UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-*v.*-

GHISLAINE MAXWELL,

Defendant.

S2 20 Cr. 330 (AJN)

[PROPOSED] JOINT REQUESTS TO CHARGE

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INTRODUCTORY INSTRUCTIONS

Role of the Court

You have now heard all of the evidence in the case, as well as the final arguments of the lawyers for the parties. 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.

On these legal matters, you must take the law as I give it to you. 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 a verdict upon any other view of the law than that which I give you. If an attorney or anyone else at trial 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 alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room. You may take a copy of these instructions with you into the jury room.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Role of the Jury

Your role is to pass upon and decide the fact issues that are in the case. You, the members of the jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence or lack of evidence; you determine the credibility of the witnesses; you resolve such conflicts as there may be in the testimony; and you draw whatever reasonable inferences you decide to draw solely based on the evidence and from the facts as you have determined them.

The evidence before you consists of the answers given by witnesses and the exhibits and stipulations that were received into evidence. If I have sustained an objection to a question or told you to disregard testimony, the answers given by a witness are no longer part of the evidence and may not be considered by you. In determining the facts, you must rely upon your own recollection of the evidence. I will instruct you at the end of these charges about your ability to request to have testimony read back and your access to other evidence admitted during the trial.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Sympathy: Oath As Jurors

Under your oath as jurors you are not to be swayed by sympathy or prejudice. You are to determine the guilt or innocence of the defendant solely on the basis of the evidence and subject to the law as I have charged you.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 2-12; and the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC).

Contact with Others/Social Media

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic devices or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the Internet, or any internet service, or any text or instant messaging service; or any internet chat room, blog, or website, such as Facebook, Instagram, LinkedIn, YouTube, Twitter, or Snapchat, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone or in person, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

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. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Your sworn duty is to decide this case solely and wholly on the evidence that was presented to you in this courtroom.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Statements of Counsel and Court Not Evidence;
Jury's Recollection Controls

You must determine the facts by relying upon your own recollection of the evidence. This case is not to be decided on the rhetoric of either the attorneys for the Government or the attorneys for the Defendants. The lawyers' arguments are intended to convince you to draw certain conclusions from the evidence or lack of evidence. Those arguments are important. You should weigh and evaluate them carefully. But you must not confuse them with the evidence. If your recollection of the evidence differs from the statements of the lawyers, follow your recollection.

You should draw no inference or conclusion for or against any party by reason of lawyers making objections or my rulings on such objections. Counsel have not only the right but the duty to make legal objections that they think are appropriate. You should not be swayed against the Government or the Defendant simply because counsel for either side has chosen to make an objection. Similarly, statements made by counsel when arguing the admissibility of evidence are not to be considered as evidence.

If I comment on the evidence during my instructions, do not accept my statements in place of your recollection. Again, it is your recollection that governs.

Do not concern yourself with what was said at side bar conferences or during my discussions with counsel. Those discussions related to rulings of law, which are my duty, and not to matters of fact, which are your duty to determine.

At times I may have admonished a witness or directed a witness to be responsive to questions, to keep his or her voice up, or to repeat an answer. My instructions were intended only to clarify the presentation of evidence. You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any witness or party in the case, by reason of any

comment, question, or instruction of mine. Nor should you infer that I have any views as to the credibility of any witness, as to the weight of the evidence, or as to how you should decide any issue that is before you. That is entirely your role.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Improper Considerations

Your verdict must be based solely upon the evidence or the lack of evidence. It would be improper for you to consider any personal feelings you may have about the defendant's race, ethnicity, religion, national origin, sex, age, or any other such factor. Similarly, it would be improper for you to consider any personal feelings you may have about the race, ethnicity, religion, national origin, sex, age, or any other similar factor of any other witness or anyone else involved in this case. It also would be improper for you to allow any feelings you might have about the nature of the crimes charged to interfere with your decision-making process.

I remind you that before each of you was accepted and sworn to act as a juror, you were asked questions concerning competency, qualifications, fairness, and freedom from prejudice and bias. On the faith of those answers, you were accepted as jurors by the parties. Therefore, those answers are as binding on each of you now as they were then, and should remain so, until the jury is discharged from consideration of this case.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

All Parties Are Equal Before the Law

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The fact that the prosecution is brought in the name of the United States of America entitles the Government to no greater consideration than that given to any other party to this litigation. By the same token, the Government is entitled to no less consideration. All parties stand as equals at the bar of justice.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Lebedev*, 15 Cr. 769 (AJN).

Presumption of Innocence and Burden of Proof

The law presumes the defendant to be innocent of all charges against her. She has pleaded not guilty to the charges in the Indictment. As a result, the burden is on the Government to prove the defendant's guilt beyond a reasonable doubt as to each charge. This burden never shifts to the defendant. In other words, she does not have to prove her innocence.

This presumption of innocence was with the defendant when the trial began remains with the defendant unless and until you are convinced that the Government has proven the defendant's guilt beyond a reasonable doubt. If the Government fails to prove the defendant's guilt beyond a reasonable doubt, you must find her not guilty.

[*If necessary*: Even though the defendant has presented evidence in her defense, the presumption of innocence remains with her. It is always the Government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt.]

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Reasonable Doubt

The question that naturally arises is: "What is a reasonable doubt?" What does that phrase mean? The words almost define themselves. A reasonable doubt is a doubt based in reason and arising out of the evidence in the case, or the lack of evidence. It is a doubt that a reasonable person has after carefully weighing all of the evidence in the case.

Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience, and your common sense. If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you do have an abiding belief of the defendant's guilt as to any crime charged in this case, such a belief as a prudent person would be willing to act upon in important matters in the personal affairs of his or her own life, then you have no reasonable doubt, and under such circumstances it is your duty to convict the defendant of the particular crime in question.

On the other hand, if after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you are not satisfied with the defendant's guilt as to any charge, that you do not have an abiding belief of her guilt as to that charge—in other words, if you have such a doubt as would reasonably cause a prudent person to hesitate in acting in matters of importance in his or her own affairs—then you have a reasonable doubt, and in that circumstances it is your duty to acquit the defendant of that charge.

One final word on this subject: Reasonable doubt is not whim or speculation. It is not an excuse to avoid an unpleasant duty. Nor is it sympathy for the defendant. "Beyond a reasonable doubt" does not mean mathematical certainty, or proof beyond all possible doubt. The law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt, and, therefore, if after a fair and impartial consideration of

all of the evidence, you are satisfied beyond a reasonable doubt of the defendant's guilt with respect to a particular charge against her, you should find the defendant guilty of that charge.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

The Indictment

The defendant, GHISLAINE MAXWELL, has been formally charged in what is called an Indictment. An indictment is simply a charge or accusation. It is not evidence. It is not proof of the defendant's guilt. It creates no presumption and it permits no inference that the defendant is guilty. You are to give no weight to the fact that an indictment has been returned against the defendant.

I will not read the entire Indictment to you at this time. Rather, I will first summarize the offenses charged in the Indictment and then explain in detail the elements of each of the offenses.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

CHARGE

Summary of Indictment

The Indictment contains six counts, or "charges," against the defendant. Each count constitutes a separate offense or crime. You must consider each count of the Indictment separately, and you must return a separate verdict on each count in which the defendant is charged. I am briefly going to summarize each count, and then will give you the law in greater detail.

Count One of the Indictment charges GHISLAINE MAXWELL, the defendant, with conspiring—that is, agreeing—with others to entice an individual to travel in interstate and foreign commerce to engage in sexual activity for which a person can be charged with a criminal offense. Count One relates to multiple victims and the time period 1994 to 2004.

Count Two of the Indictment charges the defendant with enticing an individual to travel in interstate and foreign commerce to engage in sexual activity for which a person can be charged with a criminal offense. Count Two relates to Minor Victim-1 and the time period 1994 to 1997.

Count Three of the Indictment charges the defendant with conspiring with others to transport a minor in interstate and foreign commerce, with intent that the minor engage in sexual activity for which a person can be charged with a criminal offense. Count Three relates to multiple minor victims and the time period 1994 to 2004.

Count Four of the Indictment charges the defendant with transporting a minor in interstate and foreign commerce, with the intent that the minor engage in sexual activity for which a person can be charged with a criminal offense. Count Four relates to Minor Victim-1 and the time period 1994 to 1997.

Count Five of the Indictment charges the defendant with conspiring to engage in sex trafficking of minors. Count Five relates to multiple minor victims and the time period 2001 to 2004.

Count Six of the Indictment charges the defendant with sex trafficking of minors. Count Six relates to Minor Victim-4, and the time period 2001 to 2004.

