OPENING INSTRUCTIONS

# Instruction No. \_\_\_\_

MEMBERS OF THE JURY:

Now that you have been sworn, I have the following preliminary instructions for your guidance as jurors in this case.

You will hear the evidence, decide what the facts are, and then apply those facts to the law that I will give to you.

You and only you will be the judges of the facts. You will have to decide what happened. I play no part in judging the facts. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be. My role is to be the judge of the law. I make whatever legal decisions have to be made during the course of the trial, and I will explain to you the legal principles that must guide your decisions. You must follow that law whether you agree with it or not.

Nothing the Court may say or do during the course of the trial is intended to indicate, nor should be taken by you as indicating, what your verdict should be.

# INSTRUCTION NO. \_\_\_\_

I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence, I will now give you a brief summary of the elements that the Government must prove to make the Government’s case:

[Summarize elements of charges].

# INSTRUCTION NO. \_\_\_\_

This is a criminal case. There are three basic rules about a criminal case which you must keep in mind.

First, every defendant is presumed innocent until proven guilty. The Indictment against the Defendant brought by the Government is only an accusation, nothing more. It is not proof of guilt or anything else. The Defendant, therefore, starts out with a clean slate.

Second, the burden of proof is on the Government until the very end of the case. The Defendant has no burden to prove their innocence, or to present any evidence, or to testify. Since the Defendant has the right to remain silent, the law prohibits you in arriving at your verdict from considering that the Defendant may not have testified.

Third, the Government must prove the Defendant’s guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that in this respect a criminal case is different from a civil case.

# INSTRUCTION NO. \_\_\_\_

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end.

I know that many of you use cell phones, the internet, and other tools of technology. You must not use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, text messaging, or Twitter, or through any blog or website, including Facebook, Messenger, LinkedIn, or YouTube. You may not use any social media, even if I have not specifically mentioned it here. Cell phones are not permitted in the jury room during deliberation. I expect you will inform me as soon as you become aware of another juror’s violation of these instructions.

If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk or visit with you.

Do not read or listen to anything related to this case that is not admitted into evidence. By that I mean, if there is a newspaper article or radio or television report relating to this case, do not read the article or watch or listen to the report. In addition, do not try to do any independent research or investigation – including research on the internet – on matters relating to the case or this type of case, including research on any of the people or attorneys in this case. There are good reasons for prohibiting independent research. Relying on the internet, social media, or reports doesn’t allow any party to explain, rebut, or even know about this information. Also, such information is not under oath or in a setting where you can judge its credibility, basis, or reliability, nor is it subject to cross-examination.

Again, do not reach any conclusion on the claims or defenses until all of the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

# INSTRUCTION NO. \_\_\_\_

During the trial it may be necessary for me to talk with the lawyers out of your hearing by having a sidebar or bench conference. If that happens, please be patient.

We are not trying to keep important information from you. These conferences are necessary for me to fulfill my responsibility, which is to be sure that evidence is presented to you correctly under the law.

We will, of course, do what we can to keep the number and length of these conferences to a minimum.

I may not always grant an attorney’s request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

# INSTRUCTION NO.

The evidence in this case includes only what the witnesses say while they are testifying under oath, the exhibits that I allow into evidence, any stipulations that the lawyers agree to, and facts I judicially notice.

Certain things are not evidence, and you must not consider them.

1. Statements, arguments and questions by lawyers are not evidence.

2. Objections are not evidence. Lawyers have an obligation to their clients to make an objection to a question or to a witness’s answer when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by the Court’s ruling on it. If it is overruled, treat the answer like any other. If the objection is sustained, ignore the question. Do not attempt to guess what answer might have been given if I had allowed the answer. If I tell you not to consider a particular statement, you may not refer to that statement in your later deliberations. Similarly, if I tell you to consider a particular piece of evidence for a specific purpose, you may consider it only for that purpose.

3. Testimony that the Court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

# INSTRUCTION NO. \_\_\_\_

There are two types of evidence that you may use in reaching your verdict. One type of evidence is called “direct evidence.” An example of “direct evidence” is when a witness testifies about something the witness knows through their own senses – something the witness has seen, felt, touched, or heard, or done. If a witness testified that they saw it raining outside, and you believed them, that would be direct evidence that it was raining. Another form of direct evidence is an exhibit where the fact to be proved is its existence or current condition.

The other type of evidence is “circumstantial evidence.” “Circumstantial evidence” is proof of one or more facts from which you could find another fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

You should consider both kinds of evidence that are presented to you. The law makes no distinction in the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

# INSTRUCTION NO.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, the manner in which the witness testifies, the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness’s intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness’s ability to observe the matters as to which they testified and whether they impress you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent mis-recollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, give the testimony of each witness such weight, if any, as you think it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a large number of witnesses to the contrary.

