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11 United States of America

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,) CR No. 08-59(B)-GW
15)
16 Plaintiff,)
17 v.) JOINT PROPOSED JURY
18) INSTRUCTIONS AND GOVERNMENT'S
19 GERALD GREEN and) PROPOSED JURY INSTRUCTIONS;
PATRICIA GREEN,) DEFENDANTS' PROPOSED JURY
20 Defendants.) INSTRUCTIONS ATTACHED HERETO AS
21) EXHIBIT A
22)
23) Trial Date: August 18, 2009
24) Trial Time: 9:00 a.m.

25 Plaintiff United States of America, by and through its
26 attorneys of record, the United States Attorney's Office for the
27 Central District of California, and the Fraud Section, United
28 States Department of Justice, Criminal Division, Defendant
GERALD GREEN, by and through his attorney of record, Jerome
Mooney, Esq., and Defendant PATRICIA GREEN, through her attorney

1 of record, Marilyn Bednarski, Esq., hereby submit the attached
2 proposed jury instructions, as follows:

3 1) Joint Proposed Jury Instructions in bold New Courier
4 font;

5 2) Government's Proposed Jury Instructions in plain New
6 Courier font; and

7 3) Defendant's Proposed Jury Instructions, as filed
8 separately by defendants today due to a misunderstanding between
9 the parties, are attached hereto as Exhibit A.

10 The parties respectfully request leave to submit
11 alternative or additional instructions or to delete instructions
12 as may become appropriate during the course of trial.

13 DATED: August 13, 2009

THOMAS P. O'BRIEN
United States Attorney

CHRISTINE C. EWELL
Assistant United States Attorney
Chief, Criminal Division

/s/

BRUCE H. SEARBY
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Senior Trial Attorney
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of Justice, Fraud Section

Attorneys for Plaintiff
UNITED STATES OF AMERICA

23 DATED: August 13, 2009

/s/
JEROME MOONEY, ESQ.

Attorney for Defendant
GERALD GREEN

26 DATED: August 13, 2009

/s/
MARILYN BEDNARSKI, ESQ.

Attorney for Defendant
PATRICIA GREEN

1 COURT'S DURING-TRIAL INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 1

3 You are about to listen to a tape recording that has been
4 received in evidence. Please listen to it very carefully. A
5 transcript of the recording will be displayed to help you
6 identify speakers and as a guide to help you listen to the tape.
7 However, bear in mind that the tape recording is the evidence,
8 not the transcript. If you hear something different from what
9 appears in the transcript, what you heard is controlling.

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26 Ninth Cir. Crim. Model Jury Instructions, No. 2.7 (2003)
27 [Transcript of Recording in English] (modified for display
28 of transcript).

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 2

3 Members of the jury, now that you have heard all the
4 evidence, it is my duty to instruct you on the law which applies
5 to this case. A copy of these instructions will be available in
6 the jury room for you to consult.

7 It is your duty to find the facts from all the evidence in
8 the case. To those facts you will apply the law as I give it to
9 you. You must follow the law as I give it to you whether you
10 agree with it or not. And you must not be influenced by any
11 personal likes or dislikes, opinions, prejudices, or sympathy.
12 That means that you must decide the case solely on the evidence
13 before you. You will recall that you took an oath promising to
14 do so at the beginning of the case.

15 In following my instructions, you must follow all of them
16 and not single out some and ignore others; they are all equally
17 important. You must not read into these instructions or into
18 anything the court may have said or done any suggestion as to
19 what verdict you should return -- that is a matter entirely up
20 to you.

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26 Ninth Circuit Criminal Jury Instruction No. 3.1 (2003)

27 [Duties of Jury To Find Facts And Follow Law].
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COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 3

The second superseding indictment is not evidence. Each defendant has pleaded not guilty to the charges. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

Ninth Circuit Model Jury Instruction No. 3.2 (2003) [Charge Against Defendant Not Evidence -- Presumption of Innocence -- Burden of Proof].

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 4

[IF APPLICABLE]

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that a defendant did not testify.

Ninth Circuit Criminal Jury Instruction No. 3.3 (2003)

[Defendant's Decision Not To Testify].

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 5

[IF APPLICABLE]

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

Ninth Circuit Criminal Jury Instruction No. 3.4 (2003)
[Defendant's Decision To Testify].

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 6

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

Ninth Circuit Criminal Jury Instruction No. 3.5 (2003)
[Reasonable Doubt-Defined].

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 7

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence;
- and
- (3) any facts to which all the lawyers have stipulated.

Ninth Circuit Criminal Jury Instruction No. 3.6 (2003)
[What Is Evidence].

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 8

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.

1 (4) Anything you may have seen or heard when the court was
2 not in session is not evidence. You are to decide the case
3 solely on the evidence received at the trial.
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26 Ninth Circuit Criminal Jury Instruction No. 3.7 (2003)
27 [What Is Not Evidence].
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 9

3 Evidence may be direct or circumstantial. Direct evidence
4 is direct proof of a fact, such as testimony by a witness about
5 what that witness personally saw or heard or did.