Adapted from Sand et al., *Modern Federal Jury Instructions*, Instr. 3-6. *See United States v. Sanzo*, 673 F.2d 64, 69 (2d Cir. 1982).

Multiple Counts

As I mentioned, the Indictment contains six counts. Each count charges the defendant with a different crime. You must consider each count separately and return a separate verdict of guilty or not guilty for each. Whether you find the defendant guilty or not guilty as to one offense should not affect your verdict as to any other offense charged, unless you are instructed otherwise.

With that summary of the Indictment as background, I will now give you detailed instructions that relate to the crimes charged in Counts One through Six.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Pizarro*, 17 Cr. 151 (AJN) and in *United States v. Le*, 15 Cr. 38 (AJN).

Count Two: Enticement to Engage in an Illegal Sexual Activity – The Statute

The relevant statute for Count Two is Title 18, United States Code, Section 2422, which provides that "[w]hoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in . . . in any sexual activity for which any person can be charged with a criminal offense," is guilty of a federal crime.

Count Two: Enticement to Engage in Illegal Sexual Activity– The Elements

To prove the defendant guilty of Count Two, the Government must prove each of the following three elements beyond a reasonable doubt:

First, that the defendant knowingly persuaded or induced or enticed or coerced an individual to travel in interstate or foreign commerce;

Second, that the individual traveled in interstate or foreign commerce; and

Third, that the defendant acted with the intent that the individual would engage in sexual activity for which any person can be charged with a criminal offense.

Count Two relates to Minor Victim-1 during the period 1994 to 1997.

Adapted from Sand et al., *Modern Federal Jury Instructions*, Instr. 64-6.

Count Two: Enticement to Engage in Illegal Sexual Activity – First Element

The first element of Count Two is that the defendant knowingly persuaded or induced or enticed or coerced an individual to travel in interstate or foreign commerce. The terms "persuaded," "induced," "enticed," and "coerced" have their ordinary, everyday meanings.

The term "interstate or foreign commerce" simply means movement from one state to another state or between the United States and a foreign country. The term "State" includes a State of the United States and the District of Columbia.

"Knowingly" Defined

The defendant must have acted knowingly. An act is done knowingly when it is done voluntarily and intentionally and not because of accident, mistake, or some other innocent reason.

Now, knowledge is a matter of inference from the proven facts. Science has not yet devised a manner of looking into a person's mind and knowing what that person is thinking. Whether the defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

> Adapted from Sand et al., *Modern Federal Jury Instructions*, Instr. 64-7; the charge of the Hon. Alison J. Nathan in *United States v. Pizzaro*, 17 Cr. 151 (AJN) and in *United States v. Le*, 15 Cr. 38 (AJN); the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC); the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); and the charge of the Hon. Sidney H. Stein in *United States v. Waqar*, 18 Cr. 342 (SHS). *See United States v. Waqar*, 997 F.3d 481, 484-85 (2d Cir. 2021) (stating that the "statutory verbs" in § 2422(b) "'attempt, persuade, induce, entice, [and] coerce, though not defined in the statute, are words of common usage that have plain and ordinary meanings'" (citation omitted)).

Count Two: Enticement to Engage in Illegal Sexual Activity – Second Element

The second element of Count Two is that the individual traveled in interstate or foreign commerce as alleged in the Indictment.

As I just stated, "interstate or foreign commerce" simply means movement between one state and another or between the United States and a foreign country.

Adapted from Sand et al., *Modern Federal Jury Instructions*, Instr. 64-8.

Count Two: Enticement to Engage in Illegal Sexual Activity – Third Element

The third element of Count Two is that the defendant acted with the intent that the individual would engage in sexual activity for which any person can be charged with a criminal offense.

Count Two alleges sexual activity for which a person could be charged with a crime under the criminal (or penal) law of New York State. I instruct you as a matter of law that Sexual Abuse in the Third Degree, the offense set forth in Count Two of the Indictment, was a violation of New York State Penal law from at least in or about 1994 up to an including in or about 1997, at the time the acts are alleged to have been committed.

A person violates New York State Penal Law § 130.55, Sexual Abuse in the Third Degree, when he or she subjects another person to sexual contact without the latter's consent.

Under New York law, "sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying the sexual desire of either party. It includes the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.

Also under New York law, lack of consent can result from incapacity to consent. A person less than seventeen years old is deemed incapable of consent under New York Law. Thus, the law deems sexual contact with such a person to be without that person's consent, even if in fact that person did consent. However, in order to find that the intended acts were nonconsensual solely because of the victim's age, you must find that the defendant knew that the victim was less than seventeen years old.

"Intentionally" Defined

A person acts intentionally when the act is the product of her conscious objective, that is, when she acts deliberately and purposefully and not because of a mistake or accident. Direct proof of a person's 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, she committed an act with a particular intent. Such direct proof is not required. The ultimate fact of intent, though subjective, may be established by circumstantial evidence, based upon the defendant's outward manifestations, her words, her conduct, her acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

Adapted from Sand et al., *Modern Federal Jury Instructions*, Instrs. 64-9, 64-18; New York Penal Law §§ 15.20(3), 130.00, 130.05, 130.55; New York State Pattern Jury Instructions § 130.55; the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC); and the charge of the Hon. Ann M. Donnelly in *United States v. Kelly*, 19 Cr. 286 (AMD) (E.D.N.Y.). *See United States v. Murphy*, 942 F.3d 73, 79-84 (2d Cir. 2019) (holding under 18 U.S.C. § 2423(b) that a defendant must know the age of the victim where the victim's age distinguishes lawful from unlawful conduct).

Count Four: Transportation of a Minor to Engage in Illegal Sexual Activity – The Statute

The relevant statute for Count Four is Title 18, United States Code, Section 2423(a), which provides that a person who "knowingly transports any individual under the age of 18 years in interstate or foreign commerce . . . with intent that such individual engage in . . . any sexual activity for which any person can be charged with a criminal offense," is guilty of a federal crime.

Count Four: Transportation of a Minor to Engage in Illegal Sexual Activity – The Elements

In order to prove the defendant guilty of Count Four, the Government must establish each of the following three elements of the crime beyond a reasonable doubt:

First, that the defendant knowingly transported an individual in interstate or foreign commerce as alleged in the Indictment,

Second, that the defendant transported the individual with the intent that the individual engage in any sexual activity for which any person can be charged with a criminal offense; and

Third, that the individual was less than seventeen years old at the time of the acts alleged in Count Four of the Indictment.

Count Four also relates to Minor Victim-1 during the period 1994 to 1997.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 64-16; the charge of the Hon. Richard J. Arcara in *United States v. Vickers*, 13 Cr. 128 (RJA) (W.D.N.Y.), *aff'd*, 708 F. App'x 732 (2d Cir. 2017); and the charge of the Hon. Thomas P. Greisa in *United States v. Gilliam*, 11 Cr. 1083 (TPG), *aff'd*, 842 F.3d 801, 805 (2d Cir. 2016).

Count Four: Transportation of a Minor to Engage in Illegal Sexual Activity – First Element

The first element of Count Four is that the defendant knowingly transported an individual in interstate or foreign commerce. The phrase, "transport an individual in interstate or foreign commerce" means to move or carry, or cause someone to be moved or carried, from one state to another or between the United States and a foreign country.

The Government does not have to prove that the defendant personally transported the individual across a state line. It is sufficient to satisfy this element that the defendant acted through an agent or was engaged in the making of the travel arrangements, such as by purchasing tickets necessary for the individual to travel as planned.

The defendant must have knowingly transported or participated in the transportation of the individual in interstate or foreign commerce. This means that the Government must prove that the defendant knew both that she was causing the individual to be transported, and that the individual was being transported in interstate or foreign commerce. As I have explained, an act is done knowingly when it is done voluntarily and intentionally and not because of accident, mistake or some innocent reason.

> Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 64-17; and the charge of the Hon. Richard J. Arcara in *United States v. Vickers*, 13 Cr. 128 (RJA) (W.D.N.Y.), *aff'd*, 708 F. App'x 732 (2d Cir. 2017). *See United States v. Mi Sun Cho*, 713 F.3d 716, 720 (2d Cir. 2013) (sufficient to show transportation where defendant agreed to provide a prostitution job and coordinated and prearranged the date and time of travel); *United States v. Shim*, 584 F.3d 394, 396 (2d Cir. 2009); *United States v. Evans*, 272 F.3d 1069, 1086-87 (8th Cir. 2002) (under general knowledge requirement of Mann Act, jury need not find that defendant knew that the act being committed was unlawful).

