys for the Government and for the Defendant have entered into stipulations concerning facts that are relevant to this case. When the attorneys on both sides stipulate and agree as to the existence of a fact, you must—unless otherwise instructed—accept the stipulation as evidence and regard that fact as proved.

If I instructed you that some item of evidence is received only for a limited purpose, you must consider that evidence for that purpose alone.

What is Not Evidence

In deciding the facts, you must disregard the following things, which are not evidence:

(1) Exhibits marked for identification but not received into evidence are not evidence.

(2) Demonstrative exhibits are not evidence.

(3) Testimony that the court has excluded or told you to disregard is not evidence.

(4) Arguments and statements by lawyers are not evidence.

(5) Questions put to the witnesses are not evidence. Only the witness's answer is evidence.

(6) The Indictment is not evidence. The Indictment is merely a statement of charges and not itself evidence.

(7) Objections to the questions or to offered exhibits are not evidence.

In this regard, the attorneys for both the Government and the Defendant have a duty to their clients to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. You should not be influenced by the objections or by the court's rulings on the objections. If an objection was sustained, ignore the question and the answer, if an answer was given. If an objection was overruled, treat the answer like any other answer.

From time to time, counsel requested conferences with me outside the hearing of the jury and others. You should not show any prejudice against a party because such a conference was requested, and you must not speculate about any communications between the lawyers and me outside your presence and hearing.

(8) Anything you may have seen or heard outside the courtroom is not evidence.

Your verdict must be based solely upon the evidence or lack of evidence developed at trial. You are not to engage in speculation or guesswork.

In reaching your decision as to whether the Government has sustained its burden of proof, it would be improper for you to consider any personal feelings you may have about the Defendant's race, national origin, ethnic background, sex, age, sexual orientation, occupation, or economic status. All persons are entitled to the presumption of innocence and the Government has the same burden of proof in all criminal cases.

In addition, it would be equally improper for you to allow any feelings you might have about the nature of the crimes charged to interfere with your decision-making process.

It would also be improper for you to draw any conclusions about the Defendant's guilt or innocence from anything you may or may not have observed about the spectators inside or outside the courtroom. As I have said, your verdict must be based solely upon the evidence presented at trial.

Under your oath as jurors, you are not to be swayed by sympathy for one side or the other. You are to be guided solely by the evidence in this case. The crucial, central question that you must ask yourselves as you sift through the evidence is: Has the Government proven the guilt of the Defendant beyond a reasonable doubt?

It is for you alone to decide whether the Government has proven that the Defendant is guilty of the crimes charged solely on the basis of the evidence or lack of evidence and subject to the law as I charge you. It must be clear to you that once you let fear, or prejudice, or bias, or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to the Defendant's guilt as to a particular charged crime, you must render a verdict of not guilty. But on the other hand, if you should find that the Government has met its burden of proving the Defendant's guilt beyond a reasonable doubt, you should not hesitate to render a verdict of guilty because of sympathy or any other reason.

To repeat, your verdict must be based exclusively upon the evidence or the lack of evidence in this case.

Direct and Circumstantial Evidence:

I have already told you that evidence comes in various forms, such as the sworn testimony of witnesses, exhibits, and stipulations.

This evidence may take two different forms: direct evidence and circumstantial evidence.

Direct Evidence

Direct evidence is the communication of a fact by a witness who testifies to the knowledge of that fact as having been obtained through one of the five senses.

So, for example, a witness who testifies to knowledge of a fact because he saw it, heard it, smelled it, tasted it, or touched it, is providing direct evidence. As I explained to you in my opening instruction, if you went outside and saw that it was raining, you would have observed direct evidence of rain. For testimony providing direct evidence, what remains is your responsibility to pass upon the credibility of the witnesses providing it. Physical items or documents received into evidence as an exhibit are direct evidence of the existence or condition of those items.

Circumstantial Evidence

Circumstantial evidence is evidence that tends to prove a fact at issue by proof of other facts from which the fact at issue may be inferred.

The word "infer," or the expression "to draw an inference," means to find that a fact exists from proof of another fact. For example, if a fact at issue is whether it is raining at the moment, none of us can testify directly to that fact, since we are sitting in this courtroom with the shades drawn. Assume, however, that as we sit here, a person walks into the courtroom wearing a raincoat that is wet, and that person is also carrying an umbrella dripping water. We may infer

that it is raining outside. In other words, the fact of rain is an inference that could be drawn from the wet raincoat and the dripping umbrella.

An inference is to be drawn only if it is logical and reasonable to do so. In deciding whether to draw an inference, you must look at and consider all the facts in light of reason, common sense, and experience. Whether a given inference is or is not to be drawn is entirely a matter for you, the jury, to decide. Please bear in mind, however, that an inference is not to be drawn by guesswork, suspicion, or speculation. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that you know exists.

There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The Government asks you to draw one set of inferences, while the Defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion that you, the jury, are permitted—but not required— to draw from the facts that have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense. So, while you are considering the evidence presented to you, you are permitted to draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experience.

I'm going to instruct you on a couple of inferences that you are not permitted to make. If you find that the Defendant associated with other people who were guilty of wrongdoing, you may not infer that he is guilty of participating in criminal conduct merely from that association. Similarly, if you find that the Defendant was present at the time a crime was being committed,

and had knowledge that the crime was being committed, you may not infer that he is guilty of participating in criminal conduct merely because of his presence and knowledge.

I remind you once again that you may not convict the Defendant unless you are satisfied of his guilt beyond a reasonable doubt, whether based on direct evidence, circumstantial evidence, or the logical inferences to be drawn from such evidence. Circumstantial evidence does not necessarily prove less than direct evidence, nor does it necessarily prove more. In determining what the facts are, and in arriving at your verdict, you are to consider all of the evidence in this case—direct and circumstantial.

Deciding What to Believe

In deciding what the facts are, you must decide which testimony to believe, which testimony not to believe, and how much weight to give to the testimony of each witness. As with all factual issues, you are the sole judges of the credibility of each witness and the importance of his or her testimony. In making those decisions, there are a number of factors you may take into account, including the following:

(1) Did the witness seem honest?