6 Circumstantial evidence is indirect evidence, that is, proof of
7 a chain of facts from which you could find that another fact
8 exists, even though it has not been proved directly.

9 By way of example, if you wake up in the morning and see
10 that the sidewalk is wet, you may find from that fact that it
11 rained during the night. However, other evidence, such as a
12 turned on garden hose, may explain the water on the sidewalk.
13 Therefore, before you decide that a fact has been proved by
14 circumstantial evidence, you must consider all the evidence in
15 the light of reason, experience, and common sense.

16 You should consider both kinds of evidence. The law makes
17 no distinction between the weight to be given to either direct
18 or circumstantial evidence. It is for you to decide how much
19 weight to give to any evidence.

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26 Ninth Circuit Criminal Jury Instruction No. 3.8 (2003)

27 [Direct and Circumstantial Evidence] (modified and with
28 example from the comment).

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 10

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

Ninth Circuit Criminal Jury Instruction No. 3.9 (2003)

[Credibility of Witnesses].

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 11

The defendants are on trial only for the crimes charged in the second superseding indictment, not for any other activities.

Ninth Circuit Criminal Jury Instruction No. 3.11 (2003)
[Activities Not Charged].

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 12

3 A separate crime is charged against one or more of the
4 defendants in each count. The charged have been joined for
5 trial. You must decide the case of each defendant on each crime
6 charged against that defendant separately. Your verdict on any
7 count as to any defendant should not control your verdict on any
8 other count or as to any other defendant.

9 All of the instructions apply to each defendant and to each
10 count unless a specific instruction states that it applies only
11 to a specific defendant.

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26 Ninth Circuit Criminal Jury Instruction No. 3.14 (2003)
27 [Separate Consideration of Multiple Counts-Multiple
28 Defendants].

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 13

You heard testimony from Susan Shore, a witness who received immunity. That testimony was given in exchange for a promise by the government that the testimony will not be used in any case against the witness.

For this reason, in evaluating Susan Shore's testimony, you should consider the extent to which or whether her testimony may have been influenced by this factor. In addition, you should examine Susan Shore's testimony with greater caution than the testimony of other witnesses.

Ninth Circuit Criminal Jury Instruction No. 4.9 (2003)
[Testimony Of Witness Involving Special
Circumstances-Immunity, Benefits, Accomplice, Plea]
(modified to reflect circumstances)

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 14

3 You have heard testimony from persons who, because of
4 education or experience, are permitted to state opinions and the
5 reasons for their opinions.

6 Opinion testimony should be judged just like any other
7 testimony. You may accept it or reject it, and give it as much
8 weight as you think it deserves, considering the witness's
9 education and experience, the reasons given for the opinion, and
10 all the other evidence in the case.

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26 Ninth Circuit Model Criminal Jury Instruction No. 4.17
27 (2003) [Opinion Evidence, Expert Witness]
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 15

3 You have heard audio recordings from a government
4 undercover operation in this case. Law enforcement officials
5 are not precluded from engaging in stealth and deception, such
6 as the use of informants and undercover agents, in order to
7 apprehend persons in criminal activities. Undercover agents and
8 informants may properly make use of false names and appearances
9 and may properly assume the roles of members in criminal
10 organizations. The government may use a broad range of schemes
11 and ploys to ferret out criminal activity.

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26 Ninth Circuit Criminal Jury Instruction No. 4.13 (2003)
27 [Government's Use of Undercover Agents and Informants]
28 (modified)

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 16

3 Certain charts and summaries have been shown to you in
4 order to help explain the facts disclosed by the financial
5 records, business records, and other documents which are in
6 evidence in the case. They are not themselves evidence or proof
7 of any facts. If they do not correctly reflect the facts or
8 figures shown by the evidence in the case, you should disregard
9 these charts and summaries and determine the facts from the
10 underlying evidence.

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27 Ninth Circuit Criminal Jury Instruction No. 4.18 (2003)

28 [Summaries Not Received In Evidence].

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 17

Certain charts and summaries have been received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

Ninth Circuit Criminal Jury Instruction No. 4.19 (2003)

[Charts And Summaries In Evidence]

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 18

1 Thai and German translations have been used during this
2 trial. The evidence you are to consider is only that provided
3 through the official court translators. Although some of you
4 may know Thai or German, it is important that all jurors
5 consider the same evidence. Therefore, you must base your
6 decision on the evidence presented in the English translation.
7 You must disregard any different meaning.
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27 Ninth Circuit Criminal Jury Instruction No. 3.20 (2003)
28 [Jury To Be Guided By Official English Translation].

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 19

3 The second superseding indictment charges that the offenses
4 alleged were committed "on or about" or "in or about" certain
5 dates.

6 Although it is necessary for the government to prove beyond
7 a reasonable doubt that the offenses were committed on dates
8 reasonably near the dates alleged in the second superseding
9 indictment, it is not necessary for the government to prove that
10 the offenses were committed precisely on the dates charged.