Count Four: Transportation of a Minor to Engage in Illegal Sexual Activity – First Element – Consent Irrelevant

With regard to Count Four, whether or not the individual consented to being transported or to traveling interstate for the purpose of engaging in sexual activity for which any person can be charged with a criminal offense, or the individual otherwise voluntarily participated, is irrelevant, as the consent or voluntary participation of the individual is not a defense.

> Adapted from the charge of the Hon. Thomas P. Greisa in *United States v. Gilliam*, 11 Cr. 1083 (TPG), *aff'd*, 842 F.3d 801, 805 (2d Cir. 2016). *See also United States v. Lowe*, 145 F.3d 45, 52 (1st Cir. 1998) ("Consent is a defense to kidnapping but not to a Mann Act charge."); *United States v. Jones*, 808 F.2d 561, 565-66 (7th Cir. 1986); *United States* v. *Pelton*, 578 F.2d 701, 712 (8th Cir. 1978); *Gebardi v. United States*, 287 U.S. 112, 117-18 (1932).

Count Four: Transportation of a Minor to Engage in Illegal Sexual Activity – Second Element

The second element of Count Four is that the defendant transported the individual with the intent that the individual engage in any sexual activity for which any person can be charged with a criminal offense.

In order to establish this element, it is not necessary for the Government to prove that engaging in sexual activity for which any person can be charged with a criminal offense was the defendant's sole purpose in transporting the individual across a state line. A person may have several different purposes or motives for such conduct, and each may prompt in varying degrees the act or the person's actions. The Government must prove beyond a reasonable doubt, however, that a significant or motivating purpose of the conduct was to have the individual engage in sexual activity for which any person can be charged with a criminal offense. In other words, the illegal sexual activity must not have been merely incidental to the trip.

> Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instrs. and 64-4, 64-18; Edward J. Devitt et al., *Federal Jury Practice and Instructions*, Instr. 60-07; and the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC). *See United States v. Vargas-Cordon*, 733 F.3d 366, 375 (2d Cir. 2013) ("[T]he contemplated unlawful sexual activity need not be the defendant's sole purpose for transporting a minor in interstate or foreign commerce. Rather, it must only be a 'dominant purpose' of the transportation."); *United States v. Miller*, 148 F.3d 207, 212 (2d Cir. 1998) (finding no error in jury instruction that engaging in illegal sexual activity "need not have been [the defendant's] only purpose or motivation, but it must have been more than merely incidental; it must have been one of the dominant purposes of the trip").

Count Four: Transportation of a Minor to Engage in Illegal Sexual Activity – Second Element – Illegal Sexual Activity

Count Four alleges that the defendant knowingly transported the individual in interstate or foreign commerce with the intent that the individual engage in sexual activity for which any person can be charged with a criminal offense.

Like Count Two, Count Four alleges sexual activity for which an individual could be charged with a crime under the criminal (or penal) law of New York State, specifically Sexual Abuse in the Third Degree. I have already instructed you regarding that crime, and those instructions apply equally here.

> Adapted from Sand et al., *Modern Federal Jury Instructions*, Instr. 64-18; New York State Penal Law §§ 15.20(3), 130.00, 130.05, 130.55; New York State Pattern Jury Instructions § 130.55; the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC).

Count Four: Transportation of a Minor to Engage in Illegal Sexual Activity – Third Element – Sexual Abuse in the Third Degree

The third element of Count Four is that the individual was less than seventeen years old at the time of the offense. Although the text of the law says the individual must be less than eighteen, because the New York criminal law provides that a person can consent to sexual activity if she is seventeen, this element requires that the individual was less than seventeen at the time of the offense.

> Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 64-19 ("Although section 2423(a) requires that the person transported be less than eighteen . . . [i]f the defendant is charged with transporting for the purpose of engaging in illegal sexual activity, and that underlying activity requires that the victim be less than some other age, then it can only confuse the jury to charge that the victim must be less than eighteen in this instruction and less than that other age elsewhere in the instructions."). *See* New York State Penal Law §§ 15.20(3), 130.55

Counts Two and Four: Failure to Accomplish Intended Activity is Immaterial

Now, with respect to Counts Two and Four, it is not a defense that the sexual activity which may have been intended by the defendant was not accomplished.

In other words, it is not necessary for the Government to prove that anyone, in fact, engaged in any sexual activity for which any person can be charged with a criminal offense with the individual after she was enticed, for Count Two, or transported, for Count Four, across state lines. It is enough if defendant has the requisite intent at the time of the enticement or transportation.

> Adapted from Edward J. Devitt, *et al.*, *Federal Jury Practice and Instructions*, Instr. 60-06. *See United States v. Bronxmeyer*, 616 F.3d 120, 129-30 & n.8 (2d Cir. 2010) ("The plain wording of the statute requires that the *mens rea* of intent coincide with the *actus reus* of crossing state lines."); *Cleveland v. United States*, 329 U.S. 14, 20 (1946) ("[G]uilt under the Mann Act turns on the purpose which motivates the transportation, not on its accomplishment.").

Count Six: Sex Trafficking of a Minor – Statute

The relevant statute for Count Six is Title 18, United States Code, Section 1591, which provides, in pertinent part, that "Whoever knowingly in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains, by any means a person . . . knowing that . . . the person has not attained the age of eighteen years and will be caused to engage in a commercial sex act" is guilty of a crime.

Count Six: Sex Trafficking of a Minor – Elements

To find the defendant guilty of Count Six you must find that the Government has proven each of the following four elements beyond a reasonable doubt:

First: The defendant knowingly recruited, enticed, harbored, transported, provided, or obtained a person;

Second: The defendant knew that the person was under the age of eighteen years;

Third: The defendant knew the person would be caused to engage in a commercial sex act; and

Fourth: The defendant's acts were in or affecting interstate or foreign commerce.

This Count relates to the alleged abuse of Minor Victim-4 during the period 2001 to 2004.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 47A-18; and the charge given by the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW).

Count Six: Sex Trafficking of a Minor – First Element

The first element of Count Six is that the defendant knowingly recruited, enticed, harbored, transported, provided, or obtained a person. The terms "recruited," "enticed," "harbored," "transported," "provided," and "obtained" have their ordinary, everyday meanings.

> Adapted from the charge given by the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); *United States v. Wedd*, 993 F.3d 104, 122 (2d Cir. 2021) ("In interpreting a statute, this Court gives the statutory terms their ordinary or natural meaning." (internal quotation marks omitted)). *See, e.g.*, *Noble v. Weinstein*, 335 F. Supp. 3d 504, 517 (S.D.N.Y. 2018) (explaining that, because the verb "entices" is "not defined by Congress," it bears its ordinary meaning).

Count Six: Sex Trafficking of a Minor – Second Element

The second element of Count Six is that the defendant knew that the person was under eighteen years of age.

In considering whether the defendant knew that the person had not attained the age of eighteen, please apply the definition of "knowingly" previously provided to you. Remember whether a defendant acted knowingly may be proven by what the defendant said and did and by all the facts and circumstances surrounding the case, since direct proof of a person's state of mind is rarely available.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 47A-20; and the charge given by the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW). *See United States v. Thompson*, 896 F.3d 155, 169-70 (2d Cir. 2018).

Count Six: Sex Trafficking of a Minor – Third Element

The third element of Count Six is that the defendant knew that the person would be caused to engage in a commercial sex act.

The term "commercial sex act" means "any sex act, on account of which anything of value is given to or received by any person." The thing of value may be money or any other tangible or intangible thing of value that may be given to or received by any person, regardless of whether the person who receives it is the person performing the commercial sex act.

It is not relevant whether or not the person was a willing participant in performing commercial sex acts. Consent by the person is not a defense to the charge in Count Six of the Indictment. It is also not required that the person actually performed a commercial sex act so long as the Government has proved that the defendant recruited, enticed, harbored, transported, provided, or obtained the person for the purpose of engaging in commercial sex acts.

> Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 47A-22; 18 U.S.C. § 1591(c)(1) (2000) (defining "commercial sex act"); and the charge given by the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW). *See United States v. Jones*, 847 F. App'x 28, 30 (2d Cir. 2021) (summary order) (affirming the use of an instruction drawn from the statute and the Sand treatise); *United States v. Corley*, 679 F. App'x 1, 7 (2d Cir. 2017) (summary order) ("[T]he statute does not require that an actual commercial sex act have occurred."); *United States v. Williams*, 529 F.3d 1, 6 (1st Cir. 2008) ("Even if the minor had factually consented, that consent would not have been legally valid. In all events, factual consent would not eliminate the potential risks that confronted the child." (citations omitted)).

