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GOVERNMENT'S REQUEST NO. 1

Duty To Follow Instructions

You, as jurors, are the judges of the facts. But in determining what actually happened in this case -- that is, in reaching your decision as to the facts -- it is your sworn duty to follow the law as I explain it to you. You must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. That is, you must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

It is also your duty to base your verdict solely on the testimony and evidence in this case, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors in this case, and they have the right to expect nothing less.

Overview of Indictment and Counts

Count One of the indictment in this case charges that on or about December 23, 1998, defendant Michael Alexander possessed with the intent to distribute marijuana. Count Two of the indictment charges that on or about the same date, the defendant carried a firearm during and in relation to a drug trafficking crime, namely possession with the intent to distribute marijuana, as charged in Count One of the indictment.

The indictment is not evidence against the defendant. It is simply the formal method that the United States Constitution provides for charging someone with the commission of a crime.

Your deliberations should be limited to the questions listed on the verdict form that will be provided to you by the Court. I will now instruct you on the legal principles which will help you answer those questions.

First, I will instruct you on some general legal principles applicable to all criminal trials. Then I will instruct you on the law applicable to the offenses specifically charged in this indictment.

GOVERNMENT'S REQUEST NO. 3

Evidence in the Case -- Stipulations, Judicial Notice

Now I am going to tell you something about what constitutes evidence in this case.

The evidence in the case consists of the sworn testimony of witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have produced them; all facts which may have been agreed to or stipulated; and all facts and events which may have been judicially noticed.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you should accept the stipulation as evidence and regard that fact as proved.

The court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, you may accept the Court's declaration as evidence, and regard as proved the fact or event which had been judicially noticed, but you are not required to do so because you are the sole judge of the facts.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not proper evidence, and must be entirely disregarded.

Questions, objections, statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact.

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses or the bald assertions in the exhibits. In other words, you are not limited solely to what you see and hear as the witnesses testify, or as the exhibits are admitted. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of your experience and common sense.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established from the evidence in the case.

1 Devitt and Blackmar, Federal Jury Practice and Instructions, § 12.03 (4th ed. 1992); United States v. Cornish, 103 F.3d 302, 305-07 (3d Cir. 1997).

Direct and Circumstantial Evidence

There are two types of evidence which are generally presented during a trial. One is what we call direct evidence. Direct evidence is the testimony of a witness who asserts or claims to have actual knowledge of a fact, such as an eyewitness. The other type of evidence is called circumstantial evidence. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

For example, let's suppose you have been in this courtroom for four hours and you have not been able to look outside. A man comes into this courtroom wearing a wet raincoat and carrying a dripping umbrella. You may infer from those circumstances that it is raining outside. That is what we call circumstantial as opposed to direct evidence. Direct evidence would be the testimony of the man in the wet raincoat that it was raining outside.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. The law simply

requires that before convicting any defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence, direct or circumstantial.

Adapted from 1 Devitt and Blackmar, Federal Jury Practice and Instructions, § 12.04 (4th ed. 1992); United States v. Bright, 630 F.2d 804, 823 n.37 (5th Cir. 1980); United States v. Hamilton, 457 F.2d, 95, 98 (3d Cir. 1972).

Credibility of Witnesses -- In General

Now I will speak to you briefly about evaluating the credibility of the witnesses.

You, as jurors, are the sole judges of the credibility of the witnesses and the importance or weight their testimony deserves. After making your assessment concerning the credibility of a witness, you may decide to believe all of that witness's testimony, only a portion of it, or none of it.

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

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may

simply see or hear it differently. Innocent misrecollection, like failure to recollect, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

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

Adapted from 1 Devitt and Blackmar, Federal Jury Practice and Instructions §§ 15.01, 15.07 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 6

Opinion Evidence) Expert Witnesses

The rules of evidence ordinarily do not permit witnesses to testify as to their own opinions or their own conclusions about issues in the case. An exception to this rule exists as to those witnesses who are described as "expert witnesses." An "expert witness" is someone who, by education or by experience, may have become knowledgeable in some technical, scientific or very specialized area. If such knowledge or experience may be of assistance to you in understanding some of the evidence or in determining a fact, an "expert witness" in that area may state an opinion as to relevant and material matters in which he or she claims to be an expert.