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25 1A O'Malley, Grenig and Lee Federal Jury Practice and
26 Instructions, § 13.05 (6th ed.) ["On or About" --
27 Explained] (modified to reflect multiple charges).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 20

3 The second superseding indictment alleges that an
4 approximate amount of money was involved in some of the crimes
5 charged.

6 It is not necessary for the government to prove the exact
7 or precise amount of money alleged in the second superseding
8 indictment.

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24 1A O'Malley, Grenig and Lee Federal Jury Practice and
25 Instructions, § 13.06 (6th ed.) [Approximate Amount -
26 Explained] (modified to reflect multiple counts); Ramsey v.
27 United States, 245 F.2d 295, 297 (9th Cir. 1957).
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1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 21

3 Count One of the second superseding indictment charges
4 defendants Gerald Green and Patricia Green with conspiracy to
5 violate the Foreign Corrupt Practices Act and to commit
6 Transportation Promotion Money Laundering in violation of Title
7 18, United States Code, Section 371. Section 371 provides in
8 part, as follows:

9 If two or more persons conspire . . . to commit
10 any offense against the United States . . . and
11 one or more of such persons do any act to effect
12 the object of the conspiracy, each shall be
13 [guilty of an offense against the United States].
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18 U.S.C. § 371

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 22

3 In order for the defendant to be found guilty of the
4 conspiracy charge, the government must prove each of the
5 following elements beyond a reasonable doubt:

6 First, beginning in or around 2002, and ending in or around
7 2007, there was an agreement between two or more persons to
8 commit at least one crime as charged in the second superseding
9 indictment; and

10 Second, the defendants became a member of the conspiracy
11 knowing of at least one of its objects and intending to help
12 accomplish it; and

13 Third, one of the members of the conspiracy performed at
14 least one overt act for the purpose of carrying out the
15 conspiracy, with all of you agreeing on a particular overt act
16 that you find was committed.

17 I shall discuss with you briefly the law relating to each
18 of these elements.

19 A conspiracy is a kind of criminal partnership -- an
20 agreement of two or more persons to commit one or more crimes.
21 The crime of conspiracy is the agreement to do something
22 unlawful; it does not matter whether the crime agreed upon was
23 committed.

24 For a conspiracy to have existed, it is not necessary that
25 the conspirators made a formal agreement or that they agreed on
26 every detail of the conspiracy. It is not enough, however, that
27 they simply met, discussed matters of common interest, acted in
28 similar ways, or perhaps helped one another. You must find that

1 there was a plan to commit at least one of the crimes alleged in
2 the indictment as an object of the conspiracy with all of you
3 agreeing as to the particular crime which the conspirators
4 agreed to commit.

5 One becomes a member of a conspiracy by willfully
6 participating in the unlawful plan with the intent to advance or
7 further some object or purpose of the conspiracy, even though
8 the person does not have full knowledge of all the details of
9 the conspiracy. Furthermore, one who willfully joins an
10 existing conspiracy is as responsible for it as the originators.
11 On the other hand, one who has no knowledge of a conspiracy, but
12 happens to act in a way which furthers some object or purpose of
13 the conspiracy, does not thereby become a conspirator.
14 Similarly, a person does not become a conspirator merely by
15 associating with one or more persons who are conspirators, nor
16 merely by knowing that a conspiracy exists.

17 An overt act does not itself have to be unlawful. A lawful
18 act may be an element of a conspiracy if it was done for the
19 purpose of carrying out the conspiracy. The government is not
20 required to prove that the defendant personally did one of the
21 overt acts.

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27 Ninth Circuit Criminal Jury Instruction No. 8.16 (2003)

28 [Conspiracy-Elements] (modified)

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 23

3 A conspiracy may continue for a long period of time and may
4 include the performance of many transactions. It is not
5 necessary that all members of the conspiracy join it at the same
6 time, and one may become a member of a conspiracy without full
7 knowledge of all the details of the unlawful scheme or the
8 names, identities, or locations of all of the other members.

9 Even though a defendant did not directly conspire with
10 other conspirators in the overall scheme, the defendant has, in
11 effect, agreed to participate in the conspiracy if it is proved
12 beyond a reasonable doubt that:

13 (1) the defendant directly conspired with one or more
14 conspirators to carry out at least one of the objects of
15 the conspiracy;

16 (2) the defendant knew or had reason to know that other
17 conspirators were involved with those with whom the
18 defendant directly conspired; and

19 (3) the defendant had reason to believe that whatever
20 benefits the defendant might get from the conspiracy were
21 probably dependent upon the success of the entire venture.

