

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:23-cr-7

vs.

Hon. Robert J. Jonker
United States District Judge

NATHAN WEEDEN,

Defendant.

_____ /

GOVERNMENT'S PROPOSED JURY INSTRUCTIONS

May it please the Court, the United States proposes the following jury instructions, which are drawn from the *Sixth Circuit Pattern Jury Instructions* (Jan. 1, 2019 edition, updated March 1, 2023) except where otherwise noted. The government reserves the right, with the Court's permission, to supplement or modify these requested instructions based on the evidence and defenses presented at trial.

Respectfully submitted,

MARK A. TOTTEN
United States Attorney

Dated: December 21, 2023

/s/ Nils R. Kessler
NILS R. KESSLER
Assistant United States Attorney
P.O. Box 208
Grand Rapids, MI 49501-0208
(616) 456-2404
nils.kessler@usdoj.gov

CONTENTS

1.01 INTRODUCTION	4
1.02 JURORS' DUTIES.....	5
1.03 PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT	6
1.04 EVIDENCE DEFINED	7
1.05 CONSIDERATION OF EVIDENCE	8
1.06 DIRECT AND CIRCUMSTANTIAL EVIDENCE.....	9
1.07 CREDIBILITY OF WITNESSES	10
1.08 NUMBER OF WITNESSES.....	12
1.09 LAWYERS' OBJECTIONS.....	13
2.01A SEPARATE CONSIDERATION--SINGLE DEFENDANT CHARGED WITH MULTIPLE CRIMES.....	14
2.04 ON OR ABOUT	15
2.08 INFERRING REQUIRED MENTAL STATE.....	16
2.12 USE OF THE WORD "AND" IN THE INDICTMENT.....	17
CONSPIRACY AGAINST RIGHTS (18 U.S.C. § 241) – STATUTE DEFINING THE OFFENSE.....	18
CONSPIRACY AGAINST RIGHTS (18 U.S.C. § 241) – BASIC ELEMENTS	19
COUNT 1 – 18 U.S.C. § 241: FIRST ELEMENT – EXISTENCE OF A CONSPIRACY.....	21
COUNT 1 – 18 U.S.C. § 241: SECOND ELEMENT – PURPOSE OF THE CONSPIRACY.....	24
COUNT 1 – 18 U.S.C. § 241: THIRD ELEMENT – SPECIFIC INTENT	27
COUNT 1 – 18 U.S.C. § 241: OVERT ACTS	31
2.02 DEFINITION OF THE CRIME – COUNT 2.....	33
3.02 AGREEMENT	Error! Bookmark not defined.
3.03 DEFENDANT'S CONNECTION TO THE CONSPIRACY ...	Error! Bookmark not defined.
3.04 OVERT ACTS (18 U.S.C. § 241).....	Error! Bookmark not defined.
3.06 UNINDICTED, UNNAMED OR SEPARATELY TRIED CO-CONSPIRATORS	39
3.07 VENUE	40
6.01 DEFENSE THEORY.....	41

6.02 ALIBI.....	42
7.01 INTRODUCTION	43
7.02A DEFENDANT'S ELECTION NOT TO TESTIFY OR PRESENT EVIDENCE	44
7.02B DEFENDANT'S TESTIMONY	45
7.04 IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT NOT UNDER OATH (<i>If appropriate</i>).....	46
7.05B IMPEACHMENT OF A WITNESS OTHER THAN DEFENDANT BY PRIOR CONVICTION	47
7.07 TESTIMONY OF A WITNESS UNDER GRANT OF IMMUNITY OR REDUCED CRIMINAL LIABILITY	48
7.08 TESTIMONY OF AN ACCOMPLICE.....	49
7.12 SUMMARIES AND OTHER MATERIALS NOT ADMITTED IN EVIDENCE	50
7.13 OTHER ACTS OF DEFENDANT	51
7.17 TRANSCRIPTIONS OF RECORDINGS.....	52
7.21 STIPULATIONS	53
8.01 INTRODUCTION	54
8.02 EXPERIMENTS, RESEARCH, INVESTIGATION AND OUTSIDE COMMUNICATIONS.....	55
8.03 UNANIMOUS VERDICT.....	56
8.04 DUTY TO DELIBERATE	57
8.05 PUNISHMENT	58
8.06 VERDICT FORM	59
8.08 VERDICT LIMITED TO CHARGES AGAINST THIS DEFENDANT	60
8.09 COURT HAS NO OPINION.....	61
8.10 JUROR NOTES.....	62