Count Six: Sex Trafficking of a Minor – Fourth Element

The fourth and final element of Count Six is that the defendant's sex trafficking activities were in interstate or foreign commerce or affected interstate commerce. The Government need not prove both that the activities were in interstate or foreign commerce and affected interstate or foreign commerce.

I instruct you that acts and transactions that cross state lines, or which affect the flow of money in the stream of commerce to any degree, however minimal, are acts and transactions affecting interstate commerce. For instance, it affects interstate commerce to use products that traveled in interstate commerce.

It is not necessary for the Government to prove that the defendant specifically knew or intended that the recruiting, enticing, harboring, transporting, providing, or obtaining of a person to engage in commercial sex acts would affect interstate commerce; it is only necessary that the natural consequences of such conduct would affect interstate commerce in some way, even if minor.

If you find beyond a reasonable doubt that the recruitment, enticement, harboring, transportation, providing, or obtaining of a person for the purpose of engaging in commercial sex acts was economic in nature and involved the crossing of state lines, or was economic in nature and otherwise affected the flow of money to any degree, however minimal, you may find that the interstate commerce requirement of the offense of sex trafficking of a minor has been satisfied.

I further instruct you that to find that this element has been proven beyond a reasonable doubt, it is not necessary for you to find that any interstate or foreign travel occurred. Proof of actual travel is not required.

Adapted from the charge given by the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW). *See United States v. Graham*, 707 F. App'x 23, 26 (2d Cir. 2017) (summary order)

("The conduct underlying Graham's conviction was inherently commercial, and the government adduced evidence that its commission as to all three counts involved the use of internet advertisements, condoms, hotels, and rental cars."); *United States v. Elias*, 285 F.3d 183, 189 (2d Cir. 2002); *United States v. Paris*, No. 03:06-CR-64 (CFD), 2007 WL 3124724, at *8 & n.10 (D. Conn. Oct. 24, 2007) (use of cell phones, use of hotel rooms and distribution of condoms all affected interstate commerce in sex trafficking venture).

Counts Two, Four, and Six: Aiding and Abetting

In connection with the substantive crimes charged in Counts Two, Four, and Six, the defendant is also charged with aiding and abetting the commission of those crimes. Aiding and abetting liability is its own theory of criminal liability. In effect, it is a theory of liability that permits a defendant to be convicted of a specified crime if the defendant, while not herself committing the crime, assisted another person or persons in committing the crime. As to Counts Two, Four, and Six, therefore, the defendant can be convicted *either* if she committed the crime herself, *or* if another person committed the crime and the defendant aided and abetted that person to commit that crime.

Under the federal aiding and abetting statute, whoever "aids, abets, counsels, commands, induces, or procures" the commission of an offense is punishable as a principal. You should give those worse their ordinary meaning.

In other words, it is not necessary for the Government to show that the defendant herself physically committed the crime charged in order for you to find her guilty. This is because a person who aids, abets, counsels, commands, induces, or procures the commission of a crime is just as guilty of that offense as if she committed it herself. Accordingly, you may find the defendant guilty of the offenses charged in Counts Two, Four, and Six 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, abetted, counseled, commanded, induced or procured that person to commit the crime.

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

To aid or abet another to commit a crime, it is necessary that the Government prove that the defendant willfully and knowingly associated herself in some way with the crime committed by the other person and willfully and knowingly sought by some act to help the crime succeed.

However, let me caution you that the mere presence of the defendant where a crime is being committed, even when coupled with knowledge by the defendant that a crime is being committed, or the mere acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to make the defendant guilty under this approach of aiding and abetting. Such a defendant would be guilty under this approach of aiding and abetting only if, in addition to knowing of the criminal activity, she actually took actions intended to help it succeed.

An aider and abettor must know that the crime is being committed and act in a way that 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 she is charged, ask yourself these questions:

1. Did the defendant participate in the crime charged as something she wished to bring about?

2. Did the defendant knowingly and willfully associate herself with the criminal venture?

3. Did the defendant seek by her actions to make the criminal venture succeed?

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

Adapted from Sand et al., *Modern Federal Jury Instructions*, Instr. 11-2; 18 U.S.C. § 2; the charge given by the Hon. Alison J. Nathan

in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN); and the charge given by the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW).

Counts One and Three and Five: Conspiracy to Violate Federal Laws– The Statute

The relevant statute for Counts One, Three, and Five is Title 18, United States Code, Section 371, which provides that "if two or more people conspire [] to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy," each person is guilty of a federal crime.

Counts One and Three and Five: Conspiracy to Violate Federal Laws– Conspiracy and Substantive Counts

Counts One, Three, and Five of the Indictment each charge the defendant with participating in a "conspiracy." As I will explain, a conspiracy is a kind of criminal partnership—an agreement of two or more people to join together to accomplish some unlawful purpose. The crime of conspiracy to violate federal law is an independent offense from the actual violation of any specific federal law. Indeed, you may find the defendant guilty of conspiring to violate federal law even if you find that the crime which was the object of the conspiracy was never actually committed.

As I will explain, each of the three different conspiracy counts here alleges a different purpose: the purpose of the conspiracy charged in Count One is to commit the enticement of minors offense I described for Count Two; the purpose of the conspiracy charged in Count Three is to commit the transportation of minors offense I described for Count Four; and the purpose of the conspiracy charged in Count Five is to commit the sex trafficking offense I described for Count Six.

The crime of conspiracy – or agreement – to violate a federal law is an independent offense. It is separate and distinct from the actual violation of any specific federal laws, which the law refers to as "substantive crimes." You may find a defendant guilty of the crime of conspiracy—in other words, agreeing to violate federal law—even if you find that the substantive crime which was the object of the conspiracy was never actually committed.

> Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 19-2; the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN); the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); and the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC). *See also United States v. Labat*, 905 F.2d 18, 21 (2d Cir. 1990) ("Since the essence of conspiracy is the agreement and not the commission of the substantive offense that is its

objective, the offense of conspiracy may be established even if the collaborators do not reach their goal.").

Counts One, Three and Five: Conspiracy to Violate Federal Law – The Elements

To prove the defendant guilty of the crime of conspiracy, the Government must prove beyond a reasonable doubt the following three elements:

First, that two or more persons entered the unlawful agreement charged in the Indictment;

Second, that the defendant knowingly and willfully became a member of the conspiracy; and

Third, that one of the members of the conspiracy knowingly committed at least one overt act in furtherance of the conspiracy.

Now let us separately consider each of these elements.

> Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 19-3; the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); and the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC).

Counts One, Three, and Five: Conspiracy to Violate Federal Law – First Element

Starting with the first element, what is a conspiracy? A conspiracy is an agreement or an understanding, between two or more persons, to accomplish by joint action a criminal or unlawful purpose.

The essence of the crime of conspiracy is the unlawful agreement between two or more people to violate the law. As I mentioned earlier, the ultimate success of the conspiracy, meaning the actual commission of the crime that is the object of the conspiracy, is not an element of the crime of conspiracy.

In order to show that a conspiracy existed, the evidence must show that two or more people, in some way or manner, through any contrivance, explicitly or implicitly (that is, spoken or unspoken), came to a mutual understanding to violate the law and to accomplish an unlawful plan. Express language or specific words are not required to indicate assent or attachment to a conspiracy. If you find beyond a reasonable doubt that two or more persons came to an understanding, express or implied, to violate the law and to accomplish an unlawful plan, then the Government will have sustained its burden of proof as to this element.

To satisfy this element of a conspiracy—namely, to show that the conspiracy existed—the Government is not required to show that two or more people sat around a table and entered into a solemn pact, orally or in writing, stating that they had formed a conspiracy to violate the law and spelling out all of the details. Common sense tells you that when people, in fact, agree to enter into a criminal conspiracy, much is left to the unexpressed understanding. It is rare that a conspiracy can be proven by direct evidence of an explicit agreement. Conspirators do not usually reduce their agreements to writing or acknowledge them before a notary public, nor do they publicly broadcast their plans.

In determining whether such an agreement existed, you may consider direct as well as

circumstantial evidence. The old adage, "Actions speak louder than words," applies here. Often, the only evidence that is available with respect to the existence of a conspiracy is that of disconnected acts and conduct on the part of the alleged individual co-conspirators. When taken altogether and considered as whole, however, these acts and conduct may warrant the inference that a conspiracy existed as conclusively as would direct proof, such as evidence of an express agreement. On this question, you should refer back to my earlier instructions on direct and circumstantial evidence and inferences.