(2) Did the witness have any particular reason not to tell the truth?

(3) Did the witness have a personal interest in the outcome of the case?

(4) Did the witness seem to have a good memory?

(5) Did the witness have the opportunity and ability to observe accurately the things he or she testified about?

(6) Did the witness show resentment or anger towards a party?

(7) Did the witness appear to understand the questions clearly and answer them directly?

(8) Was what the witness said supported by other evidence?

(9) Did the witness's testimony differ from the testimony of other witnesses?

(10) Was the witness consistent in his or her testimony?

(11) How did the witness's testimony on direct examination compare with his or her testimony on cross examination?

People sometimes forget things. A contradiction may be an innocent lapse of memory or it may be an intentional falsehood. Consider, therefore, whether the contradiction has to do with an important fact or only a small detail. In addition, different people observing an event may remember it differently and therefore testify about it differently.

Ultimately, you may consider the factors I have just discussed as well as other relevant factors in deciding how much weight to give to testimony.

Finally, if you find that a witness has lied to you about any matter, however insignificant, you may choose to disregard that witness's testimony in part or in whole.

Discrepancies in Testimony

You have heard evidence of discrepancies in the testimony of certain witnesses, and counsel have argued that such discrepancies are a reason for you to reject all or part of the testimony of those witnesses.

Evidence of discrepancies may be a basis to disbelieve a witness's testimony. On the other hand, discrepancies in a witness's testimony or between his or her testimony and that of others do not necessarily mean that the witness's entire testimony should be discredited.

People sometimes forget things, and even a truthful witness may be nervous and contradict him- or herself. It is also the case that two people witnessing an event may see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail

should be considered in weighing its significance. A willful falsehood always is a matter of importance and should be considered seriously.

It is for you to decide, based on your total impression of a witness, how to weigh the discrepancies in his or her testimony. You should, as always, use common sense and your own good judgment.

Interest in Outcome

In evaluating the credibility of a witness, you should take into account any evidence that the witness may benefit in some way from the outcome of the case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of the case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected his or her testimony.

Cooperating Witnesses

You have heard testimony from cooperating witnesses Frank Cahill and Dipak Khot who testified that they have entered into agreements to cooperate with the government, and to give testimony at this trial, and in exchange, the government has agreed not to prosecute them for any wrongdoing in connection with the transaction that is the subject of this indictment. In addition, the government has also agreed not to prosecute Frank Cahill for his participation in a separate wrongdoing that is not at issue in this case, in exchange for his cooperation.

The government is permitted to make these kinds of promises and is entitled to call as witnesses people to whom these promises are given. Moreover, experience will tell you that the Government sometimes must rely on the testimony of witnesses who admit participating in criminal activity. For that reason, the law allows the use of such testimony. You are instructed that you may convict a defendant on the basis of such a witness's testimony alone, if you find that his testimony proves the defendant guilty beyond a reasonable doubt.

However, the testimony of a witness who has been promised that he will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is colored in such a way as to place guilt upon the defendant in order to further the witness' own interests; for, such a witness, confronted with the realization that he can win his own freedom by helping to convict another, has a motive to falsify his testimony. You should ask yourselves whether the witness would benefit more by lying or by telling the truth. Was his testimony made up in any way because he believed or hoped that he would somehow receive favorable treatment by testifying falsely, or did he believe that his interest would be best served by testifying truthfully?

Such testimony should be received by you with suspicion and you may give it such weight, if any, as you believe it deserves.

Expert Witnesses

In this case, I have permitted certain witnesses, Dr. David DeRosa, Ross Waller, and Kevin Rodgers, to express their opinions about matters that are at issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience, and training. Such testimony is presented to you on the theory that someone

who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness's qualifications, his opinions, the reasons he gave for testifying and for his opinions, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all of the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

Testimony of Government Agents and Law Enforcement Witnesses

During this trial you heard testimony from a law enforcement witness. That a witness works in law enforcement or is a government employee does not mean that his or her testimony is entitled to any greater or lesser weight than that of an ordinary witness by reason of his or her employment.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his testimony may be colored by a personal or professional interest in the outcome of the case.

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

The Defendant's Testimony

In this case, the Defendant had no obligation to testify but chose to do so. You must therefore scrutinze the Defendant's testimony just as you would the testimony of any other witness with an interest in the outcome of the case, taking account all of the factors I have previously described.

The Defendant's Reputation and Character

The defendant has called witnesses who have testified to his good reputation for honesty, integrity and law-abidingness in the various communities in which he is known. This testimony is not to be taken by you as the witness's opinion as to whether the defendant is guilty or not guilty. That question is for you alone to determine. You should, however, consider this evidence together with all the other facts and all the other evidence in the case in determining whether the defendant is guilty or not guilty of the charges.

Such evidence alone may indicate to you that it is improbable that a person of good reputation or character would commit the offense charged. Accordingly, if, after considering the question of the defendant's reputation and character, you find that a reasonable doubt has been created, you must acquit him of all the charges.

On the other hand, if, after considering all of the evidence, including that of the defendant's reputation and character, you are satisfied beyond a reasonable doubt that the defendant is guilty, you should not acquit the defendant merely because you believe he is a person of good character or reputation.

Publicity

Your verdict must be based solely on the evidence presented in this courtroom in accordance with my instructions. You must completely disregard any reports that you have read in the press, seen on television, or heard on the radio.

You are in the best position of anyone to listen to what the witnesses testify to. You have seen these witnesses sworn. You have heard them on direct and cross-examination. Certainly, there isn't anything that anyone can print, or say over the radio, television, or Internet that would give you more information than what you have heard from the witnesses in this courtroom.

Indeed, it would be unfair to consider such reports, since they are not evidence and the parties had no opportunity to challenge their accuracy or otherwise explain them away. In short, it would be a violation of your oath as jurors to allow yourselves to be influenced in any manner by such publicity.