22 It is no defense that a person's participation in a
23 conspiracy was minor or for a short period of time.

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26 Ninth Circuit Criminal Jury Instruction No. 8.18 (2003)

27 [Conspiracy—Knowing of and Association with Other
28 Conspirators]

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 24

3 One of the objects of the conspiracy charged in Count One
4 of the second superseding indictment is a violation of the
5 Foreign Corrupt Practices Act. The relevant law here is Section
6 78dd-2(a) of Title 15 of the United States Code. That Section
7 prohibits making use of the mails or any means or
8 instrumentality of interstate commerce willfully and corruptly
9 in furtherance of a payment - or offer, promise or authorization
10 of payment - or offer, gift, promise to give, authorization of
11 the giving of anything of value - to any foreign official for
12 the purpose of:

13 (A) (i) influencing any act or decision of
14 such foreign official in her official
15 capacity, or (ii) inducing such foreign
16 official to do or omit to do any act in
17 violation of the lawful duty of such
18 official, or (B) inducing such foreign
19 official to use her influence with a foreign
20 government or instrumentality thereof to
21 affect or influence any act or decision of
22 such government or instrumentality, in order
23 to assist [the person or company making the
24 payment] in obtaining or retaining business
25 for or with, or directing business to, any
26 person.

27 Jury Instructions from United States v. Bourke, S1 05 Cr.
28 418 (SAS) (S.D.N.Y.).

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 25

3 Congress enacted the Foreign Corrupt Practices Act to stop
4 bribery of foreign officials by U.S. businesses and individuals.
5 There were two primary negative effects of such bribery that the
6 FCPA sought to address:

7 First, Congress was concerned about the domestic effects of
8 such payments, the distortion of, and resulting lack of
9 confidence in, the free market system within the United States.
10 Bribery to effect business outcomes obviously disadvantages
11 those who do not pay bribes.

12 Second, Congress was concerned about the effect of such
13 payments on the United States' foreign relations, particularly
14 the negative effects that the revelations of such bribes could
15 have upon America's image abroad.

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27 Jury Instructions from United States v. Bourke, S1 05 Cr.
28 418 (SAS) (S.D.N.Y.).

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 26

3 The defendants are charged in Counts Two through Ten of the
4 second superseding indictment with violating the Foreign Corrupt
5 Practices Act. This offense has seven elements:

6 First, that a member of the conspiracy was what the
7 statute calls a "domestic concern" or an officer, director,
8 employee, or agent of a "domestic concern," which is a term I
9 will describe for you shortly;

10 Second, that a member of the conspiracy intended to make
11 use of the mails or a means or instrumentality of interstate
12 commerce;

13 Third, a member of the conspiracy acted corruptly and
14 willfully;

15 Fourth, a member of the conspiracy intended to do so in
16 furtherance of a payment - or an offer, promise or authorization
17 for payment - or an offer, gift, promise to give or
18 authorization of the giving of anything of value;

19 Fifth, that a member of the conspiracy knew that all or a
20 portion of the payment or gift was to be offered, given, or
21 promised, directly or indirectly, to a foreign official;

22 Sixth, that the payment or gift was intended to be for one
23 of three purposes: (1) to influence any act or decision of the
24 foreign public official in her official capacity; (2) to induce
25 the foreign public official to do or omit to do any act in
26 violation of that official's lawful duty; or (3) to induce that
27 foreign official to use her influence with a foreign government
28 or instrumentality thereof to affect or influence any act or

1 decision of such government or instrumentality; and

2 Seventh, that the payment was intended to assist a member
3 of the conspiracy in obtaining or retaining business for or
4 with, or directing business to, any person.

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26 Jury Instructions from United States v. Bourke, S1 05 Cr.
27 418 (SAS) (S.D.N.Y.).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 27

3 The first element of a violation of the FCPA is that a
4 member of the conspiracy was what the statute calls a "domestic
5 concern" or is an officer, director, employee, or agent of a
6 "domestic concern." A "domestic concern" is defined as:

- 7 (a) any individual who is a citizen, national, or
8 resident of the United States; and
9 (b) any corporation, partnership, association,
10 joint-stock company, business trust,
11 unincorporated organization, or sole
12 proprietorship which has its principal place
of business in the United States, or which is
organized under the laws of a State of the
United States or a territory, possession,
or commonwealth of the United States.

13 In this case, the indictment charges that the defendants
14 were a domestic concern because they are alleged to have been
15 citizens of the United States.

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26 Jury Instructions from United States v. Bourke, S1 05 Cr.
27 418 (SAS) (S.D.N.Y.).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 28

3 The second element that the Government must prove is that a
4 member of the conspiracy intended to make use of the mails or a
5 means or instrumentality of interstate commerce. The term
6 "interstate commerce" means trade, commerce, transportation, or
7 communication among the several states, or between any foreign
8 country and any state. This term includes the intrastate use of
9 (a) a telephone or other interstate means of communication or
10 (b) any other interstate instrumentality. An "instrumentality" of
11 interstate commerce is a means used by persons and goods passing
12 between the various States or between any state and any foreign
13 country. Thus, an instrumentality includes means of
14 communication, such as a telephone, fax machine, or
15 transportation, such as a car or plane.

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26 Jury Instructions from United States v. Bourke, S1 05 Cr. 418
27 (SAS) (S.D.N.Y.).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 29

3 The third element of a violation of the FCPA is that a member
4 of the conspiracy intended to act "corruptly" and "willfully." I
5 will now define these terms.