So, in considering the first element of the crime of conspiracy as charged in Counts One, Three, and Five—whether the conspiracy actually existed—you should consider all the evidence that has been admitted with respect to the acts, conduct, and statements of each alleged coconspirator, and any inferences that may be reasonably drawn from them. It is sufficient to establish the existence of the conspiracy, as I've already said, if, from the proof of all the relevant facts and circumstances, you find beyond a reasonable doubt that the minds of at least two alleged co-conspirators met in an understanding to accomplish, by the means alleged, the object of the conspiracy.

In short, as far as the first element of the conspiracy is concerned, the Government must prove beyond a reasonable doubt that at least two alleged conspirators came to a mutual understanding, either spoken or unspoken, to violate the law in the manner charged in Counts One, Three, and Five of the Indictment.

Liability for Acts and Declarations of Co-Conspirators

You will recall that I have admitted into evidence against the defendant the acts and statements of others because these acts and statements were committed or made by persons who, the Government charges, were also confederates or co-conspirators of the defendant.

The reason for allowing this evidence to be received against the defendant has to do in part with the nature of the crime of conspiracy. A conspiracy is often referred to as a partnership in crime: as in other types of partnerships, when people enter into a conspiracy to accomplish an unlawful end, each and every member becomes an agent for the other conspirators in carrying out the conspiracy.

Therefore, the reasonably foreseeable acts, statements, and omissions of any member of the conspiracy, committed in furtherance of the common purpose of the conspiracy, are deemed under the law to be the acts of all of the members, and all of the members are responsible for such acts, statements, or omissions.

If you find, beyond a reasonable doubt, that a defendant was a member of the conspiracy charged in the Indictment, then any acts done or statements made in furtherance of the conspiracy by a person also found by you to have been a member of the same conspiracy may be considered against that defendant. This is so even if such acts were committed or such statements were made in that defendant's absence, and without the defendant's knowledge.

However, before you may consider the acts or statements of a co-conspirator in deciding the guilt of the defendant, you must first determine that the acts were committed or statements were made during the existence, and in furtherance, of the unlawful scheme. If the acts were done or the statements were made by someone whom you do not find to have been a member of the conspiracy, or if they were not in furtherance of the conspiracy, they may not be considered by you in deciding whether the defendant is guilty or not guilty.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instrs. 19-4, 19-9; the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN) and in *United States v. Jones*, 16 Cr. 533 (AJN); the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); and the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081

(DLC). *See also United States v. Rea*, 958 F.2d 1206, 1214 (2d Cir. 1992) ("In order to prove conspiracy, the government need not present evidence of an explicit agreement; proof of a tacit understanding will suffice. The coconspirators need not have agreed on the details of the conspiracy, so long as they have agreed on the essential nature of the plan, and their goals need not be congruent, so long as they are not at cross-purposes." (citations omitted)).

Counts One, Three, and Five: Conspiracy to Violate Federal Law – First Element: Object of the Conspiracy

Count One charges the defendant with participating in a conspiracy, from at least in or about 1994, up to and including in or about 2004, to entice minors to travel to engage in sexual activity for which any person can be charged with a criminal offense. The object of the conspiracy charged in Count One of the Indictment is to entice minors to travel to engage in sexual activity for which any person can be charged with a criminal offense. I have already reviewed the elements of that offense in connection with Count Two. If you find beyond a reasonable doubt that the defendant agreed with at least one other person that those elements be done, then the enticement of minors to travel to engage in sexual activity for which any person can be charged with a criminal offense objective would be proved.

Count Three charges the defendant with participating in a conspiracy, from at least in or about 1994, up to and including in or about 2004, to transport minors with the intent to engage in sexual activity for which any person can be charged with a criminal offense. The object of the conspiracy charged in Count Three of the Indictment is to transport minors with the intent to engage in sexual activity for which any person can be charged with a criminal offense. I have already reviewed the elements of that offense in connection with Count Four. If you find beyond a reasonable doubt that the defendant agreed with at least one other person that those elements be done, then the transportation of minors with the intent to engage in sexual activity for which any person can be charged with a criminal offense objective would be proved.

Count Five charges the defendant with participating in a conspiracy, from at least in or about 2001, up to and including in or about 2004, to commit sex trafficking of a minor. The object of the conspiracy charged in Count Five of the Indictment is to commit sex trafficking

of a minor. I have already reviewed the elements of that offense in connection with Count Six. If you find beyond a reasonable doubt that the defendant agreed with at least one other person that those elements be done, then the sex trafficking of minors objective would be proved.

Adapted from the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW).

Counts One, Three, and Five: Conspiracy to Violate Federal Law – Second Element: Membership in the Conspiracy

With respect to each of Counts One, Three and Five, if you conclude that the Government has proven beyond a reasonable doubt that the relevant conspiracy existed, and that the conspiracy had the object I just mentioned, then you must next consider the second element: namely, whether the defendant knowingly and willfully participated in the conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objectives.

In order to satisfy the second element of Counts One, Three, or Five, the Government must prove beyond a reasonable doubt that the defendant knowingly and willfully entered into the conspiracy with a criminal intent—that is, with a purpose to violate the law—and that she agreed to take part in the conspiracy to further promote and cooperate in its unlawful objective.

"Willfully" and "Knowingly"

An act is done "knowingly" and "willfully" if it is done deliberately and purposely—that is, the defendant's actions must have been her conscious objective rather than a product of a mistake or accident, mere negligence, or some other innocent reason.

To satisfy its burden of proof that the defendant willfully and knowingly became a member of a conspiracy to accomplish an unlawful purpose, the Government must prove beyond a reasonable doubt that the defendant knew that she was a member of an operation or conspiracy to accomplish that unlawful purpose, and that her action of joining such an operation or conspiracy was not due to carelessness, negligence, or mistake.

Now, as I have said, knowledge is a matter of inference from the proven facts. Science has not yet devised a manner of looking into a person's mind and knowing what that person is thinking. However, you do have before you the evidence of certain acts and conversations alleged to have taken place involving the defendant or in her presence. You may consider this

evidence in determining whether the Government has proven beyond a reasonable doubt the defendant's knowledge of the unlawful purposes of the conspiracy.

It is not necessary for the Government to show that a defendant was fully informed as to all the details of the conspiracy in order for you to infer knowledge on her part. To have guilty knowledge, a defendant need not have known the full extent of the conspiracy or all of the activities of all of its participants. It is not even necessary for a defendant to know every other member of the conspiracy.

In addition, the duration and extent of the defendant's participation has no bearing on the issue of her guilt. She need not have joined the conspiracy at the outset. The defendant may have joined it for any purpose at any time in its progress, and she will be held responsible for all that was done before she joined and all that was done during the conspiracy's existence while she was a member. Each member of a conspiracy may perform separate and distinct acts and may perform them at different times. Indeed, a single act may be enough to bring one within the membership of the conspiracy, provided that the defendant was aware of the conspiracy and knowingly associated herself with its criminal aims. It does not matter whether the defendant's role in the conspiracy may have been more limited than or different in nature or in length of time from the roles of her co-conspirators, provided she was herself a participant.

I want to caution you, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make her a member of the conspiracy. Similarly, a person may know, assemble with, or be friendly with, one or more members of a conspiracy, without being a conspirator herself. I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. In other words, knowledge without agreement and participation is not sufficient. What is necessary is that a defendant participate in the

conspiracy with knowledge of its unlawful purposes, and with an intent to aid in the accomplishment of its unlawful objectives.

It is also not necessary that the defendant receive or even anticipate any financial benefit from participating in the conspiracy as long as she participated in it in the way I have explained. That said, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, that is a factor which you may properly consider in determining whether or not she was a member of a conspiracy charged in the Indictment.

Once a conspiracy is formed, it is presumed to continue until either its objective is accomplished or there is some affirmative act of termination by the members. So too, once a person is found to be a member of a conspiracy, she is presumed to continue as a member in the conspiracy until the conspiracy is terminated, unless it is shown by some affirmative proof that the person withdrew and disassociated herself from it.

In sum, the defendant, with an understanding of the unlawful nature of the conspiracy, may have intentionally engaged, advised, or assisted in the conspiracy for the purpose of furthering an illegal undertaking. The defendant thereby becomes a knowing and willing participant in the unlawful agreement—that is to say, she becomes a conspirator.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 19-6; the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 533 (AJN) and in *United States v. Lebedev*, 15 Cr. 769 (AJN); and the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW).