Particular Investigative Techniques Not Required

Although the Government bears the burden of proof beyond a reasonable doubt, and although a reasonable doubt can arise from lack of evidence, I instruct you that there is no legal requirement that the Government use any specific investigative techniques to prove its case. Law enforcement techniques are not your concern. Your concern is to determine whether or not, based upon all of the evidence in this case, the Government has proven that the Defendant is guilty beyond a reasonable doubt as to each count charged against him.

Number of Witnesses and Uncontradicted Testimony

The fact that one party called more witnesses and introduced more evidence than another party does not mean that you should find the facts in favor of the side offering the most witnesses. By the same token, you do not have to accept the testimony of any witness, even if

that witness has not been contradicted or impeached, if you find the witness not to be credible. You do have to decide which witnesses to believe and which facts are true. To do this, you must look at all of the evidence, drawing upon your own common sense and personal experience.

All Available Witnesses Need Not Be Produced

The law does not require the Government to produce all available evidence or call as witnesses all persons involved in the case who may have been present at any relevant time or place, or who may appear to have some knowledge of a matter at issue in this trial. Nor does the law require any party to produce as exhibits all papers and objects mentioned during the course of the trial. You are always entitled, however, to consider any lack of evidence in determining whether the Government has met its burden of proof beyond a reasonable doubt.

Uncalled Witness Equally Available to Both Sides

Both the government and the defense have the same power to (1) subpoena witnesses to testify on their behalf; or (2) depose witnesses located abroad, who would be otherwise unavailable to testify at a trial in the United States, for the purpose of using their recorded deposition testimony at trial. You should remember that there is no duty on either side to call a witness whose testimony would be merely cumulative of testimony already in evidence, or who would merely provide additional testimony to facts already in evidence.

I remind you, however, that because the law presumes the Defendant to be innocent, the burden of proving his guilt beyond a reasonable doubt is on the Government throughout the trial. The Defendant never has the burden of proving his innocence or of producing any evidence or calling any witnesses at all.

Charts and Summaries

The parties have presented exhibits in the form of charts and summaries. These charts and summaries were shown to you in order to make other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based, and they are not themselves independent evidence. Therefore, you are to give no greater consideration to these schedules or summaries than you would give to the evidence upon which they are based.

It is for you to decide whether the charts, schedules, or summaries correctly present the information contained in the testimony and in the exhibits on which they are based. You are entitled to consider the charts, schedules, and summaries if you find that they are of assistance to you in analyzing and understanding the evidence.

Transcripts of Audio Recordings

Audio recordings of telephone calls have been admitted into evidence. In connection with those records, each party has been permitted to provide you with and display transcripts containing that party's interpretation of what appears in the tape recordings. Those transcripts were given to you as an aid or guide to assist you in listening to the tapes. As I have told you many times, however, the transcripts are not in and of themselves evidence. You alone should make your own interpretation of what appears on the tapes based on what you heard. If you think you heard something differently than appeared on the transcript, it is your determination that is controlling.

Multiple Counts

The Indictment contains a total of ten counts or charges against the Defendant. Each count charges the Defendant with a different crime. You must consider each count separately and return a separate and unanimous verdict of guilty or not guilty for each count. Whether you find the Defendant guilty or not guilty as to one count should not affect your verdict as to the other charged counts.

Other Persons Not on Trial

You are about to be asked to decide whether or not the Government has proven beyond a reasonable doubt the guilt of this Defendant. You are not being asked whether any other person has been proven guilty. Your verdict should be based solely upon the evidence or lack of evidence as to this Defendant in accordance with my instructions and without regard to whether the guilt of other people has or has not been proven.

You have heard evidence about the involvement of certain other people in the events referred to in the Indictment. You may not draw any inference, favorable or unfavorable, towards the Government or the Defendant from the fact that certain persons are not on trial before you, or that persons were named as co-conspirators but not Indicted. That these individuals are not on trial before you, or are not named as defendants, is not your concern. You also should not speculate as to the reason these people are not on trial before you, or are not named as defendants, nor should you allow their absence as parties to influence in any way your deliberations in this case. Your concern is solely the Defendant on trial before you.

Punishment

The question of the possible punishment of the Defendant is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. Your function is to weigh the evidence in the case, and to determine whether or not the Defendant is guilty beyond a reasonable doubt solely upon the basis of the evidence. Under your oath as jurors, you cannot allow a consideration of the punishment that may be imposed upon the Defendant, if he is convicted, to influence your verdict in any way or to enter your deliberations in any sense.

Crimes Defined by Statute Only

In our system, we only have crimes that are defined by statute. The fact that something may be repugnant to you, or may be something that you think is morally wrong, is irrelevant. Statutes define our crimes, and I will talk to you about the individual statutes and how they break down into elements so that you can consider the elements that the Government must prove. A feeling that something wrong has been done is insufficient to support a criminal conviction, and not every instance of unfairness or sharp business practice constitutes a federal crime. Instead, for each charge, you must analyze the evidence and determine whether the Government has or has not met its burden of proving beyond a reasonable doubt each and every essential element of the federal statutory offense charged in the indictment.

Charges Do Not Require Proof of Regulatory Violation

You have heard evidence regarding the existence or non-existence of regulations prohibiting certain conduct that has been described during this trial. I instruct you that the Defendant is not charged with violating any regulation. He is charged with the crimes of wire fraud and conspiracy to commit wire fraud. I will instruct you about the elements of those crimes in a few minutes. The Government is not required to show that the Defendant violated any statute, law, or regulation apart from the charges as outlined in those instructions.

You should, however, consider the absence of law, regulation, and guidance in evaluating the Defendant's intent, knowledge, willfulness, and good faith.

PART II – SUBSTANTIVE CHARGES

I will now turn to the second part of this jury charge, in which I instruct you on the legal elements of the crimes charged. I will review the Indictment with you and instruct you as to the legal elements of the crimes with which the Defendant is charged. As I instructed you earlier and at the outset of this case, an Indictment is a charge or accusation. It is not evidence and you are to give it no weight. The Indictment in this case has ten counts. You will be called upon to render a separate verdict as to each count.

KNOWLEDGE, INTENT, AND WILLFULNESS

Before discussing the elements of the separate counts, I will discuss the concepts of knowledge, intent, and willfulness.