You should consider each expert's opinion received in evidence and give it such weight as you may think it deserves. If you decide that the opinion of the expert witness is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion in part or in its entirety. On the other hand, if you decide the opinion of an expert witness is based upon sufficient education and experience, that the reasons given in support of the opinion are sound, and that the opinion is not outweighed by other evidence, you may credit the opinion.

Adapted from 1 Devitt, et al., Federal Jury Practice and Instructions, § 14.01 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 7

Reasonable Doubt

I have said that the government must prove the defendant guilty beyond a reasonable doubt. The question naturally is what is reasonable doubt? The words almost define themselves. It is a doubt based on reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is doubt which would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a caprice or whim; it is not speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendant, which means that it is always the government's burden to prove each of the elements of the crime charged beyond a reasonable doubt.

If, after fair and impartial consideration of all of the evidence, you have a reasonable doubt, it is your duty to

acquit the defendant. On the other hand, if after fair and impartial consideration of all of the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

Sand, Siffert, Loughlin & Reiss, Modern Federal Jury Instructions
¶ 4-2 (1998).

Failure to Call Witnesses

The law does not require the government to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the government to produce as exhibits all papers and things mentioned in the evidence.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and no adverse inferences may be drawn from his failure to do so.

1 Devitt and Blackmar, Federal Jury Practice and Instructions,

§ 17.18 (3d ed. 1977).

GOVERNMENT'S REQUEST NO. 9

Irrelevance of Guilt or Innocence of Others

You are here to determine the guilt or innocence of the defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are also guilty.

1 Devitt & Blackmar, Federal Jury Practice and Instructions § 12.11 at 372-73 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 10

If Defendant Does Not Testify:
Defendant Not Required To Testify

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

The fact that a defendant did not testify must not be discussed or considered by the jury in any way when deliberating and arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

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

1 Devitt & Blackmar, Federal Jury Practice and Instructions § 15.14 at 533 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 11

If Defendant Does Testify:
Credibility of Defendant As A Witness

A defendant who wishes to take the stand is a competent witness, and the defendant's testimony is to be judged in the same way as that of any other witness.

The defendant has taken the stand in his own behalf, and in that respect he has placed his credibility in issue the same as any other witness. You will therefore appraise his credibility from the standpoints which have been described to you; and in doing so you may take into consideration his interest in the outcome of the case. The defendant in a criminal case is always vitally interested in the verdict of the jury. It does not necessarily follow from the presence of his interest that he would tell an untruth while under oath on the witness stand, but that is a circumstance which is proper for you to consider, along with all the other circumstances in the case.

United States v. Floyd, 555 F.2d 45 (2d Cir.), cert. denied, 434 U.S. 851 (1977); 2 Devitt and Blackmar, Federal Jury Practice and Instructions, § 59.36 (3d ed. 1977).

Punishment May Not Be Considered

When you are deliberating, you should not consider what punishment the defendant might receive if you determine that he is guilty of the offense charged. The punishment provided by law for the offenses charged in the indictment is exclusively within the province of the Court, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Adapted from 1 Devitt and Blackmar, Federal Jury Practice and Instructions § 20.01 (4th ed. 1992).

Sympathy And Bias

Under your oath as jurors, you are not to be swayed by sympathy or bias. You are to be guided solely by the evidence in the case, and the crucial hard-core question you must ask yourselves as you sift through the evidence is, where do you find the truth? This is a quest for truth as to the facts, that is what a trial is. It's not a battle of wits. It's not a contest of salesmanship, and it's not a contest of personalities. The only triumph in any case is whether or not the truth has triumphed. If it has, then justice has been done. If not, justice will not have been done.