Counts One, Three, and Five Two: Conspiracy to Violate Federal Law – Third Element

The third element to establish the offense of conspiracy, is that at least one overt act was knowingly committed by at least one of the conspirators—not necessarily the defendant—in furtherance of the conspiracy.

The overt act element requires the Government to show something more than mere agreement; some overt step or action must have been taken by at least one of the conspirators in furtherance of that conspiracy. In other words, the Government must show that the agreement went beyond the mere talking stage. It must show that at least one of the conspirators actually did something in furtherance of the conspiracy.

With respect to the overt acts for Count One, the Indictment reads as follows: [The Court is respectfully requested to read the overt acts listed under Count One of the Indictment].

With respect to the overt acts for Count Three, the Indictment reads as follows: [The Court is respectfully requested to read the overt acts listed under Count Three of the Indictment].

With respect to the overt acts for Count Five, the Indictment reads as follows: [The Court is respectfully requested to read the overt acts listed under Count Five of the Indictment].

In order for the Government to satisfy this element, it is not necessary for the Government to prove that any of the specific overt acts alleged was committed. Nor does the Government have to prove that the defendant committed the overt act. It is sufficient for the Government to show that any of the members of the conspiracy knowingly committed some overt act in furtherance of the conspiracy. Further, the overt act need not be one that is alleged in the Indictment. Rather, it can be any overt act that is substantially similar to those acts alleged in the Indictment, if you are convinced that the act occurred while the conspiracy was still in existence and that it was done in furtherance of the conspiracy as described in the Indictment. In addition, you need not be unanimous as to which overt act you find to have been committed. It

is sufficient as long as all of you find that at least one overt act was committed by one of the conspirators in furtherance of the conspiracy.

You should bear in mind that the overt act, standing alone, may be an innocent, lawful act. However, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding, or assisting the conspiratorial scheme. You are therefore instructed that the overt act does not have to be an act which in and of itself is criminal or constitutes an objective of the conspiracy.

You are further instructed that the overt act need not have been committed at precisely the time alleged in the Indictment. It is sufficient if you are convinced beyond a reasonable doubt, that it occurred at or about the time and place stated.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instrs. 19-7, 19-8; the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN); the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); and the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC).

Statute of Limitations

There is a limit on how much time the Government has to obtain an indictment. Counts Two, Four, Five, and Six are timely—that is, they are not barred by any statute of limitations. As to Counts One and Three, in order to prove that this prosecution is timely, the Government has to prove that least one of the overt acts in furtherance of that conspiracy involved a victim other than Minor Victim-3. Put simply: you may not convict the defendant on Counts One or Three solely on the basis of Minor Victim-3 or an overt act involving Minor Victim-3.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 19-7.

OTHER INSTRUCTIONS

Direct and Circumstantial Evidence

There are two types of evidence that you may use in reaching your verdict. One type of evidence is direct evidence. One kind of direct evidence is a witness's testimony about something that the witness knows by virtue of his or her own senses—something that the witness has seen, smelled, touched, or heard. Direct evidence may also be in the form of an exhibit.

The other type of evidence is circumstantial evidence. Circumstantial evidence is evidence that tends to prove one fact by proof of other facts. There is a simple example of circumstantial evidence that is often used in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that there are blinds on the courtroom windows that are drawn and that you cannot look outside. As you are sitting here, someone walks in with an umbrella that is dripping wet. Someone else then walks in with a raincoat that is also dripping wet.

Now, you cannot look outside the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of the facts that I have asked you to assume, it would be reasonable and logical for you to conclude that between the time you arrived at the courthouse and the time these people walked in, it had started to rain.

That is all there is to circumstantial evidence. You infer based on reason, experience, and common sense from an established fact the existence or the nonexistence of some other fact.

Many facts, such as a person's state of mind, can only rarely be proved by direct evidence. Circumstantial evidence is of no less value than direct evidence. It is a general rule that the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting each defendant, you, the jury, must be satisfied of each defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Inferences

During the trial, and as I give you these instructions, you have heard and will hear the term "inference." For instance, in their closing arguments, the attorneys have asked you to infer, based on your reason, experience, and common sense, from one or more established facts, the existence of some other fact. I have instructed you on circumstantial evidence and that it involves inferring a fact based on other facts, your reason, and common sense.

What is an "inference"? What does it mean to "infer" something? An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists based on another fact that you are satisfied exists.

There are times when different inferences may be drawn from facts, whether proven 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.

Therefore, while you are considering the evidence presented to you, you may draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experience.

Some inferences, however, are impermissible. You may not infer that the defendant is guilty of participating in criminal conduct if you find merely that she was present at the time the crime was being committed and had knowledge that it was being committed. Nor may you use

evidence that I have instructed you was admitted for a limited purpose for any inference beyond that limited purpose.

In addition, you may not infer that the defendant is guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing or merely because he has or had knowledge of the wrongdoing of others.

Here again, let me remind you that, whether based upon direct or circumstantial evidence, or upon the logical, reasonable inferences drawn from such evidence, you must be satisfied of the guilt of the defendant as to each count charged before you may convict her as to that count.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Credibility of Witnesses

You have had the opportunity to observe the witnesses. It is your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of the witnesses. How do you evaluate the credibility or believability of the witnesses? The answer is that you use your common sense, judgment, and experience. Common sense is your greatest asset as a juror. You should ask yourselves, did the witness impress you as honest, open, and candid? Or did the witness appear evasive, as though the witness was trying to hide something? How responsive was the witness to the questions asked on direct examination and on cross-examination? Consider the witness's demeanor, manner of testifying, and accuracy of the witness's recollection. In addition, consider how well the witness recounted what was heard or observed, as the witness may be honest but mistaken.

If you find that a witness is intentionally telling a falsehood that is always a matter of importance that you should weigh carefully. If you find that any witness has lied under oath at this trial, you should view the testimony of such a witness cautiously and weigh it with great care. You may reject the entirety of the witness testimony, part of it or none of it. It is for you to decide how much of any witness's testimony, if any, you wish to credit. A witness may be inaccurate, contradictory, or even untruthful in some respects and yet entirely believable and truthful in other respects. It is for you to determine whether such untruths or inconsistencies are significant or inconsequential, and whether to accept or reject all or to accept some and reject the balance of the testimony of any witness.

On some occasions during this trial, witnesses were asked to explain an apparent inconsistency between testimony offered at this trial and previous statements made by the witness. It is for you to determine whether a prior statement was inconsistent, and if so, how much (if any) weight to give to an inconsistent statement in assessing the witness's credibility at

trial. You can credit the prior inconsistent statement or credit the witness' statement at trial. You make the determination based on your assessment of the witness.

In evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. 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 any witness who has an interest in the outcome of a case would testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

You are not required to accept testimony even though the testimony is not contradicted and the witness's testimony is not challenged. You may decide because of the witness's bearing or demeanor, or because of the inherent improbability of the testimony, or for other reasons sufficient to yourselves that the testimony is not worthy of belief. On the other hand, you may find, because of a witness's bearing and demeanor and based upon your consideration of all the other evidence in the case, that the witness is truthful.

Thus, there is no magic formula by which you can evaluate testimony. You bring to this courtroom all your experience and common sense. You determine for yourselves in many circumstances the reliability of statements that are made by others to you and upon which you are asked to rely and act. You may use the same tests here that you use in your everyday lives. You may consider the interest of any witness in the outcome of this case and any bias or prejudice of any such witness, and this is true regardless of who called or questioned the witness.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Credibility of Witnesses – Impeachment by Prior Inconsistent Statement

[If applicable]

You have heard evidence that a witness made a statement on an earlier occasion which counsel argues is inconsistent with the witness's trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence bearing on either defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted him or herself. If you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much of the trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation appealed to your common sense.

It is exclusively your duty, based on all of the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the witness's testimony.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN).

Conscious Avoidance

[If applicable]

As I have explained, each of the counts charged in the Indictment requires the Government to prove that the defendant acted knowingly, as I have already defined that term.

If a person is actually aware of a fact, then she knows that fact. But, in determining whether the defendant acted knowingly, you may also consider whether the defendant deliberately closed her eyes to what otherwise would have been obvious.

To be clear, the necessary knowledge on the part of the defendant with respect to any particular charge cannot be established by showing that that defendant was careless, negligent, or foolish. However, one may not willfully and intentionally remain ignorant of a fact material and important to her conduct in order to escape the consequences of criminal law. The law calls this "conscious avoidance" or "willful blindness."