1.01 INTRODUCTION

(1) Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case.

(2) I will start by explaining your duties and the general rules that apply in every criminal case.

(3) Then I will explain the elements, or parts, of the crime that the defendant is accused of committing.

[(4) Then I will explain the defendant's position.]

(5) Then I will explain some rules that you must use in evaluating particular testimony and evidence.

(6) And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

(7) Please listen very carefully to everything I say.

1.02 JURORS' DUTIES

(1) You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

(2) Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

[(3) The lawyers have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.]

(4) Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way.

1.03 PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

(1) As you know, the defendant has pleaded not guilty to the crime charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the government tells the defendant what crime he is accused of committing. It does not even raise any suspicion of guilt.

(2) Instead, the defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the government presents evidence here in court that overcomes the presumption and convinces you beyond a reasonable doubt that he is guilty.

(3) This means that the defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that he is guilty, and this burden stays on the government from start to finish. You must find the defendant not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

(4) The government must prove every element of the crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

(5) Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

1.04 EVIDENCE DEFINED

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

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

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

(4) During the trial I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

(5) Make your decision based only on the evidence, as I have defined it here, and nothing else.

1.05 CONSIDERATION OF EVIDENCE

(1) You are to consider only the evidence in the case. You should use your common sense in weighing the evidence. Consider the evidence in light of your everyday experience with people and events and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

(2) In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an "inference." A jury is allowed to make reasonable inferences, unless otherwise instructed. Any inferences you make must be reasonable and must be based on the evidence in the case.

(3) The existence of an inference does not change or shift the burden of proof from the government to the defendant.

1.06 DIRECT AND CIRCUMSTANTIAL EVIDENCE

(1) Now, some of you may have heard the terms "direct evidence" and "circumstantial evidence."

(2) Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

(3) Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

(4) It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

1.07 CREDIBILITY OF WITNESSES

(1) Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

(2) Let me suggest some things for you to consider in evaluating each witness's testimony.

(A) Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening and may make a mistake.

(B) Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

(C) Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

(D) Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

(E) Ask yourself if the witness had any relationship to the government or the defendant, or anything to gain or lose from the case, that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

[(F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.]

(G) And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and

that even two honest people who witness the same event may not describe it exactly the same way.

(3) These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

1.08 NUMBER OF WITNESSES

(1) One more point about the witnesses. Sometimes jurors wonder if the number of witnesses who testified makes any difference.

(2) Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

1.09 LAWYERS' OBJECTIONS

(1) There is one more general subject that I want to talk to you about before I begin explaining the elements of the crime charged.

(2) The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

(3) And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

2.01A SEPARATE CONSIDERATION--SINGLE DEFENDANT CHARGED WITH MULTIPLE CRIMES

(1) The defendant has been charged with several crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

(2) Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

2.04 ON OR ABOUT

(1) Next, I want to say a word about the date mentioned in the indictment.

(2) The indictment charges that the conspiracy against rights existed from "on or about" September 15, 2019, through "on or about" September 25, 2019; and that Temple Jacob was damaged "on or about" September 21, 2019. The government does not have to prove that the crimes happened on or between those exact dates. But the government must prove that the crimes happened reasonably close to those dates.

2.08 INFERRING REQUIRED MENTAL STATE

(1) Next, I want to explain something about proving a defendant's state of mind.

(2) Ordinarily, there is no way that a defendant's state of mind can be proved directly because no one can read another person's mind and tell what that person is thinking.