6 A person acts "corruptly" if he or she acts voluntarily and
7 intentionally, with an improper motive of accomplishing either an
8 unlawful result, or a lawful result by some unlawful method or
9 means. The term "corruptly" is intended to connote that the
10 offer, payment, and promise was intended to influence an official
11 to misuse her official position.

12 A person acts "willfully" if he or she acts deliberately and
13 with the intent to do something that the law forbids, that is,
14 with a bad purpose to disobey or disregard the law. Now, a
15 defendant need not be aware of the specific law and rule that his
16 or her conduct may be violating. But he or she must act with the
17 intent to do something that the law forbids. Overall, it is only
18 necessary that a defendant intends those wrongful actions, and
19 that the actions are not the product of accident or mistake.

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23 Jury Instructions from United States v. Bourke, S1 05 Cr. 418
24 (SAS) (S.D.N.Y.); United States v. Bryan, 524 U.S. at 184,
25 191-92 (1998); United States v. Tarallo, 380 F.3d 1174, 1188
26 (9th Cir. 2004); United States v. Kay, 513 F.3d 432 (5th Cir.
27 2007) see 15 U.S.C. § 78dd-2(a)(1), 78ff(a).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 30

3 As I mentioned before, the fourth element of a violation of
4 the FCPA is that a member of the conspiracy intended to act in
5 furtherance of a payment or an offer, promise, or authorization of
6 payment of money, or an offer, gift, promise to give or
7 authorization of the giving of anything of value.

8 It is not required that an actual payment of gift be made by
9 a member of the conspiracy. A promise, offer, or authorization of
10 a payment, or an offer, promise or authorization of a gift by a
11 member of the conspiracy, is also prohibited by the FCPA.
12 Moreover, it is not necessary that the bribe, or offer or promise
13 of a bribe, was intended to be made directly by a conspiracy
14 member himself to the foreign official. A member of the
15 conspiracy who engages in bribery of a foreign official indirectly
16 through any other person or entity, is liable under the FCPA, just
17 as if the person had engaged in the bribery directly. Thus, if
18 you find that a member of the conspiracy has authorized another
19 person to pay or promise a bribe, that authorization alone is
20 sufficient for you to find that this element has been proven.

21 Further, it is not necessary that the payment actually take
22 place or that the gift actually be given. Instead, it is the
23 offer, promise, or authorization of the bribe that completes the
24 crime. Thus, you may find this element satisfied if you find that
25 a member of the conspiracy authorized an unlawful payment or gift,
26 even if you believe that the payment was not actually made or gift
27 was not actually given - that it was diverted by middlemen or even
28 that the middlemen never intended to pay the bribe.

1 Finally, the payment or gift, or offer, promise, or
2 authorization thereof, need not be in the form of money. Anything
3 of value, such as objects, items, or something that provides a
4 benefit, such as a service, is sufficient to satisfy the element.
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26 Jury Instructions from United States v. Bourke, S1 05 Cr. 418
27 (SAS) (S.D.N.Y.).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 31

3 The fifth element of a violation of the FCPA is that a member
4 of the conspiracy knew that all or a portion of the payment or
5 gift would be offered, given, or promised, directly or indirectly,
6 to any foreign official.

7 A "foreign official" is: (1) an officer or employee of a
8 foreign government; (2) any defendant, agency, or instrumentality
9 of such foreign government; or (3) any person acting in an
10 official capacity for or on behalf of such government or
11 department, agency, or instrumentality.

12 An "instrumentality" of a foreign government includes
13 government-owned or government-controlled companies.

14 The FCPA provides that a person's state of mind is "knowing"
15 with respect to conduct, a circumstance, or a result if:

- 16 i. such person is aware that such person is
17 engaging in such conduct, that such
18 circumstance exists, or that such result is
19 substantially certain to occur; or
20 ii. such person has a firm belief that such
21 circumstance exists or that such result is
22 substantially certain to occur.

23 The element of knowledge may also be satisfied if you find
24 that the defendants deliberately closed their eyes to what
25 otherwise would have been obvious to them. When knowledge of the
26 existence of a particular fact is an element of the offense, such
27 knowledge may be established if a person is aware of a high
28 probability of its existence and then fails to take action to
determine whether it is true or not.

If the evidence shows you that the defendants actually

1 believed the transaction was legal, they cannot be convicted. Nor
2 can they be convicted of being stupid or negligent or mistaken;
3 more is required than that. But a defendant's knowledge of a fact
4 may be inferred from willful blindness to the knowledge or
5 information indicating that there was a high probability that
6 there was something forbidden or illegal about the contemplated
7 transaction and payment. It is the jury's function to determine
8 whether or not the defendants deliberately closed their eyes to
9 the inferences and the conclusions to be drawn from the evidence
10 here.

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26 Jury Instructions from United States v. Bourke, S1 05 Cr. 418
27 (SAS) (S.D.N.Y.).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 32

3 The sixth element of a violation of the FCPA is that the
4 gift, promise, or authorization thereof, was for one of three
5 purposes:

- 6 (1) to influence any act or decision of a foreign
7 public official in her official capacity;
- 8 (2) to induce a foreign public official to do or
9 omit to do any act in violation of that
10 official's lawful duty; or
- 11 (3) to induce that foreign official to use her
12 influence with a foreign government or
13 instrumentality thereof to affect or influence
14 any act or decision of such government or
15 instrumentality.