Knowingly

Certain allegations in the Indictment require that in order to sustain its burden of proof, the Government must prove beyond a reasonable doubt that a defendant acted "knowingly." A defendant acts knowingly if he acts purposely and voluntarily, and not because of ignorance, mistake, accident, carelessness, or other innocent reason. Whether a defendant acted knowingly may be proven by his conduct and by all of the facts and circumstances surrounding the case.

Intentionally

Certain allegations in the Indictment require that in order to sustain its burden of proof, the Government must prove that a defendant acted "intentionally." Before you can find that a defendant acted intentionally, you must be satisfied beyond a reasonable doubt that the defendant acted deliberately and purposefully. That is, a defendant's acts must have been the product of his conscious, objective decision, rather than the product of mistake or accident. A defendant need not have been aware of the specific law or rule that his conduct may have violated.

Willfully

Certain allegations in the Indictment require that the government prove beyond a reasonable doubt that the Defendant acted "willfully." "Willfully" means to act with the intent to do something the law forbids; that is, with a bad purpose to disobey or disregard the law.

The Government does not have to prove that a defendant knew he was violating a particular statute. However, a defendant cannot be convicted of a crime unless the Government proves that he engaged in conscious wrongdoing with a sufficiently culpable state of mind to support a criminal conviction. A defendant's conduct is not "willful" if it was due to negligence, inadvertence, or mistake.

* * * *

These issues of knowledge, intent, and willfulness require you to make a determination about the Defendant's state of mind, something that rarely can be proved directly. A wise and careful consideration of all the circumstances of the case may, however, permit you to make such a determination as to the Defendant's state of mind. I remind you, however, that where knowledge, intent, and willfulness are elements of a crime, the Government must prove the Defendant's state of mind beyond a reasonable doubt.

SUBSTANTIVE CHARGES

COUNTS TWO THROUGH SIX AND EIGHT THROUGH ELEVEN: WIRE FRAUD

Counts Two through Six and Eight through Eleven of the Indictment charge the Defendant with wire fraud. The Government claims that Defendant committed wire fraud against Cairn Energy. In relevant part, Counts Two through Six and Eight through Eleven read as follows:

> In or about and between October 2011 and December 2011, both dates being approximate and inclusive, within the Southern District of New York and the Eastern District of New York, the defendant Mark Johnson . . . , together with others, did knowingly and intentionally devise a scheme and artifice to defraud [Cairn Energy], and to obtain money and property from [Cairn] by means of materially false and fraudulent pretenses, representations and promises.
>
> On or about the dates specified below, for the purpose of executing such scheme and artifice, the defendant Mark Johnson . . . , together with others, transmitted and caused to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, as set forth below:

Count	On or About Date	Underlying Fund Transfer	Description of Wire
TWO	12/7/2011	[Not Applicable]	Telephone call at approximately 1:35 PM London time involving Johnson in New York, New York, and others outside the State of New York in which Johnson and others discussed whether the [Cairn] FX Transaction should be executed at the 3 PM fix or the 4 PM fix.
THREE	12/7/2011	[Not Applicable]	Telephone call at approximately 2:27 PM London time involving Johnson in New York, New York, and Stuart Scott, outside the State of New York in which Johnson and Scott discussed that [Cairn] had given HSBC the full order.

Count	On or About Date	Underlying Fund Transfer	Description of Wire
FOUR	12/7/2011	[Not Applicable]	Telephone call at approximately 2:54 PM London time involving Johnson in New York, New York, and Stuart Scott outside the State of New York, in which Johnson and Scott discussed how high they could "ramp" the price of Sterling/Dollar before [Cairn] would "squeal."
FIVE	12/7/2011	[Not Applicable]	Email involving Johnson in New York, New York, and others outside the State of New York in which Johnson and others discussed that [Cairn/Cairn's Advisor] was calling at "every uptick" in reference to the price of Sterling and was told that a "[R]ussian name" was buying at the same time as [Cairn].
SIX	12/7/2011	[Not Applicable]	Telephone call at approximately 3:15 PM London time involving Johnson in New York, New York, and others outside the State of New York in which Johnson and others discussed the [Cairn] FX Transaction.
EIGHT	12/8/2011	Outgoing fund transfer of approximately $286.5 million from [Cairn's] Financial Institution A account to HSBC.	Wire initiated by JP Morgan Chase Clearing Corporation from Brooklyn, New York, to JP Morgan's mainframe at a location outside of New York approving underlying fund transfer.
NINE	12/8/2011	Outgoing fund transfer of approximately $370 million from [Cairn's] Financial Institution A account to HSBC.	Wire initiated by JP Morgan Chase Clearing Corporation from Brooklyn, New York, to JP Morgan's mainframe at a location outside of New York approving underlying fund transfer.

Count	On or About Date	Underlying Fund Transfer	Description of Wire
TEN	12/8/2011	Outgoing fund transfer of approximately $345 million from [Cairn's] Financial Institution A account to HSBC.	Wire initiated by JP Morgan Chase Clearing Corporation from Brooklyn, New York, to JP Morgan's mainframe at a location outside of New York approving underlying fund transfer.
ELEVEN	12/8/2011	Outgoing fund transfer of approximately $390 million from [Cairn's] Financial Institution A account to HSBC	Wire initiated by JP Morgan Chase Clearing Corporation from Brooklyn, New York, to JP Morgan's mainframe at a location outside of New York approving underlying fund transfer.

The Indictment also contains another count, Count Seven. The Government has informed the court and the Defendant that it will not pursue that count. You must not consider that count.

The relevant statute is section 1343 of Title 18 of the United States Code, which states

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice shall be [guilty of a crime].

Elements of Wire Fraud

In order to prove the Defendant guilty of wire fraud, the Government must prove each of the following elements beyond a reasonable doubt:

- First, that there was a scheme or artifice to defraud Cairn by obtaining money or property from Cairn by materially false and fraudulent pretenses, representations or promises, as alleged in the Indictment;
- Second, that the Defendant knowingly and willfully participated in the scheme or artifice to defraud Cairn, with knowledge of its fraudulent nature and with specific intent to defraud Cairn; and
- Third, that in execution of that scheme, the Defendant used or caused the use of interstate or international wires as specified in the Indictment.