The conduct charged in the indictment is illegal under federal law. The issue and only issue for you to decide is whether or not the defendant has violated the law. You are to determine the guilt or innocence of the defendant solely on the basis of the evidence and the law as I have now charged you. If you find that law has not been violated, you should not hesitate for any reason to return a verdict of not guilty. If, on the other hand, you find beyond a reasonable doubt that the law has been violated as charged, you should not hesitate to render a verdict of guilty because of sympathy or bias, prejudice, fear, public opinion, or your own views as to the propriety or social desirability of this conduct. You should not be biased or prejudiced solely by the use of a cooperating defendant or

improperly influenced by any person's race, color or religion, national ancestry or sex; that is, you must not decide this matter based on anything other than the evidence in this case and the law as I have instructed you as you said under oath you could at the time of your selection as jurors.

United States v. Martorano, Criminal No. 82-00013 (E.D. Pa.),
aff'd, 709 F.2d 863 (3d Cir.), cert. denied, 464 U.S. 993 (1983).

GOVERNMENT'S REQUEST NO. 14

Description of Count 1 -- Statute Involved

I will now instruct you on the law relating to the specific charges contained in the indictment.

Count 1 charges the defendant with possession with the intent to distribute marijuana, in violation of Title 21, United States Code, Section 841(a)(1). That statute provides: "[I]t shall be unlawful for any person knowingly or intentionally ... to ... distribute ... or possess with intent to ... distribute a controlled substance ..."

Title 21, United States Code, Section 841(a)(1).

GOVERNMENT'S REQUEST NO. 15

Possession with the Intent to Distribute a
Controlled Substance -- Elements of the Offense

In order for the defendant to be found guilty of possession with the intent to distribute a controlled substance, as charged in Count 1, the government must prove each of the following elements beyond a reasonable doubt:

_____ First: The defendant possessed a quantity of the controlled substance described in the indictment, namely, marijuana;

_____ Second: The defendant knew that the substance was a controlled substance; and

_____ Third: The defendant intended to distribute the controlled substance.

2 Devitt and Blackmar, Federal Jury Practice and Instructions § 54.07 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 16

To Possess -- Defined

The term "to ...possess" means to exercise control or authority over something at a given time. There are several types of possession: actual, constructive, sole and joint.

The possession is considered to be "actual possession" when a person knowingly has direct physical control or authority over something. The possession is called "constructive possession" when a person does not have direct physical control over something, but can knowingly control it and intends to control it, sometimes through another person.

The possession may be knowingly exercised by one person exclusively, which is called sole possession, or the possession may be knowingly exercised jointly when it is shared by two or more persons.

2 Devitt & Blackmar, Federal Jury Practice and Instructions, § 54.08 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 17

"With Intent to Distribute" -- Defined

The phrase "with intent to distribute" means to have in mind or to plan in some way to deliver or to transfer possession or control over a thing to someone else.

In attempting to determine the intent of any person you may take into your consideration all the facts and circumstances shown by the evidence received in the case concerning that person.

In determining a person's "intent to distribute" controlled substances, the jury may consider among other things, the quantity of the controlled substance, the presence of equipment or paraphernalia used in the processing or sale of controlled substances and weapons.

2 Devitt & Blackmar, Federal Jury Practice and Instructions, §
54.09 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 18

Proof of Intent

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer a defendant's intent from the surrounding circumstances. You may consider any statement made and done or omitted by a defendant, and all other facts and circumstances in evidence which indicate his state of mind.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. As I have said, it is entirely up to you to decide what facts to find from the evidence.

2 Devitt, Blackmar, & O'Malley, Federal Jury Practice and Instructions, 401, § 17.07 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 19

Knowledge of Precise Controlled Substance Need Not Be Proven

_____It is not necessary for the government to prove that a defendant knew the precise nature of the controlled substance that he intended to distribute. However, the government must prove beyond a reasonable doubt that the defendant knew that he possessed with the intent to distribute some type of controlled substance.