16 One of these purposes must have been the reason for the
17 payment, gift, or promise. The government need not prove that any
18 foreign official was actually influenced.
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25 Jury Instructions from United States v. Bourke, S1 05 Cr. 418
26 (SAS) (S.D.N.Y.).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 33

3 The final element of a violation of the FCPA is that a
4 payment or gift, or gift, or offer, promise, or authorization
5 thereof, was to be made for the purpose of assisting a member of
6 the conspiracy in obtaining or retaining business for any person
7 or company. It is therefore not necessary for the government to
8 prove that the members of the conspiracy actually obtained or
9 retained any business whatsoever as a result of an unlawful offer,
10 payment, promise, or gift.

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26 Jury Instructions from United States v. Bourke, S1 05 Cr. 418
27 (SAS) (S.D.N.Y.).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 34

3 It does not matter who suggested that a corrupt offer,
4 payment, promise or gift be made. The FCPA prohibits any
5 payment or gift intended to influence the recipient, regardless
6 of who first suggested it. It is not a defense that the payment
7 was demanded on the part of a government officials as a price
8 for gaining entry into a market or to obtain a contract or other
9 benefit. That the offer to pay, payment, promise to pay, or
10 authorization of a payment may have been first suggested by the
11 recipient is not deemed an excuse for a defendant's decision to
12 make a corrupt payment, nor does it alter the corrupt purpose
13 with which the offer to pay, payment, promise to pay, or
14 authorization of payment was made.

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27 Jury Instructions from United States v. Bourke, S1 05 Cr.
28 418 (SAS) (S.D.N.Y.).

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 35

3 Under Section 149 of Thailand's Penal Code, it is unlawful
4 for any government official of the Kingdom of Thailand to accept
5 property or any other benefit for exercising or not exercising
6 any of her official functions.

7 Under Section 152 of Thailand's Penal Code, it is unlawful
8 for any government official, having the duty of managing or
9 looking after any activity, to take the interest for the benefit
10 of herself or another person concerning such activity.

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28 Thailand's Penal Code, Sections 149 and 152.

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 36

3 Under Section 6 of The Act On Offenses By Officials In
4 Public Organizations of 1959 of the Kingdom of Thailand,
5 applicable to officials of Thailand's public organizations and
6 publically-owned enterprises, it is unlawful for any competent
7 official thereof to demand, receive, or agree to receive
8 property or any other illegitimate benefits for performance or
9 omission of a particular act in office, whether that act is
10 legal or illegal.

11 Under Section 11 of The Act On Offenses By Officials In
12 Public Organizations of 1959 of the Kingdom of Thailand, it is
13 unlawful for any competent official to perform or refrain from
14 performing any act on the ground of corruption.

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27 The Act on Offenses By Officials in Public Organizations of
28 1959 of the Kingdom of Thailand, Sections 6 and 11.

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 37

3 For the purpose of collecting an income tax, Thailand's
4 Revenue Code requires its citizens, residents, and businesses to
5 submit to the national revenue authorities a tax return
6 reporting assessable income. Under Thailand's Revenue Code
7 Sections 39 and 40, assessable income includes money earned from
8 labor, employment, positions of duty, service fees, investment
9 assets, sales agreements, brokerage fees, contracting, and other
10 business, commercial, and professional activities.

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28 Thai Revenue Code, section 39 and 40.

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 38

3 The defendants are charged in Counts Eleven through
4 Seventeen of the second superseding indictment with
5 transporting funds to promote unlawful activity in violation of
6 Section 1956(a)(2)(A) of Title 18 of the United States Code. In
7 order for the defendants to be found guilty of that charge, the
8 government must prove each of the following elements beyond a
9 reasonable doubt:

10 First, the defendants transported money from a place in the
11 United States, namely, Los Angeles County, to places outside the
12 United States; and

13 Second, the defendants acted with the intent to promote the
14 carrying on of unlawful activity, that is, bribery of a foreign
15 official in violation of the FCPA.

16 Section 1956(a)(2)(A) contains no requirement that
17 "proceeds" first be generated by unlawful activity, followed by
18 a financial transaction with those proceeds, for criminal
19 liability to attach.

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24 Ninth Circuit Model Jury Instructions No. 8.122 (2003)
25 [Transporting Funds to Promote Unlawful Activity]; United
26 States v. Piervinanzi, 23 F3d 670, 680 (2d Cir. 1994);
27 United States v. O'Connor, 158 F.Supp.2d 697,726 n. 52
28 (E.D.Va. 2001).