In this case, each of the wire fraud counts alleges the same facts with respect to the first and second elements but alleges a different wire communication with respect to each count.

I will now explain each of these elements further.

First Element: Existence of a Scheme or Artifice to Defraud

The first element that the government must prove beyond a reasonable doubt is that there was a scheme or artifice to defraud Cairn of money or property by means of materially false or fraudulent pretenses, representations or promises. I will break this down into three parts: the scheme or artifice to defraud, the materially false or fraudulent pretenses, and the money or property.

The Scheme or Artifice to Defraud

A "scheme or artifice" is merely a plan for the accomplishment of an object. A scheme to defraud is any plan, device, or course of action to obtain money or property by means of false or fraudulent pretenses, representations or promises reasonably calculated to deceive persons of average prudence.

"Fraud" is a general term which embraces all the various means which human ingenuity can devise and which are resorted to by an individual to gain an advantage over another by false representations, suggestions or suppression of the truth, or deliberate disregard for the truth.

So, putting this all together, a "scheme to defraud" is merely a plan to deprive another of money or property by trick, deceit, deception or swindle.

The Government is not required to prove that the Defendant personally originated the scheme to defraud. Furthermore, it is not necessary that the Government prove that the Defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss.

A scheme to defraud need not be shown by direct evidence, but may be established by all of the circumstances and facts in the case.

Materially False or Fraudulent Pretenses or Representations

The scheme to defraud in this case is alleged to have been carried out by making false or fraudulent statements and representations. A representation or statement is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made, and is fraudulent if it was falsely made with the intention to deceive and with the specific intent to cause financial or property loss to another. False and fraudulent statements under the statute may include the concealment of material facts in a manner that makes what is said or represented deliberately misleading. An estimate or expression of an opinion may also constitute false or fraudulent statements under the statute, but only if the Government proves beyond a reasonable doubt that it was not honestly believed by the person making the statement when it was made.

The failure to disclose information may also constitute a fraudulent representation only if the Defendant was under a legal, professional or contractual duty to make such a disclosure, the Defendant actually knew such disclosure was required to be made, and the Defendant failed to make such disclosure with the intent to defraud.

The deception need not be premised upon spoken or written words alone. The arrangement of the words, or the circumstances in which they are used may convey the false and deceptive appearance. If there is deception, the manner in which it is accomplished does not matter.

The false or fraudulent representation or failure to disclose must relate to a material fact or matter. To be material, a fact must be of such importance that it would reasonably be expected to cause a prudent person to act or not act in some way with respect to the transaction at issue. This means that if you find a particular statement of fact to have been false, you must determine whether the Government has shown beyond a reasonable doubt that a reasonable

person in Cairn's position would have considered the fact to be important in making a decision in connection with the underlying FX transaction with HSBC. The same principle applies to fraudulent half truths or omissions of material facts: the misrepresentation must be of some independent value to Cairn or must bear on the ultimate value of the FX transaction.

A false or fraudulent statement is not material under this element if it constitutes "puffery" or sales talk that would not, in the view of a reasonable investor, be considered important in making a decision regarding the transaction at issue.

Money or Property

Finally, in order to be actionable, the scheme to defraud must target money or property. The Government has advanced two theories in support of the wire fraud charges, both of which pertain in part to the money or property requirement:

- First, that the Defendant misappropriated Cairn's confidential business information, in a breach of duty of trust and confidence owed by Defendant to Cairn; and
- Second, that the Defendant deprived Cairn of its intangible right to control its assets by depriving Cairn, through misrepresentations and omissions, of potentially valuable economic information that would reasonably be expected to affect Cairn's economic decisions.

The Government does not need to prove both theories in order for you to find the Defendant guilty of the wire fraud counts. The government need only prove that the Defendant violated the statute in one of the two ways, but to find the Defendant guilty of wire fraud, you must be unanimous as to which theory the Government has proven beyond a reasonable doubt. In other words, for a guilty verdict to be rendered on any of Counts Two through Six or Eight through Eleven, all twelve jurors must agree either that the Government has proven that the

Defendant engaged in a scheme to misappropriate Cairn's confidential information in violation of a duty of trust and confidence, or that the Government has proven that Defendant engaged in a scheme to defraud Cairn of its right to control its assets by depriving it of potentially valuable economic information. Of course, a guilty verdict can also be rendered if all twelve jurors agree that each of the two theories has been proven. You may not, however, find the Defendant guilty unless you unanimously agree on at least one of these theories. I will now describe the Government's theories.

Misappropriation

A defendant may be found guilty of wire fraud where he knowingly and with fraudulent intent misappropriates confidential information in violation of a duty of trust and confidence owed to the source of that information, and then uses that information for his own benefit. In using this information for his own purposes and without disclosing his intentions to the source of the information, a defendant deprives the victim of the exclusive use of its confidential information.

To establish this theory, the Government must first establish that the Defendant entered into a relationship of trust and confidence with Cairn. Whether such a relationship exists is a matter of fact for you, the jury, to determine. At the heart of this relationship lies reliance and de facto control and dominance: one party, known as the principal, relies on another party, known as the agent, to serve the principal's interests. The relationship between the principal and the agent implies and necessitates great confidence and trust on the part of the principal, and a high degree of good faith on the part of the agent. In the course of this relationship, the principal may provide the agent with confidential information for the purpose of allowing the agent to use that property or information to benefit the principal. Because the principal gives the agent

confidential information for the purpose of benefiting the principal, the law imposes on the agent a duty not to use that information for his own benefit without disclosing his intention to do so to the principal. The agent's undisclosed use of material information for his own benefit, under circumstances where the non-disclosure can or does result in harm to the principal, may constitute a violation of the wire-fraud statute if the Government has proven beyond a reasonable doubt the other elements of that offense.