(3) But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

(4) You may also consider the natural and probable results of any acts that the defendant knowingly did [or did not do], and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

2.12 USE OF THE WORD “AND” IN THE INDICTMENT

Although the indictment charges that the statute was violated by acts that are connected by the word “and”, it is sufficient if the evidence establishes a violation of the statute by any one of the acts charged. Of course, this must be proved beyond a reasonable doubt.

**COUNT 1 – CONSPIRACY AGAINST RIGHTS (18 U.S.C. § 241): STATUTE
DEFINING THE OFFENSE**

Count 1 of the indictment accuses the defendant of a conspiracy against rights in violation of federal law, and is brought under Section 241 of Title 18 of the United States Code which provides in pertinent part, that:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State . . . in the free exercise or enjoyment of any right or privilege secured to him by the . . . laws of the United States . . .

they shall be guilty of an offense.

Authority:

18 U.S.C. § 241

COUNT 1 – CONSPIRACY AGAINST RIGHTS (18 U.S.C. § 241): BASIC ELEMENTS

For you to find the defendant guilty of conspiracy against rights as charged in Count 1, the government must prove each of the following elements beyond a reasonable doubt:

- 1) First, that a conspiracy or agreement to commit a prohibited act existed between at least two people;
- 2) Second, that the purpose of the conspiracy was, as charged in Count 1, to injure, oppress, threaten, or intimidate non-white or Jewish citizens of the United States in their exercise or enjoyment of a right secured by the laws of the United States, here, the right to hold real and personal property free from discrimination; and
- 3) Third, that the defendant knowingly and voluntarily joined that conspiracy, specifically intending to achieve its unlawful purpose.

If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

I will now explain each of these elements in more detail.

Authority:

18 U.S.C. § 241.

42 U.S.C § 1982.

Anderson v. United States, 417 U.S. 211, 223 (1974) (holding that “the prosecution must show that the offender acted with a specific intent to interfere with the federal rights in question.”) (citations omitted).

United States v. Guest, 383 U.S. 745, 753-54 (1966) (same).

Screws v. United States, 325 U.S. 91 (1945) (same).

United States v. Robinson, 813 F.3d 251, 256 (6th Cir. 2016) (“To obtain a conviction for conspiracy to violate civil rights under § 241, the government must prove that the defendant knowingly agreed with another person to injure a third party in the

exercise of a right guaranteed under the Constitution, and that there was specific intent to commit the deprivation.”) (internal citations omitted).

United States v. Epley, 52 F.3d 571, 575-76 (6th Cir. 1995) (“To obtain a conviction for conspiracy to violate civil rights under § 241, the government must prove the defendant knowingly agreed with another person to injure the victim in the exercise of a right guaranteed under the Constitution. Specific intent to deprive another of civil rights is an element of the offense that the government must prove beyond a reasonable doubt.”) (internal citations omitted).

United States v. Lanham, 617 F.3d 873, 885 (6th Cir. 2010) (same).

United States v. Whitney, 229 F.3d 1296, 1301 (10th Cir. 2000) (same) *quoting Epley*, 52 F.3d at 575-76.

United States v. Scott, 979 F.3d 986, 990 (2d Cir. 2020) (“Section 241 makes it unlawful for ‘two or more persons [to] conspire to injure, oppress, threaten, or intimidate any person . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.’”).

United States v. Hewitt, 999 F.3d 1141, 1146–47 (8th Cir. 2021) (“For a conspiracy against rights, the Government must prove ‘an actual agreement between two or more persons to accomplish a prohibited object.’”)

United States v. Gonzalez, 906 F.3d 784, 790 (9th Cir. 2018) (“As relevant here, § 241 prohibits two or more persons from ‘conspir[ing] to injure, oppress, threaten, or intimidate any person . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.’”).

Pattern Federal Criminal Jury Instructions of the Seventh Circuit, 18 U.S.C. § 241 (elements) (2023 ed.)