2 Devitt, Blackmar, & O'Malley, Federal Jury Practice and Instructions, § 54.15 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 20

Marijuana is a Controlled Substance

You are instructed as a matter of law that marijuana is a controlled substance, as that term is used in the Indictment, these instructions and the statute just read to you. [**IF STIPULATED:** As you may recall, the defendant and the government have stipulated that the substance contained in Government's Exhibit No. 3 is marijuana. Therefore, you should accept the stipulation as evidence and regard that fact as proved.]

However, it is solely for you to decide whether or not the United States has proven beyond a reasonable doubt that the defendant possessed with the intent to distribute that controlled substance.

2 Devitt, Blackmar & O'Malley, Federal Jury Practice and Instructions § 54.13 (4th ed. 1992); 21 U.S.C. § 802.

GOVERNMENT REQUEST NO. 21

Similar Acts Evidence [if applicable]

During the course of the trial, you heard evidence of prior acts of the defendant which may be similar to those charged in the indictment, but which were committed on other occasions. You must not consider any of this evidence in deciding if the defendant committed the acts charged in the indictment. However, you may consider this evidence for other, very limited, purposes.

If you find beyond a reasonable doubt from other evidence in this case that the defendant did commit the acts charged in Count 1 of the indictment, then you may use this evidence to help you decide whether the defendant had the state of mind or intent necessary to commit the offense charged in Count 1.

Eleventh Circuit Pattern Jury Instructions ¶ 4 (Special Instructions) at 51 (1997 ed.); Eighth Circuit Pattern Jury Instructions §§ 2.08-2.09 at 33-36 (1996 ed.).

GOVERNMENT'S REQUEST NO. 22

Count Two -- Statute Involved

Title 18, United States Code, Section 924(c)(1)(A), makes it a crime for anyone to carry a firearm during and in relation to a drug trafficking crime. Count Two charges that the defendant violated that law by carrying a firearm during and in relation to the drug trafficking crime charged in Count One of the indictment. The term "drug trafficking crime" means an offense that is a felony and involves the possession with the intent to distribute, distribution, manufacture or importation of any controlled substances. You are instructed that the offense alleged in Count One is a drug trafficking crime.

Pattern Jury Instructions for the Eleventh Circuit § 31 at 183 (1997 ed.); 2 Devitt, Blackmar & O'Malley, Federal Jury Practice and Instructions § 36.19 at 388 (4th ed. 1992).

GOVERNMENT'S REQUEST NO. 23

Carrying a Firearm During and in Relation to a
Drug Trafficking Crime -- Elements of the Offense

In order for the defendant to be found guilty of carrying a firearm during and in relation to a drug trafficking crime, as charged in Count Two, the United States must prove each of the following elements beyond a reasonable doubt:

_____ First: That the defendant committed the drug trafficking crime charged in Count One of the indictment;

_____ Second: That during and in relation to the commission of that offense the defendant carried a firearm, as charged; and

_____ Third: That the defendant carried the firearm knowingly.

Pattern Jury Instructions for the Eleventh Circuit § 31 at 183-84 (1997 ed.).

GOVERNMENT'S REQUEST NO. 24

Definition of "Firearm"

The term "firearm" means any weapon which is designed to, or may readily be converted to, expel a projectile by the action of an explosive; and the term includes the frame or receiver of any such weapon. [**IF STIPULATED:** As you may recall, the defendant and the government have stipulated that Government's Exhibit No. 1 is a "firearm" as the Court has just defined that term. Therefore, you should accept the stipulation as evidence and regard that fact as proved.]

Pattern Jury Instructions for the Eleventh Circuit § 31 at 183-84
(1997 ed.).

GOVERNMENT'S REQUEST NO. 25

Definitions of "Carry" and "During and in Relation To"

To "carry" a firearm means that the defendant either had a firearm on or around his person or transported, conveyed or possessed a firearm in such a way that it was available for immediate use if the defendant so desired. For you to find that the firearm was "carried" during and in relationship to a drug trafficking crime, it is sufficient that you find that the firearm was physically held by the defendant during the drug trafficking crime.