The duty of trust and confidence exists only where (1) a defendant explicitly accepts that duty, or (2) where a defendant's acceptance of that duty may be implied from a pre-existing fiduciary or similar relationship of trust and confidence between that defendant and the claimed principal. Before a duty of trust and confidence may be imposed, the defendant must be on notice that he has entered into a relationship with the principal that gives him heightened responsibilities. A duty of trust and confidence is not to be lightly implied.

Simply entrusting someone with confidential information does not, without more, give rise to a relationship of trust and confidence. Instead, a defendant must have accepted his entry into a relationship of trust and confidence and received the confidential information in the course of that relationship.

It is for you to find whether the Government has established beyond a reasonable doubt that a relationship of trust and confidence exists between Cairn and the Defendant, whether Cairn provided the Defendant with confidential information in the course of such a relationship, and whether the Defendant, with knowledge and fraudulent intent, secretly used that information for his own benefit under circumstances where that use could or did result in a tangible harm to Cairn.

Right to Control

The other way in which the Government alleges that the Defendant committed wire fraud is by depriving Cairn of its right to control its assets. Under the right to control theory, the Government contends that the Defendant committed wire fraud by making material misrepresentations and omissions that deceived Cairn and deprived it of potentially valuable economic information that Cairn would consider valuable in deciding how to use its assets.

* * * *

To establish liability under either the misappropriation theory or the right-to-control theory, the Government must prove beyond a reasonable doubt that the alleged scheme was meant to deprive Cairn of money or property. Property includes intangible interests. In the misappropriation theory, the property implicated is the confidential information obtained through a relationship of trust and confidence. Under the "right to control" theory, the property at issue is the alleged victim's right to control its assets, which can be harmed when the alleged victim is deprived of potentially economically valuable information that would be valuable in deciding how to use those assets.

With respect to either confidential information or the potentially valuable economic information, depriving Cairn of its property can only support a conviction if the misrepresentations or non-disclosures constituting the deprivation can or do result in tangible economic harm to Cairn. The harm could be that Cairn was charged a higher price than it bargained for, or it could be that Cairn did not receive the goods or services it bargained for. Under the right to control theory, the Defendant's misrepresentations and omissions must go to the heart of Cairn's bargain with HSBC. It is not enough if there were misrepresentations or

omissions that did no more than cause Cairn to enter into a transaction it otherwise would have avoided.

A scheme intended to deceive and to bring about financial gain to the Defendant without causing financial or property loss to the victim is not sufficient to satisfy this requirement: the scheme must have been intended to harm the victim.

If you find that the government has sustained its burden of proof that a scheme or artifice to defraud Cairn Energy of money or property by means of materially false or fraudulent pretenses, representations or promises, as charged, did exist, you next should consider the second element.

Second Element: Participation in the Scheme with Intent

The second element that the Government must prove beyond a reasonable doubt is that the Defendant participated in the scheme to defraud knowingly, willfully and with specific intent to defraud.

I have already instructed you as to the meaning of "knowingly" and "willfully." "Intent to defraud" means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial or property loss to another. Such intent can be found only if the Defendant understood and intended that, as a result of intentional misrepresentations, there existed a discrepancy between benefits that Cairn reasonably anticipated because of these misrepresentations and the actual benefits that the Defendant delivered or intended to deliver to Cairn. In other words, the Government must prove beyond a reasonable doubt that the Defendant knew that material false misrepresentations or omissions had been made to Cairn and intended that Cairn would be deprived of its money or property as a result of those misrepresentations or omissions.

The wire fraud statute recognizes that there may be multiple motives for human behavior. A specific intent, as described above, need not be the actor's sole, or even primary, purpose for taking an action. A defendant acts with specific intent if an intent to defraud was one of several objectives in taking a specific action or making a specific representation or omission, even if he was also motivated by other factors that were not dishonest. Regardless of whether a defendant acts with one or more intents, the Government must prove beyond a reasonable doubt that the defendant had a specific intent to defraud.

Since an essential element of the crime charged is intent to defraud, it follows that good faith on the part of a defendant is a complete defense to a charges of mail fraud and wire fraud.

However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by a defendant is a complete defense, however inaccurate the statements may have turned out to be. You are instructed that a good faith belief is one that is held honestly and genuinely. Further, if a defendant believed in good faith that his conduct was proper, even if he was mistaken in that belief, and even if others were injured by his conduct, there would be no crime. A defendant, however, has no burden to establish a defense of good faith. The burden is on the Government to prove fraudulent intent and consequent lack of good faith beyond a reasonable doubt.

As a practical matter, then, in order to sustain the charges against the Defendant, the Government must establish beyond a reasonable doubt that he knew that his conduct as a participant in the scheme was calculated to deceive and, nonetheless, he associated himself with the alleged fraudulent scheme for the purpose of causing some loss to Cairn.

The question of whether a person acted knowingly, willfully and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one's state of mind.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required. The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

The Government can also meet its burden of showing that the Defendant had knowledge of the falsity of the statements if it establishes beyond a reasonable doubt that he was aware of a high probability that the statements were false, and took deliberate steps to avoid learning what otherwise would have been obvious. If the Government establishes that the Defendant acted with a conscious purpose to avoid learning the truth, the knowledge requirement would be satisfied unless the Defendant actually believed the statements to be true. This guilty knowledge, however, cannot be established by demonstrating that the defendant was merely negligent, foolish, or reckless: he must actively avoid learning the truth.

If you find that the Government has established both the first element and this second element—that the defendant was a knowing participant and acted with specific intent to defraud—beyond a reasonable doubt, then you should consider the third and final element of wire fraud. If, on the other hand, you find that the Government has failed to establish either or both of these elements beyond a reasonable doubt, you must find the Defendant not guilty.

Third Element: Use of the Wires

The third element that the Government must establish beyond a reasonable doubt is the use of an interstate or international wire communication in furtherance of the scheme to defraud.

The wire communication must pass between two or more states as, for example, an email or telephone call between New York and New Jersey; or it must pass between the United States and a foreign country, such as an email or telephone call between New York and London. A wire communication also includes a wire transfer of funds between banks in different states or between a bank in the United States and a bank in a foreign country.