Eighth Circuit Model Jury Instructions, No. 6.18.241 (Conspiracy to Deprive a Person of Civil Rights (18 U.S.C. § 241) elements) (2023 ed.)

Fifth Circuit Pattern Jury Instructions (Criminal Cases), No. 2.11 (18 U.S.C. § 241 elements) (2019 ed.).

Sixth Circuit Pattern Jury Instruction 3.01B CONSPIRACY TO DEFRAUD THE UNITED STATES (18 U.S.C. § 371) – BASIC ELEMENTS, Use Note (noting that the Sixth Circuit has repeatedly approved the language as sufficient that the defendant join the conspiracy “knowingly and voluntarily”), citing *United States v. Damra*, 621 F.3d 474, 498-500 (6th Cir. 2010).

COUNT 1 – 18 U.S.C. § 241: FIRST ELEMENT – EXISTENCE OF A CONSPIRACY

(1) The first element of Count 1—that a conspiracy or criminal agreement existed—requires the government to prove that two or more persons (not including any government agent) conspired, or agreed, to cooperate with each other to deprive persons of rights protected under federal laws.

(2) It is a crime for two or more persons to conspire, or agree, to commit a prohibited or criminal act, even if they never actually achieve their goal. A conspiracy is a kind of criminal partnership.

(3) This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

(4) What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to injure, oppress, threaten, or intimidate others to interfere with property rights. This is essential.

(5) An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. A tacit or implicit understanding is enough to establish a conspiratorial agreement. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

Authority:

In General

18 U.S.C. § 241.

Sixth Circuit Pattern Jury Instruction (2023 ed.) 3.02 AGREEMENT (modified incorporate the § 241 underlying right, and to include that a tacit or implicit understanding is enough to establish a conspiratorial agreement.); *see also id.*, Use Note (“Specific instructions that an agreement between a defendant and a government agent will not support a conspiracy conviction may be required where important given the facts of the particular case.”).

United States v. Hewitt, 999 F.3d 1141, 1146-47 (8th Cir. 2021) (“For a [§ 241] conspiracy against rights, the Government must prove ‘an actual agreement between two or more persons to accomplish a prohibited object.’”).

Agreement between defendant and government agent alone is insufficient

Sixth Circuit Pattern Jury Instruction (2023 ed.) 3.02 AGREEMENT, Use Note (“Specific instructions that an agreement between a defendant and a government agent will not support a conspiracy conviction may be required where important given the facts of the particular case.”).

United States v. Guerrero, 76 F.4th 519, 528 (6th Cir. 2023) (venue case holding that “Government agents cannot be conspirators”).

United States v. Tompkins, No. 21-5871, 2023 WL 319520, at *3 (6th Cir. Jan. 19, 2023) (Unpublished) (same, quoting *Pennell*).

United States v. Pennell, 737 F.2d 521, 536 (6th Cir. 1984) (It is settled that “proof of an agreement between a defendant and a government agent or informer will not support a conspiracy conviction.”).

Achieving goal and direct evidence not required – tacit understanding is sufficient

Sixth Circuit Pattern Jury Instruction (2023 ed.) 3.01A CONSPIRACY TO COMMIT AN OFFENSE (18 U.S.C. § 371) – BASIC ELEMENTS (“It is a crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal”); *see also id.* (“A conspiracy is a kind of criminal partnership.”).

Anderson v. United States, 417 U.S. 211, 225 (1974) (discussing nature and purpose of conspiracy and noting that a jury could find a violation of § 241 even where defendants did not specifically discuss their attempt to violate a federal right.).

Glasser v. United States, 315 U.S. 60, 80 (1942) (“Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and collocation of circumstances.”).

United States v. Robinson, 813 F.3d 251, 256 (6th Cir. 2016) (“The existence of a § 241 conspiracy need not be proven by direct evidence, and a common plan may be inferred from circumstantial evidence. . . As such, a tacit

understanding is enough to show a conspiratorial agreement.”) (citations and internal quotation marks omitted).