Thus, if you find beyond a reasonable doubt that the defendant was aware that there was a high probability a crime was being committed, but that the defendant deliberately and consciously avoided confirming this fact, such as by purposely closing her eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge, unless you find that the defendant actually believed that she was not engaged in such unlawful behavior. In other words, a defendant cannot avoid criminal responsibility for her own conduct by "deliberately closing her eyes," or remaining purposefully ignorant of facts which would confirm to her that she was engaged in unlawful conduct.

With respect to the conspiracy counts, you must also keep in mind that there is an important difference between knowingly and intentionally participating in a conspiracy—which I just explained to you—and knowing the specific objective of the conspiracy on the other. You

may consider conscious avoidance in deciding whether the defendant knew the objective of a conspiracy, that is, whether she reasonably believed that there was a high probability that a goal of the conspiracy was to commit the crime charged as objects of the conspiracy and took deliberate and conscious action to avoid confirming that fact but participated in the conspiracy anyway. But conscious avoidance cannot be used as a substitute for finding that the defendant knowingly and intentionally joined the conspiracy in the first place. It is logically impossible for a defendant to intend and agree to join a conspiracy if she does not actually know it exists. However, if you find beyond a reasonable doubt that the defendant knowingly chose to participate in such a joint undertaking, you may consider whether the defendant took deliberate and conscious action to avoid confirming otherwise obvious facts about the purpose of that undertaking.

In sum, if you find that a defendant believed there was a high probability that a fact was so and that the defendant took deliberate and conscious action to avoid learning the truth of that fact, you may find that the defendant acted knowingly with respect to that fact. However, if you find that the defendant actually believed the fact was not so, then you may not find that she acted knowingly with respect to that fact.

> Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN); the charge of the Hon. P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (PKC); and Sand et al., *Modern Federal Jury Instructions*, Instr. 3A-2. *See United States v. Lange*, 834 F.3d 58, 76 (2d Cir. 2016) ("Conscious avoidance may not be used to support a finding as to . . .intent to participate in a conspiracy, but it may be used to support a finding with respect to . . . knowledge of the conspiracy's unlawful goals." (internal quotation marks omitted)).

Venue

[If requested by defense]

With respect to each of the counts in the indictment, you must also consider the issue of venue, namely, whether any act in furtherance of the unlawful activity occurred within the Southern District of New York. The Southern District of New York encompasses the following counties: New York County (i.e., Manhattan), Bronx, Westchester, Rockland, Putnam, Dutchess, Orange and Sullivan Counties. Anything that occurs in any of those places occurs in the Southern District of New York.

Venue must be examined separately for each count in the Indictment. Venue on one count does not establish venue on another count, though if applicable, you may rely on the same evidence to establish venue on multiple counts.

As to the conspiracy charges, the Government need not prove that any crime was completed in this District or that the defendant or any of her co-conspirators were physically present here. Rather, venue is proper in this District if the defendant or any of her co-conspirators caused any act or event to occur in this District in furtherance of the offense, and it was reasonably foreseeable to the defendant that the act would take place in the Southern District of New York.

As to the substantive counts – that is, the non-conspiracy counts – the Government again need not prove that any crime was completed in this District or that the defendant was physically present here. Rather, venue is proper in this District provided that any act in furtherance of the essential conduct of the crime took place in the Southern District of New York. Again, the defendant need not have specifically intended to cause an act or event to happen in this District, or even known that he was causing an act or event to happen here, as long as it was reasonably foreseeable to the defendant that such act would occur in this District and it in fact occurred.

On the issue of venue—and this alone—the Government need not prove venue beyond a reasonable doubt, but only by a mere preponderance of the evidence. A "preponderance of the evidence" means more likely than not. Thus, the Government, which does bear the burden of proving venue, has satisfied that burden as to venue if you conclude that it is more likely than not that some act or communication in furtherance of each charged offense occurred in the Southern District of New York, and it was reasonably foreseeable to each Defendant that the act would so occur. If, on the other hand, you find that the Government has failed to prove the venue requirement as to a particular offense, then you must acquit the Defendant of that offense, even if all the other elements of the offense are proven.

> Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 3-11; the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN); the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC); and the charge of the Hon. P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (PKC). *See also United States v. Khalupsky,* 5 F.4th 279 (2d Cir. 2021) ("The government bears the burden of proving appropriate venue on each count, as to each defendant, by a preponderance of the evidence.").

Time of Offense

The Indictment alleges that certain conduct occurred on or about various dates or during various time periods. It is not necessary, however, for the Government to prove that any conduct alleged occurred exactly on such dates or throughout any such time periods. As long as the conduct occurred around any dates or within any time periods the Indictment alleges it occurred, that is sufficient.

This is also a good opportunity to instruct you that it does not matter if a specific event or transaction is alleged to have occurred on or about a certain date, and the evidence indicates that in fact it occurred on another date. The law only requires a substantial similarity between the dates alleged in the Indictment and the dates established by the testimony and other evidence.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN); the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); and the charge of the Hon. P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (PKC).

Law Enforcement and Government Employee Witnesses

You have heard testimony from law enforcement officials and employees of the Government. The fact that a witness may be employed by the Federal Government as a law enforcement official or employee does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

In this context, defense counsel is allowed to try to attack the credibility of such a witness on the ground that his or her 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 or Government employee witness and to give to that testimony the weight you find it deserves.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 7-16; and the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Formal / Informal Immunity of Government Witnesses

[If applicable]

You have heard the testimony of [witnesses] who have testified under a grant of immunity from this Court. What this means is that the testimony of the witness may not be used against him or her in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the immunity order of this court.

Such testimony should be scrutinized by you with great care and you should act upon it with caution. You should examine 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 witnesses' own interests. If you believe the testimony to be true and determine to accept it, you may give it such weight, if any, as you believe it deserves.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 7-8; and the charge of the Hon. Loran G. Schofield in *United States v. Calk*, 19 Cr. 366 (LGS).

Expert Testimony

[If applicable]

You have heard testimony from a witness/certain witnesses who was/were proffered as (an) expert(s) in different areas. An expert is allowed to express his or her opinion on those matters about which he or she has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing an expert's testimony, you may consider the expert's qualifications, opinions, reasons for testifying, 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 expert testimony whatever weight, if any, you find it deserves in light of all the evidence in this case.

You should not, however, accept a witness's testimony merely because he or she is an expert. 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.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 7-21; and the charge of the Hon. Alison J. Nathan in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Limiting Instruction – Similar Act Evidence

[If Applicable]

The Government has offered evidence tending to show that on different occasions, the defendant engaged in conduct similar to the charges in the Indictment.

Let me remind you that the defendant is on trial only for committing acts alleged in the Indictment. Accordingly, you may not consider this evidence of similar acts as a substitute for proof that the defendant committed the crimes charged. Nor may you consider this evidence as proof that a defendant has a criminal personality or bad character. The evidence of the other, similar acts was admitted for a much more limited purpose and you may consider it only for that limited purpose.

If you determine that the defendant committed the acts charged in the Indictment and the similar acts as well, then you may, but you need not draw an inference that in doing the acts charged in the Indictment, that defendant acted knowingly and intentionally and not because of some mistake, accident, or other innocent reasons. You may also consider this evidence in determining whether the defendant utilized a common scheme or plan in committing both the crimes charged in the Indictment and the similar acts introduced by the Government.

Evidence of similar acts may not be considered by you for any other purpose. Specifically, you may not consider it as evidence that the defendant is of bad character or has the propensity to commit crimes.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 5-25; and the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN).

Defendant's Testimony

[Requested only if the defendant testifies]

[The Government respectfully requests that the Court include the following instruction in its general instruction on witness credibility, rather than as a separate instruction:]

The defendant testified at trial and was subject to cross-examination. You should examine and evaluate this testimony just as you would the testimony of any witness.

> *See United States v. Gaines*, 457 F.3d 238, 249 & n.8 (2d Cir. 2006).

Defendant's Right Not to Testify

[If requested by defense]

The defendant did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government's burden to prove a defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to a defendant. A defendant is never required to prove that she is innocent.

You may not attach any significance to the fact that the defendant did not testify.

No adverse inference against the defendant may be drawn by you because the defendant did not take the witness stand. You may not consider this against the defendant in any way in your deliberations in the jury room.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 5-21; and the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

Uncalled Witnesses – Equally Available to Both Sides

There are people whose names you heard during the course of the trial but did not appear to testify. [If applicable: One or more of the attorneys has referred to their absence from the trial.] I instruct you that each party had an equal opportunity or lack of opportunity to call any of these witnesses. Therefore, you should not draw any inferences or reach any conclusions as to what they would have testified to had they been called. Their absence should not affect your judgment in any way.