The use of the wires need not itself be a fraudulent representation. It must, however, further or assist in the carrying out of the scheme to defraud.

It is not necessary for the Defendant to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which the Defendant is accused of participating.

In this regard, it is sufficient to establish this element of the crime if the evidence justifies a finding that the Defendant caused the wires to be used by others. This does not mean that the Defendant must specifically have authorized others to make the call or transfer the funds. When one does an act with knowledge that the use of the wires will follow in the ordinary course of business or where such use of the wires can reasonably be foreseen, even though not actually intended, then he causes the wires to be used.

With respect to the use of the wires, the Government must establish beyond a reasonable doubt the particular use charged in the indictment. However, the Government does not have to prove that the wires were used on the exact date charged in the Indictment. It is sufficient if the

evidence establishes beyond a reasonable doubt that the wires were used on a date substantially similar to the dates charged in the Indictment.

Aiding and Abetting

For Counts Two through Six and Eight through Eleven, the Government can meet its burden of proof either by proving that the Defendant himself did the acts charged, or by proving that he aided and abetted another person in doing so. In relevant part, the aiding and abetting statute, section 2(a) of Title 18 of the United States Code, provides that,

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Under this provision, it is not necessary for the Government to show that a defendant himself physically committed the crime with which he is charged in order for the Government to sustain its burden of proof. A person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you may find the defendant guilty of the offense charged if you find beyond a reasonable doubt that the Government has proven that another person actually committed the offense with which the Defendant is charged, and that the Defendant aided or abetted that person in the commission of the offense.

The first requirement is that you find that another person has committed the crime charged. Obviously, no one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the Defendant aided or abetted the commission of that crime.

In order to aid or abet another to commit a crime, it is necessary that a defendant willfully and knowingly associate himself in some way with the crime and that he participate in it by doing some act with the desire to help the crime succeed. That is, a defendant must have the

specific intent of furthering the criminal offense through some action on his part. An aider and abettor must have some interest in the criminal venture. That interest need not be a financial one, but you may consider the presence or absence of a financial interest in making your determination.

To establish that the Defendant knowingly associated himself with the crime, the Government must establish beyond a reasonable doubt that the Defendant had the mental state required for wire fraud: that he knowingly and willfully participated in a scheme to defraud Cairn, with knowledge of its fraudulent nature and with specific intent to defraud.

To establish that the Defendant participated in the commission of the crime, the Government must prove beyond a reasonable doubt that the Defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about that crime.

The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the Defendant that a crime is being committed, or merely associating with others who were committing a crime is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

To determine whether a defendant aided or abetted the commission of the crime with which he is charged, ask yourself these questions:

- Did he participate in the crime charged as something he wished to bring about?
- Did he knowingly and willfully associate himself with the criminal venture?
- Did he seek by his actions to make the criminal venture succeed?

- Did the Defendant engage in the activity with a specific intent to defraud?

If he did, then the Defendant is an aider and abettor, and therefore guilty of the offense. If, on the other hand, your answer to any one of these questions is "no," then the Defendant is not an aider and abettor, and you must find him not guilty on that theory.

COUNT ONE: CONSPIRACY TO COMMIT WIRE FRAUD

Count One of the Indictment charges the Defendant with Wire Fraud Conspiracy. The wire fraud that is alleged to be the object of the conspiracy consists of the alleged scheme to defraud Cairn that I described to you. Count One reads, as relevant:

> In or about and between October 2011 and December 2011, both dates being approximate and inclusive, in the Eastern District of New York and elsewhere, the defendant Mark Johnson . . ., together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud [Cairn Energy], and to obtain money and property from [Cairn] by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds.

The relevant statute on this subject is section 1349 of Title 18 of the United States Code. It provides:

> Any person who attempts or conspires to commit any offense under this chapter [including the wire fraud statute that I discussed earlier] shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

I have already instructed you on the substantive offense of wire fraud, and I will now direct you on the law of conspiracy.

Elements of Conspiracy

A conspiracy is a criminal partnership: an agreement by two or more persons to join together to accomplish some unlawful purpose. The crime of conspiracy to commit wire fraud is an independent offense, separate and distinct from actually violating the wire fraud statute. In other words, the Government need not prove that the Defendant actually committed the wire fraud in order to prove him guilty of the conspiracy. Instead, in order to prove the crime of conspiracy, the Government must establish the following two elements beyond a reasonable doubt:

- First, that two or more persons entered into the particular unlawful agreement charged in the Indictment; and
- Second, that the Defendant knowingly, intentionally, and willfully became a member of the conspiracy.

First Element: Unlawful Agreement

The first element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more persons entered the particular unlawful agreement charged in the Indictment—the conspiracy to commit wire fraud by defrauding Cairn.

In order for the government to satisfy this element, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement to commit wire fraud. Similarly, you need not find that the alleged conspirators stated, in words or writing, what the wire fraud scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the Government must prove is that two or more people intentionally came to a mutual understanding, either spoken or unspoken, to cooperate with each other to accomplish an unlawful act, specifically wire fraud. This is true whether or not the conspirators were successful in their aims.

You may, of course, find that the existence of an agreement to engage in criminal conduct has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, direct proof may not be available. You may therefore infer the existence of the agreement from the circumstances of this case and the conduct of the parties involved. In a very real sense, then, in the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those you find to be conspirators as proof that a common design existed on the part of those persons to act together to accomplish the unlawful purpose stated in the Indictment.

Second Element: Knowing Membership in the Conspiracy

The second element that the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that the Defendant became a member of the charged conspiracy with knowledge of its goal or goals and intending by his actions to help it succeed.

The Government must prove by evidence of the Defendant's own actions and conduct beyond a reasonable doubt that the Defendant knowingly, intentionally, and willfully entered into the conspiracy with criminal intent—that is, with the purpose to violate the law—and that he agreed to take part in the conspiracy with the intention of further promoting and cooperating in its unlawful objectives.