# INSTRUCTION NO.

Try not to be swayed by the appearance of the witness - the witness’s clothing, hairstyle, or grooming. Guard against the natural tendency to believe people whose appearance is similar to your own dress and grooming. Also, be on guard against being influenced by how attractive the witness may be. Beware of an inclination to be more sympathetic to a witness who is appealing in his or her appearance. These factors are often unrelated to a witness’s truthfulness. Mannerisms can also be misleading. Sometimes a truthful witness may seem to be nervous or tense. Such a witness may be intimidated by the courtroom, and some witnesses are typically nervous, fidgety or tense in their manner.

Evaluate not just what the witness says, but how the witness says it. Pay attention to facial expression, gesture, posture, and tone of voice. Look for discrepancies between what the witness says and how the witness says it. But remember that sometimes truthful witnesses may look worried because they are afraid of being disbelieved and that some liars can behave convincingly.

# INSTRUCTION NO. \_\_\_\_

The testimony of a drug abuser must be examined and weighed by the jury with greater caution than the testimony of a witness who does not abuse drugs.

You must determine whether the testimony of that witness has been affected by the use of drugs or the need for drugs.

# INSTRUCTION NO. \_\_\_\_

The testimony of a witness may be discredited or impeached by showing that the witness previously has been convicted of a felony, that is, a crime punishable by imprisonment for a term of years. A prior conviction does not mean that a witness is not qualified to testify, but is merely one circumstance that you may consider in determining their credibility .

It is the sole and exclusive right of the jury to determine the weight to be given to any prior conviction as impeachment and the weight to be given to the testimony of anyone who has been convicted of a felony.

# INSTRUCTION NO. \_\_\_

In some cases, such as this one, scientific, technical, or other specialized knowledge may assist the jury in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training or education, may testify as what we call an expert and state an opinion concerning such matters.

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

# INSTRUCTION NO.

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

# INSTRUCTION NO.

The Court will permit jurors to take notes during the evidence, the summations of the attorneys at the conclusion of the evidence, and during my instructions to you on the law. However, I’d ask you to observe the following limitations:

Note-taking is permitted, not required. Please don’t give any more or less weight to the opinion of a juror who chooses not to take notes.

Please take notes sparingly. Notes are for the purpose of refreshing memory only, not to summarize the testimony. Overindulgence in note-taking may be distracting. You, the jurors, must pass on the credibility of witnesses; hence, you must observe the demeanor and appearance of each person on the witness stand to assist you in judging credibility. Don’t let note-taking distract you from this task.

Your notes are for your own private use only. Do not use your notes, or any other juror’s notes, as authority to persuade fellow jurors. Remember, notes are personal memory aids only, and notes, just like observations, can be mistaken.

Finally, do not take your notes away from court. When you are not in court, you may keep your notes in the jury room where they will be safe and available. At the conclusion of the case, after all deliberations, a court officer will collect and destroy your notes to protect the secrecy of your deliberations.

# INSTRUCTION NO. \_\_\_\_

The trial will now begin.

First the Government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, the Defendant’s attorney may make an opening statement or may reserve opening statement until the close of the Government’s case. The Defendant is not obligated to make an opening statement. Opening statements are not evidence but simply outlines to help you understand what each side intends to present.

Next is the presentation of evidence. The Government goes first because the Government has the burden of proof. The Government will present evidence including testimony by witnesses who the Defendant may cross-examine. Following the Government’s case, the Defendant may, if the Defendant wishes, present evidence including witnesses who the Government may cross-examine.

After all the evidence is in, I will instruct you on the law, and then the attorneys will present their closing arguments to summarize and interpret the evidence in a way that is helpful for their positions. As with opening statements, closing arguments are not evidence. After closing arguments, you will retire to deliberate on your verdict.

EVIDENTIARY INSTRUCTIONS

# INSTRUCTION NO.

MEMBERS OF THE JURY:

Now that you have heard the evidence, I will instruct you about the applicable law. It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions of the Court, just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the evidence received in the case.

You are to disregard any evidence offered at trial and rejected by the Court. You are not to consider the opening statements and the arguments of counsel as evidence. Their purpose is merely to assist you in analyzing and considering the evidence presented at trial. The lawyers may properly refer to some of the governing rules of law in their arguments. If there is any difference between the law as stated by the lawyers and as stated in these instructions, you are governed by my instructions.

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

# INSTRUCTION NO. \_\_\_\_

During this trial I have permitted you to take notes. Many courts do not permit note-taking by jurors and a word of caution is in order. There is always a tendency to attach undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, your notes are only a tool to aid your own individual memory, and you should not share your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are not a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision.

# INSTRUCTION NO. \_\_\_\_

You must presume the Defendant to be innocent of the crime charged. Thus, the Defendant, although accused of a crime in the Indictment, begins the trial with a “clean slate” with no evidence against them. The Indictment is not evidence of any kind. The Defendant is not on trial for any acts or crimes not contained in the Indictment. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against the Defendant. The presumption of innocence alone, therefore, is sufficient to acquit the Defendant.

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

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense – the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Unless the Government proves, beyond a reasonable doubt, that the Defendant has committed each and every element of the offense charged in the Indictment, you must find the Defendant not guilty of the offense. If the jury views the evidence in the case as reasonably permitting either of two conclusions – one of innocence, the other of guilt – the jury must, of course, adopt the conclusion of innocence.