The phrase "during and in relation to" the commission of an offense means that there must be a connection between the defendant, the firearm and the drug trafficking crime so that the firearm facilitated the crime.

Pattern Jury Instructions for the Eleventh Circuit § 31 at 183-84 (1997 ed.); Muscarello v. United States, 524 U.S. 125, 118 S.Ct. 1911 (1998) ("carry" includes transporting in trunk of car).

GOVERNMENT'S REQUEST NO. 26

"On or About") Proof Of

The indictment charges that the offenses alleged were committed "on or about" December 23, 1998. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offenses were committed precisely on the date charged.

1 Devitt, et al., Federal Jury Practice and Instructions, § 13.05
(4th ed. 1992).

GOVERNMENT'S REQUEST NO. 27

Special Interrogatories -- Possession
of Firearm and Interstate Nexus

In addition to your verdict on Counts 1 and 2, the verdict form which will be provided to you when you retire to the jury room to deliberate asks you to answer two special interrogatories or questions. The special interrogatories are:

- (1) Did defendant Michael Alexander, on or about February 17, 1999, knowingly possess a Baretta Model 9 millimeter Luger semi-automatic pistol, bearing serial number D42222Z loaded with 13 rounds of ammunition?

and

- (2) If so, did the defendant possess that Baretta Model 9 millimeter Luger semi-automatic pistol bearing serial number D42222Z firearm in or affecting interstate or foreign commerce, as defined by this Court?

I will now provide you with some legal instructions which will help you answer these special interrogatories.

GOVERNMENT'S REQUEST NO. 28

Knowing Possession -- Defined

The first special interrogatory asks you to decide whether the defendant knowingly possessed the firearm listed in the indictment on or about February 17, 1999. As I instructed you in connection with the charge of possession with the intent to distribute marijuana, to "possess" means to have something within a person's control. This does not necessarily mean that the defendant must hold it physically, that is, have actual possession of it. As long as the firearm is within the defendant's control, he possesses it. The defendant's control may be direct, as by actually holding a firearm, or indirect, by having the intent and power to exercise dominion or control over a firearm. The possession may be for some time, or it may be just momentary or fleeting.

If you find that the defendant either had actual possession of the firearm, or that he had the power and intention to exercise control over it, even though it was not in his physical possession, you may find that the government has proven possession. Proof of ownership of the firearm is not required.

The defendant possessed the firearm knowingly if he possessed it purposely and voluntarily, and not by accident or mistake, and knew that the weapon was a firearm, or gun, as we commonly use the word.

However, the government is not required to prove that the defendant knew that he was breaking the law. The government

is also not required to prove that the defendant had knowledge of the technical definition of a firearm. Finally, the government does not have to prove that the defendant knew the firearm had passed in commerce.

Adapted from 1A L. Sand, et al., Modern Federal Jury Instructions, 35-49 (1998); United States v. Dancy, 861 F.2d 77, 81 (5th Cir. 1988) (per curiam); United States v. Toner, 728 F.2d 115, 128 (2d Cir. 1984); United States v. Garrett, 574 F.2d 778, 783 & n.5 (3d Cir.), cert. denied, 436 U.S. 919 (1978); United States v. Goodie, 524 F.2d 515, 518 (5th Cir. 1975), cert.

denied, 425 U.S. 905 (1976); United States v. Sanders, 462 F.2d 122, 124 (6th Cir. 1972).

GOVERNMENT'S REQUEST NO. 29

Proof of Knowledge

As I instructed you earlier, the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. No one can read another person's mind and tell what that person is thinking. But a defendant's state of mind can be proved indirectly from the surrounding circumstances. In determining the issue of what a person knew at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge.

Adapted from 1 Devitt, et al., Federal Jury Practice and Instructions, § 17.07 (4th ed. 1992); Sixth Circuit, Pattern Jury Instructions, 2.08 (1991).