United States v. Gresser, 935 F.2d 96, 101 (6th Cir. 1991) (same).

United States v. Conatser, 514 F.3d 508, 518 (6th Cir. 2008) (holding in § 241 case that

“conspiracy may be inferred from circumstantial evidence, [and that] a defendant's knowledge of and participation in a conspiracy also may be inferred from his conduct and established by circumstantial evidence.”).

United States v. Whitney, 229 F.3d 1296, 1301 (10th Cir. 2000) (“The government need not offer direct proof of an express agreement on the part of the defendant. Instead, the agreement may be informal and may be inferred entirely from circumstantial evidence.”) (internal citations omitted).

United States v. Scott, 979 F.3d 986, 996 (2d Cir. 2020) (holding in § 241 conspiracy case, “[t]he gist of conspiracy is, of course, agreement. Nevertheless, to establish the existence of a conspiracy, the government need not present evidence of a formal or express agreement, and may instead rely on proof the parties had a “tacit understanding to engage in the offense. The evidence must be sufficient to permit the jury to infer that the defendant and other alleged coconspirators entered into a joint enterprise with consciousness of its general nature and extent.”) (internal quotations and citations omitted).

COUNT 1 – 18 U.S.C. § 241: SECOND ELEMENT – PURPOSE OF THE CONSPIRACY

(1) The second element of Count 1 requires the government to prove that the purpose of the conspiracy was to injure, oppress, threaten, or intimidate non-white and Jewish citizens in the free exercise and enjoyment of a right protected by the constitution or federal laws. I instruct you that the right to hold and use real and personal property is such a right.

(2) This element can be met even if the defendant or his co-conspirators had other motivations, so long as a purpose of the conspiracy was to injure, oppress, threaten, or intimidate non-white and Jewish citizens, including members and guests of Temple Jacob, to interfere with their right to hold and use property in the same manner enjoyed by all citizens free from discrimination.

(3) The words “injure,” “oppress,” “threaten,” and “intimidate” are not used in any technical sense, but instead cover any conduct intended to harm, frighten, prevent, or punish the free action of other persons. Actual physical force is not required to trigger the statute.

Authority:

In General

18 U.S.C. § 241.

42 U.S.C. § 1982.

United States v. Price, 383 U.S. 787, 796-806 (1966) (discussing nature and scope of rights protected under § 241, holding that “[t]he language of § 241 is plain and unlimited . . . its language embraces all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States.”).

United States v. Epley, 52 F.3d 571, 575-76 (6th Cir. 1995) (“To obtain a conviction for conspiracy to violate civil rights under § 241, the government must prove [the defendant] knowingly agreed with another person to injure [the victim] in the exercise of a right guaranteed under the Constitution.”)

United States v. Brown, 49 F.3d 1162, 1165–67 (6th Cir. 1995) (holding that even non-owning patrons of a Jewish synagogue are protected under § 241 and

42 U.S.C. § 1982, covered by the federally protected right to hold (*i.e.*, ‘use’) property free from racial discrimination).

Other Motivations

Anderson v. United States, 417 U.S. 211, 226 (1974) (“A single conspiracy may have several purposes, but if one of them—whether primary or secondary—be the violation of a federal law, the conspiracy is unlawful under federal law.”).

Ingram v. United States, 360 U.S. 672, 679–80, (1959) (holding in tax conspiracy case that a “conspiracy, to be sure, may have multiple objectives, and if one of its objectives, even a minor one, be the evasion of federal taxes, the offense is made out, though the primary objective may be concealment of another crime.”).

United States v. Gresser, 935 F.2d 96, 100–101 (6th Cir.1991) (rejecting, in § 241 cross burning case, a defendant’s argument that his motivation was only to retaliate against two particular Black youths with whom he was involved in an altercation rather than Black people in general, finding that “whatever provoked Singer’s wrath, he expressed it entirely in racial terms, shouting racial epithets against blacks as a group.”).