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 39

3 The defendants are charged in Count Eighteen of the second
4 superseding indictment with money laundering in violation of
5 Section 1957 of Title 18 of the United States Code. In order for
6 the defendants to be found guilty of that charge, the government
7 must prove each of the following elements beyond a reasonable
8 doubt:

9 First, the defendants knowingly engaged or attempted to
10 engage in a monetary transaction;

11 Second, the defendants knew the transaction involved
12 criminally derived property;

13 Third, the property had a value of greater than \$10,000;

14 Fourth, the property was, in fact, derived from a specified
15 unlawful activity, namely, bribery of a foreign official, a felony
16 violation of the Foreign Corrupt Practices Act; and

17 Fifth, the transaction occurred in the United States.

18 The term "monetary transaction" means the transfer, in or
19 affecting interstate commerce, of funds or a monetary instrument
20 by, through, or to a financial institution. The term "monetary
21 transaction" does not include any transaction necessary to
22 preserve a person's right to legal representation as guaranteed by
23 the Sixth Amendment to the Constitution.

24 The term "financial institution" means a commercial bank.

25 The term "criminally derived property" means any property
26 constituting, or derived from, the proceeds of a criminal offense.
27 The government must prove that the defendants knew that the
28 property involved in the monetary transaction constituted, or was

1 derived from, proceeds obtained by some criminal offense. The
2 government does not have to prove that the defendants knew the
3 precise nature of the criminal offense, or knew the property
4 involved in the transaction represented the proceeds of the
5 unlawful activity, namely, bribery of a foreign official in
6 violation of the FCPA.

7 Although the government must prove that, of the property at
8 issue more than \$10,000 was criminally derived, the government
9 does not have to prove that all of the property at issue was
10 criminally derived.

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27 Ninth Circuit Model Jury Instructions No. 8.123A (2003)
28 [Money Laundering].

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 40

3 The defendant GERALD GREEN is charged in Count Nineteen of
4 the second superseding indictment with knowingly making a false
5 entry in documents to obstruct the investigation of a matter
6 within the jurisdiction of a government agency, in violation
7 Title 18, United States Code, Section 1519. In order for the
8 defendant to be found guilty of that charge, the government must
9 prove each of the following essential elements beyond a
10 reasonable doubt:

11 First, the defendant knowingly falsified a document; and

12 Second, the defendant acted with the intent to impede,
13 obstruct, or influence the investigation of a matter within the
14 jurisdiction of a department or agency of the United States,
15 namely, the Federal Bureau of Investigation.

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28 18 U.S.C. § 1519.

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 41

3 The intent of a person or the knowledge that a person
4 possesses at any given time may not ordinarily be proved
5 directly because there is no way of directly scrutinizing the
6 inner-workings of the human mind. In determining the issue of
7 what a person knew or what a person intended at a particular
8 time, you may consider any statements made or acts done or
9 omitted by that person and all other facts and circumstances
10 received in evidence which may aid in your determination of that
11 person's knowledge or intent, including the scheme itself. You
12 may infer, but you are certainly not required to infer, that a
13 person intends the natural and probable consequences of acts
14 knowingly done or knowingly omitted.

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21 United States v. Rasheed, 663 F.2d 843, 850 (9th Cir. 1981)
22 (evidence of defendants' fraudulent activities included
23 their knowingly false misrepresentations and concealments);
24 United States v. Bohonus, 628 F.2d 1167, 1172 (9th Cir.
25 1980) (intention is shown by examining scheme itself);
26 United States v. Jones, 425 F.2d 1048, 1058 (9th Cir. 1970)
27 (intent can be found from circumstantial evidence, and need
28 not be specifically admitted or confessed)

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 42

3 The defendant PATRICIA GREEN is charged in Counts Twenty
4 and Twenty-one of the second superseding indictment with filing
5 a false tax return in violation of Section 7206(1) of Title 26
6 of the United States Code. In order for the defendant to be
7 found guilty of that charge, the government must prove each of
8 the following elements beyond a reasonable doubt:

9 First, the defendant made and signed a tax return for the
10 year 2004 that she knew contained false information as to a
11 material matter;

12 Second, the return contained a written declaration that it
13 was being signed subject to the penalties of perjury; and

14 Third, in filing the false tax return, the defendant acted
15 willfully.

16 The false information was material if it had a natural
17 tendency to influence or was capable of influencing or affecting
18 the ability of the IRS to audit or verify the accuracy of the
19 tax return or related return.

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22 Ninth Circuit Model Jury Instructions No. 9.37 (2003)
23 [Filing False Tax Return]; United States v. Gaudin, 515
24 U.S. 506, 509 (1995); United States v. Fawaz, 881 F.2d 259,
25 263 (6th Cir. 1989); United States v. Greenberg, 735 F.2d
26 29, 31 (2d Cir. 1984).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 43

3 Under the internal revenue laws, in the assessment of
4 income tax owing from a business, all the ordinary and necessary
5 expenses paid or incurred during the taxable year in carrying on
6 any trade or business are allowed to be deducted from gross
7 income.

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28 26 U.S.C. § 162(a).

1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 44

3 Under the internal revenue laws, the business expenses
4 allowed to be deducted as set forth in the previous instruction
5 do not include illegal bribes, kickbacks, and other payments,
6 including kickbacks made to induce or influence a foreign public
7 official to act, or omit to act, in such a way that will affect
8 or influence any act or decision of such government or
9 instrumentality.