Adapted from 1A L. Sand, et al., Modern Federal Jury Instructions, 35-50 (1998); Barrett v. United States, 423 U.S. 212, 215 n.4 (1976).

GOVERNMENT'S REQUEST NO. 31

Future Deliberations May Be Required

My instructions are now complete and it is time for you to retire to the jury room and deliberate on the questions listed on the verdict form which will be provided to you. Please be aware that, after you complete your deliberations, there may be some additional evidence presented to you and a few additional matters about which you will have to deliberate.

GOVERNMENT'S REQUEST NO. 32

[NOTE: GOVERNMENT'S REQUEST NOS. 32-36 SHOULD BE TENDERED TO THE JURY ONLY IF SPECIAL INTERROGATORIES 1 AND 2 ARE ANSWERED "YES"]

Bifurcation -- Duties After Initial Deliberations

Now that you have completed your initial deliberations, there are two more matters for you to consider: Count Three of the indictment [if the jury answered both special interrogatories in the affirmative] and criminal forfeiture [if the jury found the defendant guilty on Count 1]. I will now instruct you on the legal principles which will guide your consideration of these matters.

GOVERNMENT'S REQUEST NO. 33

Count Three -- Statute Involved

Count Three of the indictment charges the defendant with possession of a firearm by a convicted felon, in violation of Title 18, United States Code, Section 922(g)(1). Specifically, Count 3 alleges that on or about February 17, 1999, the defendant possessed, in and affecting commerce, a Baretta 9 millimeter Luger semi-automatic, model 92F, bearing serial number D42222Z, loaded with 13 rounds of 9 millimeter ammunition after having been convicted of a crime punishable by a term of imprisonment exceeding one year. Title 18, United States Code, Section 922(g)(1) provides that "[i]t shall be unlawful for any person -- who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess in or affecting commerce, any firearm or ammunition."

Title 18, United States Code, Section 922(g)(1).
GOVERNMENT'S REQUEST NO. 34

Possession of Firearm by a Convicted Felon --
Elements of the Offense

In order to convict the defendant on Count Three of the indictment, the government must prove each of the following elements beyond a reasonable doubt:

First: That the defendant was previously convicted of a crime punishable by imprisonment for a term exceeding one year;

Second: That the defendant thereafter knowingly possessed the firearm as charged; and

Third: That the possession was in or affecting interstate commerce; that is, that at some time before the defendant came into possession of the firearm, it had crossed a state line.

1A L. Sand, et al., Modern Federal Jury Instructions, 35-47 (1998); United States v. Scarfo, 685 F.2d 842, 844 (3d Cir.

1982), cert. denied by Scarfo v. United States, 459 U.S. 1170
(1983); Barrett v. United States, 423 U.S. 212, 215 n.4 (1976).

GOVERNMENT'S REQUEST NO. 35

Only Issue Left to Decide -- Prior Conviction

By virtue of your affirmative responses to the two special interrogatories contained on the verdict form you submitted to the Court, you already have determined that the government has satisfied its burden of proving the second and third elements of this offense, namely, that the defendant knowingly possessed the firearm on or about the date alleged in the indictment and that the firearm was possessed in or affecting interstate or foreign commerce. Thus, the only remaining issue for you to decide with respect to Count 3 is whether the government has satisfied its burden of proving the first element of that offense beyond a reasonable doubt, that is, whether the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year prior to the date charged in the indictment. If you find that the government has proven the defendant's prior conviction beyond a reasonable doubt, you must find the defendant guilty of Count 3.

GOVERNMENT'S REQUEST NO. 36

Prior Conviction [IF STIPULATED]

The defendant and the government have stipulated -- that is, agreed -- that prior to December 23, 1998, the defendant was convicted of a crime punishable by imprisonment for a term exceeding one year in the Commonwealth of Pennsylvania. Therefore, you should accept the stipulation as evidence and regard that fact as proved.