It is not necessary that a defendant be fully informed of all the details of the conspiracy, or all of its participants. He may not know more than one other member of the conspiracy, or more than one of its objects. He may have joined the conspiracy at any time in its duration, and may not have received any benefit in return. It is not essential that the Defendant receive a monetary benefit from or have a financial interest in the outcome of the conspiracy. It is enough if the Defendant participated in the conspiracy unlawfully, intentionally, knowingly, and willfully, as I have defined those terms.

The key question is whether the Defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement. Whether the Defendant acted knowingly and willfully may be proven by the Defendant's conduct and by all of the facts and circumstances surrounding the case.

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

The Defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to become a member of the conspiracy, the Defendant need not have known the identities of each and every other member of the conspiracy, nor need he have been apprised of all of their activities. Moreover, the Defendant does not need to have been informed of all of the details, or the scope, of the conspiracy in order to justify an inference of knowledge on his part. Furthermore, the Defendant need not have joined in all of the conspiracy's unlawful objectives.

The extent of a defendant's participation has no bearing on the issue of a defendant's guilt. A conspirator's liability is not measured by the extent or duration of his or her participation. Indeed, each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the Defendant within the ambit of the conspiracy.

I want to caution you, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make him a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish membership in the conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. The fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make that

defendant a member of the conspiracy. More is required under the law. What is necessary is that the Defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful ends.

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

PART III: GENERAL RULES REGARDING DELIBERATIONS

I will now give you some general rules regarding your deliberations.

Keep in mind that nothing I have said in these instructions is intended to suggest to you in any way what I think your verdict should be. That is entirely for you to decide. By way of reminder, I charge you once again that it is your responsibility to judge the facts in this case from the evidence presented during the trial, and to apply the law as I have given it to you to the facts as you find them from the evidence. Each of you will be provided with a copy of these instructions and a Verdict Sheet for your use during deliberations. You will receive most of the evidence for your review in the jury room. If you require any other items of evidence, including the playback of voice recordings, or any testimony, please advise me.

When you retire, your first duty is to elect a foreperson. Traditionally, Juror Number One acts as a foreperson. Of course, the foreperson's vote is entitled to no greater weight than that of any other juror. The foreperson's role is an administrative one: it is not to control the deliberations, but to be responsible for signing all communications to the court on behalf of the jury and for handing them to the court officer during your deliberation. However, any of you may on your own send the court a note should the foreperson decline to do so.

Then, it is your duty to discuss the case for the purpose of reaching a verdict. Each of you must decide the case for yourself. You should make your decision only after considering all of the evidence, listening to the views of your fellow jurors, and discussing it fully. It is important that you reach a verdict if you can do so conscientiously. You should not hesitate to reconsider your opinions from time to time and to change them if you are convinced that they are wrong. However, do not surrender your honest belief as to the weight and effect of the evidence simply to arrive at a unanimous verdict. If, after considering all the evidence and the arguments

of your fellow jurors, you entertain an honest, conscientious view that differs from the others, you are not to change your view simply because you are outnumbered.

Remember also that your verdict must be based solely on the evidence or lack of evidence in this case, and on the law as the court has given it to you, not on anything else. Opening statements, closing arguments, and other statements or arguments of counsel are not evidence. If your recollection of the facts differs from the way counsel has stated the facts, then your recollection controls.

Finally, bear in mind that the Government has the burden of proof and that you must be convinced of the Defendant's guilt beyond a reasonable doubt in order to return a guilty verdict. If you find that this burden has not been met, you must return a verdict of not guilty. By contrast, if you find that the Government's burden has been met, then you must return a verdict of guilty.

You cannot allow consideration of the punishment that may be imposed upon the Defendant, if convicted, to influence your verdict in any way or to enter into your deliberations. The duty of imposing sentences rests exclusively with me. Your duty is to weigh the evidence in this case and to determine guilt or non-guilt solely upon such evidence or lack of evidence and upon the law, without being influenced by any assumptions, conjectures, sympathy, or inference not warranted by the facts.

During your deliberations, you should not discuss, or provide any information about, the case with anyone. This includes discussing the case in person, in writing, by phone or by any electronic means, via text messaging, e-mail, Facebook, LinkedIn, Twitter, blogging, or any Internet chat room, web site, or other feature. In other words, do not talk to anyone on the phone or in person, correspond with anyone, or communicate by any electronic means about this case

with anyone, except with your fellow jurors and then only while you are in the jury room. If you are asked or approached in any way about your jury service or anything about this case, you should respond that you have been ordered by the judge not to discuss the matter, and you should report the contact to the court as soon as possible. Along the same lines, you should not try to access any information about the case or do research on any issue that arose during the trial from any outside source, including dictionaries, reference books, or anything on the Internet. Information that you may find on the Internet or in a printed reference might be incorrect or incomplete. In our court system, it is important that you not be influenced by anyone or anything outside this courtroom. Your sworn duty is to decide this case solely and wholly on the evidence that was presented to you in this courtroom.

There is only one exception to this rule. If it becomes necessary during your deliberations to communicate with me, you may send a note, through the Marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will never communicate with any member of the jury on any subject touching the merits of the case other than in writing or orally here in open court. If you do send any notes to the court, do not disclose anything about your deliberations. Specifically, do not disclose to anyone—not even to me—how the jury stands, numerically or otherwise, on the question of the guilt or non-guilt of the Defendant, until after you have reached a unanimous verdict or have been discharged.

You have a right to see exhibits or review testimony during your deliberations. If you would like to review a witness's testimony during your deliberations, you may send a signed note to me requesting the specific portion of the testimony and we will provide it to you. Please

be patient, as it may take some time to locate the relevant portion of the transcript. Please make your requests as specific as possible so that we may more promptly assist you.

Any verdict you reach must be unanimous. When you have reached a decision, the foreperson should sign the verdict form, indicate the date on it, and notify the Marshal by note that you have reached a verdict.

Your oath sums up your duty, and that is: without fear or favor to any person, you will well and truly try the issues in this case according to the evidence given to you in court and the laws of the United States. I thank you for performing this critical duty in support of our system of justice.

Now, members of the jury, we are almost done. Please remain seated for a moment while I confer with the attorneys to see if there are any additional instructions they would like me to deliver prior to your deliberations.