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21 26 U.S.C. § 162(c). Adapted from the charges of the
22 Honorable David Hittner, United States v. Kay, 01 Cr. 914,
23 DE 142 at 22 (S.D. Tex. Oct. 6, 2004), aff'd, 513 F.3d 432,
24 446-52 (5th Cir. 2007) (FCPA trial), and the Honorable Anne
25 E. Thompson, United States v. Mead, Cr. 98-240-01
26 (AET) (D.N.J.) (FCPA trial); see 15 U.S.C. § 78dd-2(h)(2)(A);
27 United States v. Kozeny, 493 F. Supp. 2d 693, 703 (S.D.N.Y.
28 2007).

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 45

3 To prove a defendant guilty of aiding and abetting, the
4 government must prove beyond a reasonable doubt that:

5 First, the crime was committed by someone;

6 Second, the defendants knowingly and intentionally aided,
7 counseled, commanded, induced, or procured that person to commit
8 that crime; and

9 Third, the defendants acted before the crime was completed.

10 It is not enough that the defendants merely associated with
11 the person committing the crime, or unknowingly or
12 unintentionally did things that were helpful to that person, or
13 were present at the scene of the crime.

14 The evidence must show beyond a reasonable doubt that the
15 defendants acted with the knowledge and intention of helping
16 that person commit the particular crime.

17 The government is not required to prove whether the
18 defendants actually committed the crime or aided and abetted in
19 its commission.

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26 Ninth Circuit Model Jury Instructions No. 5.1 (2003)

27 [Aiding and Abetting] (last paragraph modified slightly).
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1 COURT'S INSTRUCTION NO. _____

2 GOVERNMENT'S PROPOSED INSTRUCTION NO. 46

3 An act is done knowingly if the defendants are aware of the
4 act and does not act through ignorance, mistake, or accident.
5 The government is not required to prove that the defendants knew
6 that their acts or omissions were unlawful. You may consider
7 evidence of the defendants' words, acts, or omissions, along
8 with all the other evidence, in deciding whether the defendants
9 acted knowingly.

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26 Ninth Circuit Criminal Jury Instruction No. 5.6 (2000)
27 [Knowingly Defined].
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1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 47

3 You have heard testimony that the defendants made
4 statements. It is for you to decide:

5 First, whether the defendants made the statements; and

6 Second, if so, how much weight to give to them.

7 In making those decisions, you should consider all of the
8 evidence about the statement, including the circumstances under
9 which the defendants may have made it.

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27 Ninth Circuit Model Jury Instruction No. 4.1 (2003)

28 [Statements By Defendant].

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 48

3 When you begin your deliberations, you should select one
4 member of the jury as your foreperson. That person will preside
5 over the deliberations and speak for you here in court.

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

9 Each of you must decide the case for yourself, but you
10 should do so only after you have considered all the evidence,
11 discussed it fully with the other jurors, and listened to the
12 views of your fellow jurors.

13 Do not be afraid to change your opinion if the discussion
14 persuades you that you should. But do not come to a decision
15 simply because other jurors think it is right.

16 It is important that you attempt to reach a unanimous
17 verdict but, of course, only if each of you can do so after
18 having made your own conscientious decision. Do not change an
19 honest belief about the weight and effect of the evidence simply
20 to reach a verdict.

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27 Ninth Circuit Model Jury Instructions No. 7.1 (2003)

28 [Duty to Deliberate].

COURT'S INSTRUCTION NO. ____

JOINT PROPOSED INSTRUCTION NO. 49

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

Ninth Circuit Model Jury Instructions No. 7.2 (2003)

[Consideration of Evidence].

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 50

3 Some of you have taken notes during the trial. Whether or
4 not you took notes, you should rely on your own memory of what
5 was said. Notes are only to assist your memory. You should not
6 be overly influenced by the notes.

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27 Ninth Circuit Model Jury Instructions No. 7.3 (2003)
28 [Use of Notes].

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 51

The punishment provided by law for a crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against a defendant beyond a reasonable doubt.

Ninth Circuit Model Jury Instructions No. 7.4 (2003)
[Jury Consideration of Punishment].

1 COURT'S INSTRUCTION NO. _____

2 JOINT PROPOSED INSTRUCTION NO. 52

3 A verdict form has been prepared for you. After you have
4 reached unanimous agreement on a verdict, your foreperson will
5 fill in the form that has been given to you, sign and date it,
6 and advise the bailiff that you are ready to return to the
7 courtroom.

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27 Ninth Circuit Model Jury Instructions No. 7.5
28 [Verdict Form].

COURT'S INSTRUCTION NO. _____

JOINT PROPOSED INSTRUCTION NO. 53

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, 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 respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone -- including me -- how the jury stands, numerically or otherwise, on the question of the guilt of a defendant, until after you have reached a unanimous verdict or have been discharged.

Ninth Circuit Model Jury Instructions No. 7.6 (2003)

[Communication with Court]