Adapted from 1A L. Sand, et al., Modern Federal Jury Instructions, 35-48 (1998).

GOVERNMENT'S REQUEST NO. 37

[NOTE: GOVERNMENT REQUEST NOS. 37-41 SHOULD BE TENDERED TO THE JURY ONLY IF THE DEFENDANT WAS FOUND GUILTY OF COUNT 1]

Forfeiture -- Overview

The final matter you must decide is whether the firearm and ammunition possessed by the defendant should be forfeited to the United States. The indictment alleges that the gun and ammunition are subject to forfeiture.

Under the federal narcotics laws, any person who is convicted of the offense of which the defendant has been found guilty -- possession with the intent to distribute marijuana -- is required to forfeit to the United States the proceeds and instrumentalities of his illegal conduct. Specifically, the laws of the United States provide that certain interests of a defendant are subject to forfeiture including:

(1) any real or personal property which the defendant used in any manner or part to facilitate the commission of the offenses of which he has been convicted; and

(2) any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of his participation in the offenses of which he has been convicted.

21 U.S.C. § 853(a)(1), (a)(2), and (p)

Forfeiture -- Burden of Proof

The government's burden of proof for forfeiture is not "beyond a reasonable doubt" but "by a preponderance of the evidence."

If you believe by a preponderance of the evidence that the defendant used the gun and ammunition described in the indictment to facilitate the commission of the narcotics offense of which you found him guilty, the gun and ammunition are subject to forfeiture.

"Preponderance of the evidence" means that the government has to produce evidence which, considered in light of all of the facts, leads you to believe that what the government claims is more likely true than not. To put it differently, if you were to put the government's evidence and the defendant's evidence on the opposite sides of a balance scale, the government would have to make the scale tip slightly on its side. If the government's evidence fails to do this, then the government has not met its burden of proof. You should note that this burden of proof is less than the beyond a reasonable doubt standard which you use when determining guilt.

Libretti v. United States, 516 U.S. 29 (1995); United States v. Sandini, 816 F.2d 869, 870, 875-76 (3d Cir. 1987).

GOVERNMENT'S REQUEST NO. 39

Binding Effect of Prior Verdict

I instruct you that your previous determination that the defendant is guilty of Count 1 of the indictment is binding on you in this part of the proceedings, and you must not discuss or determine anew whether he is guilty or not guilty of that offense.

I also instruct you that what happens to any property that you find subject to forfeiture is exclusively a matter for the Court to decide. You should not consider what might happen to the property in making your determination.

GOVERNMENT'S REQUEST NO. 40

Continuing Validity of Prior Instructions

You are further instructed that all of the instructions previously given to you concerning your consideration of the evidence, the credibility or believability of the witnesses, your duty to deliberate together and the necessity of a unanimous verdict, will all continue to apply during your deliberations concerning the forfeiture claim. The instructions on the government's burden of proof in this portion of the case differ, as I have previously stated. Here, the government's burden of proof is by a preponderance of the evidence.

GOVERNMENT'S REQUEST NO. 41

Verdict Form -- Forfeiture

It is your duty to determine what property, if any, was used to facilitate the drug law violations for which the defendant has been convicted.

A Supplemental Verdict Form has been prepared for your use. It asks you to determine whether the gun and ammunition listed in the indictment were used by the defendant to facilitate the drug law violation of which he has been found guilty.

You may answer by simply putting an "X" or check mark in the space provided next to the words "Yes" or "No" in the space provided. You will take this Supplemental Verdict Form to the jury room and when you have reached unanimous agreement, you will have your foreperson fill in, date and sign the form and notify the United States Marshal. The foreperson must then sign and date the Supplemental Verdict Form.

CERTIFICATE OF SERVICE

I hereby certify that on this July 20th day of July 1999, a true and correct copy of the foregoing Government's Proposed Jury Instructions was sent, by first-class mail, postage prepaid, to:

Joseph C. Santaguida, Esquire
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FLOYD J. MILLER
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