You should remember my instruction, however, that the law does not impose on the defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 6-7; and the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Le*, 15 Cr. 38 (AJN).

Particular Investigative Techniques Not Required

[If applicable]

You have heard reference, in the arguments of defense counsel in this case, to the fact that certain investigative techniques were used or not used by the Government. There is no legal requirement, however, that the Government prove its case through any particular means. While you are to carefully consider the evidence adduced by the Government, you are not to speculate as to why they used the techniques they did or why they did not use other techniques. The Government is not on trial. Law enforcement techniques are not your concern.

Your concern is to determine whether or not, on the evidence or lack of evidence, the defendant's guilt has been proved beyond a reasonable doubt.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN); the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC); and the charge of the Hon. P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (PKC).

Use of Evidence from Searches

You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Evidence obtained from these searches was properly admitted in this case, and may be properly considered by you. Such searches were appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations, because I instruct you that the Government's use of the evidence is entirely lawful. You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in the case in determining whether the Government has proven the defendant's guilt beyond a reasonable doubt. As with all evidence, it is for you to determine what weight, if any, to give such evidence.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN).

Use of Electronic Communications

Some of the evidence in this case has consisted of electronic communications seized from computers or electronic accounts. There is nothing illegal about the Government's use of such electronic communications in this case and you may consider them along with all the other evidence in the case. Whether you approve or disapprove of the seizure of these communications may not enter your deliberations.

You may, therefore, regardless of any personal opinions, consider this evidence along with all the other evidence in the case in determining whether the Government has proven the defendant's guilt beyond a reasonable doubt. However, as with the other evidence, it is for you to determine what weight, if any, to give such evidence.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN).

Persons Not on Trial

You may not draw any inference, favorable or unfavorable, towards the Government or the defendant on trial from the fact that any person in addition to the defendant is not on trial here. You also may not speculate as to the reasons why other persons are not on trial. Those matters are wholly outside your concern and have no bearing on your function as jurors.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN); the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC); and the charge of the Hon. P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (PKC).

Preparation of Witnesses

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with the Government lawyers, the defense lawyers, or their own lawyers before the witnesses appeared in court.

Although you may consider that fact when you are evaluating a witness's credibility, I should tell you that there is nothing either unusual or improper about a witness meeting with lawyers before testifying so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

Adopted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN); the charge of the Hon. Kimba M. Wood in *United States v. Almonte*, 16 Cr. 670 (KMW); and the charge of the Hon. P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (PKC).

Redaction Of Evidentiary Items

[If Applicable]

We have, among the exhibits received in evidence, some documents that are redacted. "Redacted" means that part of the document has been taken out. Material may be redacted for any number of reasons, including that it is not relevant to the issues you must decide in this case, among other reasons. You are to concern yourself only with the part of the item that has been admitted into evidence, and you should not consider any possible reason for the redactions.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN); and the charge of the Hon. Richard J. Sullivan, Jury Charge, *United States v. Adony Nina, et al.*, 13 Cr. 322 (S.D.N.Y. 2013).

Charts and Summaries – Admitted as Evidence

[If Applicable]

Now, some of the exhibits that were admitted into evidence were in the form of charts and summaries. For these charts and summaries that were admitted into evidence, you should consider them as you would any other evidence, which includes assessing the accuracy of the information contained in those charts or summaries.

Adapted from Sand, et al., *Modern Federal Jury Instructions*, Instr. 5-12; and the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN). *See also* Fed. R. Evid. 1006.

Stipulations

[If Applicable]

In this case you have heard evidence in the form of stipulations.

A stipulation of testimony is an agreement among the parties that, if called, a witness would have given certain testimony. You must accept as true the fact that the witness would have given the testimony. However, it is for you to determine the effect or weight to give that testimony.

You also heard evidence in the form of stipulations that contain facts that were agreed to be true. In such cases, you must accept those facts as true.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Jones*, 16 Cr. 553 (AJN) and in *United States v. Pizarro*, 17 Cr. 151 (AJN); the charge of the Hon. P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (PKC); and from Sand, et al., *Modern Federal Jury Instructions*, Instrs. 5-6 & 5-7.

Punishment Not to be Considered by the Jury

Under your oath as jurors, you cannot allow a consideration of possible punishment that may be imposed upon a defendant, if convicted, to influence you in any way or in any sense to enter into your deliberations. The duty of imposing sentence is mine and mine alone. Your function is to weigh the evidence in the case and to determine whether the defendant is or is not guilty upon the basis of evidence and the law.

Therefore, I instruct you not to consider punishment or possible punishment in any way in your deliberations in this case.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Pizarro*, 17 Cr. 151 (AJN); from the charge of the Hon. Denise L. Cote in *United States v. Purcell*, 18 Cr. 081 (DLC); and charge of the Hon. P. Kevin Castel in *United States v. William Walters*, 16 Cr. 338 (PKC).

Right to Hear Testimony; Election of Foreperson; Communications with the Court; Juror Note-Taking

You are about to go into the jury room and begin your deliberations. The documentary evidence will be sent back with you. If you want any of the testimony read to you, that can be arranged. But please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting portions of the testimony that you might want.

Your first task as a jury will be to choose your foreperson. The foreperson has no greater voice or authority than any other juror, but is the person who will communicate with the Court through written note when questions arise and to indicate when you have reached your verdict.

Your requests for testimony—in fact, any communications with the Court— should be made to me in writing, signed by your foreperson, and given to one of the Marshals. I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom so I can speak with you in person. In any communication, please do not tell me or anyone else how the jury stands on the issue of the jury's verdict until after a unanimous verdict is reached.

For those of you who took notes during the course of the trial, you should not show your notes to or discuss your notes with any other juror during your deliberations. Any notes you have taken are to assist you and you alone. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror.

Finally, your notes are not to substitute for your recollection of the evidence in this case. If you have any doubt as to any testimony, you may request that the official trial transcript that has been made of these proceedings be read or otherwise provided to you.

Adapted from the charge of the Hon. Alison J. Nathan in *United States v. Lebedev*, 15 Cr. 769 (AJN), in *United States v. Jones*, 16 Cr. 553 (AJN), and in *United States v. Pizarro*, 17 Cr. 151 (AJN).

CONCLUDING REMARKS

Members of the jury, that about concludes my instructions to you. The most important part of this case, members of the jury, is the part that you as jurors are now about to play as you deliberate on the issues of fact. It is for you, and you alone, to weigh the evidence in this case and determine whether the Government has proved beyond a reasonable doubt each of the essential elements of the crime with which each Defendant is charged. If the Government has succeeded, your verdict should be guilty as to that Defendant and that charge; if it has failed, your verdict should be not guilty as to that Defendant and that charge.

You must base your verdict solely on the evidence or lack of evidence and these instructions as to the law, and you are obliged under your oath as jurors to follow the law as I have instructed you, whether you agree or disagree with the particular law in question.

Under your oath as jurors, you are not to be swayed by sympathy. You should be guided solely be the evidence presented during the trial and the law as I gave it to you, without regard to the consequences of your decision. You have been chosen to try the issues of fact and reach a verdict on the basis of the evidence or lack of evidence. If you let sympathy interfere with your clear thinking, there is a risk that you will not arrive at a just verdict.

As you deliberate, please listen to the opinions of your fellow jurors, and ask for an opportunity to express your own views. Every juror should be heard. No one juror should hold center stage in the jury room and no one juror should control or monopolize the deliberations. If, after listening to your fellow jurors and if, after stating your own view, you become convinced that your view is wrong, do not hesitate because of stubbornness or pride to change your view. On the other hand, do not surrender your honest convictions and beliefs solely because of the opinions of your fellow jurors or because you are outnumbered. Your final vote must reflect your conscientious belief as to how the issues should be decided.

Thus, the verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous.

If at any time you are divided, do not report how the vote stands, and if you have reached a verdict, do not report what it is until you are asked in open court.

A verdict form has been prepared for your convenience. After you have reached your decision, your foreperson will fill in the form. At that point the foreperson should advise the marshal outside your door that you are ready to return to the courtroom.

Finally, I say this not because I think it is necessary, but because it is the custom in this courthouse to say this: You should treat each other with courtesy and respect during your deliberations.

In conclusion, ladies and gentlemen, I am sure that if you listen to the views of your fellow jurors, and if you apply your own common sense, you will deliberate fairly.

Dated: New York, New York
October __, 2021

Respectfully submitted,

_____
[Defense signature block]

DAMIAN WILLIAMS
United States Attorney

By: _____
[redacted]
Assistant United States Attorneys