# INSTRUCTION NO. \_\_\_

An indictment is a formal method of accusing a defendant of a crime. It is not evidence of any kind.

# INSTRUCTION NO. \_\_\_

The indictment charges that the offenses alleged were committed “on or about” certain dates.

Although it is necessary for the Government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the dates alleged in the indictment, it is not necessary for the Government to prove that the offenses were committed precisely on the dates charged.

# INSTRUCTION NO. \_\_\_\_

The Defendant has pleaded “not guilty” to the charges contained in the Indictment. The pleas of “not guilty” put in issue each of the essential elements of the offenses as described in these instructions and imposes on the Government the burden of establishing each of these elements by proof beyond a reasonable doubt.

# INSTRUCTION NO. \_\_\_

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

It is not up to you to decide whether anyone who is not on trial in this case should be prosecuted for the crimes charged. The fact that another person also may be guilty is no defense to a criminal charge. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

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

If the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant for the crimes charged in the Indictment, you should so find, even though you may believe that one or more other unindicted persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the Defendant not guilty.

# INSTRUCTION NO. \_\_\_\_

A separate crime is charged against the Defendant in each count of the Indictment. You must separately consider the evidence against the Defendant on each count and return a separate verdict for each count.

Your verdict as to any one count, whether it is guilty or not guilty, should not influence your verdict as to any other count unless the form of verdict that I will provide indicates otherwise.

The Defendant is not on trial for any act or any conduct not specifically charged in the Indictment.

# INSTRUCTION NO. \_\_\_\_

You are instructed that the parties have agreed and stipulated to certain matters of fact. That stipulation has been read to you and is included in the back of the instruction notebook which you will take with you into the jury room.

# INSTRUCTION NO.

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

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

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

# INSTRUCTION NO. \_\_\_\_\_

Evidence has been presented about a statement attributed to the Defendant alleged to have been made after the commission of the crimes charged in this case but not made in court. You should always consider such evidence with caution and weigh it with care. Any such statements should be disregarded entirely unless the other evidence in the case convinces you that, more likely than not, the statement was made knowingly and voluntarily.

In determining whether any such statement was knowingly and voluntarily made, consider, for example, the age, gender, training, education, occupation, physical condition, and mental condition of the Defendant, and any evidence concerning their treatment while under interrogation if the statement was made in response to questioning by Government officials, and all the other circumstances in evidence surrounding the making of the statement.

If, after considering all this evidence, you conclude it is more likely than not that the Defendant’s statement was made knowingly and voluntarily, you may give such weight to the statement as you feel it deserves under all the circumstances.

# INSTRUCTION NO. \_\_\_

A defendant in a criminal case has an absolute right under our Constitution not to testify.

You may not discuss or consider in your deliberations, in any way, the fact that the Defendant did not testify. No inference of any kind may be drawn from the fact that a defendant decided to exercise this privilege under the Constitution and did not testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

**Alternative Instruction - Defendant Testifies**

INSTRUCTION NO. \_\_\_\_\_

You should judge the testimony of the Defendant in the same manner as you judge the testimony of any other witness in this case.

# INSTRUCTION NO. \_\_\_

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

# INSTRUCTION NO.

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would deal with any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case. Use the evidence only for those purposes for which it has been received and give such evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the Defendant is proved guilty beyond a reasonable doubt, say so. If not proved guilty beyond a reasonable doubt, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember, as well, that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always with the Government.

# INSTRUCTION NO. \_\_\_

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

CLOSING INSTRUCTION

# INSTRUCTION NO. \_\_\_

MEMBERS OF THE JURY:

Upon retiring to the jury room to begin your deliberation, you must elect one of your members to act as your presiding juror. The presiding juror, sometimes called the foreperson, will preside over your deliberations and will be your spokesperson here in court.

Your verdict must represent the collective judgment of the jury. In order to return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view toward reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if convinced it is erroneous. Do not surrender your honest conviction, however, solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are the “judges” of the facts of this case. Your sole interest is to seek the truth from the evidence received during trial.

Your verdict must be based solely upon the evidence received in this case. Nothing you have seen or read outside of court may be considered. Nothing that I have said or done during the course of this trial is intended in any way to somehow suggest to you what I think your verdict should be. Nothing said in these instructions and nothing in any form of verdict prepared for your convenience is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the exclusive duty and responsibility of the jury. As I have told you many times, you are the sole judges of the facts.

The Court has prepared a verdict form for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your presiding juror fill in, date, and sign the form. The presiding juror shall then inform the bailiff that you have reached a verdict and you shall return to the courtroom.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note, signed by the presiding juror or by one or more members of the jury, through the bailiff. A form is provided in the jury notebook. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury concerning the evidence, your opinions, or the deliberations other than in writing or orally here in open court.

You will note from the oath about to be taken by the bailiff that the bailiff, too, as well as all other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case. Bear in mind also that you are never to reveal to any person how the jury stands, numerically or otherwise, on the question of whether or not the United States has sustained its burden of proof until after you have reached a unanimous verdict.