United States v. Ferrara, 788 F. App’x 748, 755 (2d Cir. 2019) (holding that “a conspiracy can have more than one objective.”).

“injure,” “oppress,” “threaten,” or “intimidate”

United States v. LaVallee, 439 F.3d 670, 684 (10th Cir. 2006) (upholding instructions that, among other things, “informed the jury that the words ‘injure,’ ‘oppress,’ ‘threaten,’ or ‘intimidate,’ ‘are not used in any technical sense but may cover a variety of conduct intended to harm, frighten, prevent, or punish the free action of other persons’.”).

United States v. McDermott, 29 F.3d 404, 407-09 (8th Cir. 1994) (citing with approval jury instructions that “‘injure,’ ‘oppress,’ ‘threaten,’ or ‘intimidate’ ... [are] not used in any technical sense, but ... cover a variety of conduct intended to harm, frighten, punish or prevent the free action of other persons[,]” noting that “‘prevent’ denotes a more forceful and threatening course of conduct,” which amounts to “more than ‘hurt feelings, offense, or resentment.”).

Eighth Circuit Model Jury Instructions, No. 6.18.241 (Conspiracy to Deprive a Person of Civil Rights (18 U.S.C. § 241) (including as an element that the

defendant “intended to [interfere with][hinder][prevent] (name of person)’s free exercise or enjoyment of any right or privilege,” further defining terms “injure,” “oppress,” “threaten,” and “intimidate” as not used in any technical sense, but, instead, cover any conduct intended to prevent the free action of other persons.”)) (2023 ed.).

Fifth Circuit Pattern Jury Instructions (Criminal Cases), No. 2.11 (18 U.S.C. § 241 elements) (2019 ed.) (including as an element that the defendant “specifically intended by the conspiracy to [hinder][prevent] [interfere with] _____’s (name victim) enjoyment of a right. . .”).

COUNT 1 – 18 U.S.C. § 241: THIRD ELEMENT – SPECIFIC INTENT

(1) The third element requires the government to prove that the defendant knowingly and voluntarily joined the agreement to accomplish the unlawful objective described above, understanding the conspiracy's main purpose, and intending to help advance or achieve its goals.

(2) This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

(3) But proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

(4) A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose, such as the defendant's actions and reactions to the circumstances. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

(5) It is not necessary for you to determine that the defendant was thinking in legal terms. That is, you do not need to find that the defendant or any co-conspirators understood the legal basis of the federal right to use and hold property, which I have just described. Rather, you need only find that the defendant entered the agreement with a bad purpose, knowing it to be an unlawful agreement to interfere with property rights, but deciding to further its purpose anyway.

Authority:

In General

Sixth Circuit Pattern Jury Instruction (2023 ed.) 3.03 DEFENDANT'S CONNECTION TO THE CONSPIRACY (as modified to include language "such as the defendant's actions and reactions to the circumstances" and point (5)).

Anderson v. United States, 417 U.S. 211, 223 (1974) (“It is established that since the gravamen of the offense under § 241 is conspiracy, the prosecution must show that the offender acted with a specific intent to interfere with the federal rights in question.”).

United States v. Price, 383 U.S. 787, 806 n.20 (1966) (requiring specific intent be proven in a § 241 case and noting that there is “no basis for distinction” between § 241 and § 242 with respect to the specific intent requirement.).

Screws v. United States, 325 U.S. 91, 106 (1945) (defining a “willful” act as one committed either “in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite.”).

United States v. Prabhu Ramamoorthy, 949 F.3d 955, 961 (6th Cir. 2020) (“A specific intent crime requires additional bad purpose.”) (internal citations omitted).

United States v. Robinson, 813 F.3d 251, 256 (6th Cir. 2016) (listing as a § 241 element the specific intent to commit the deprivation.).

United States v. Lanham, 617 F.3d 873, 885 (6th Cir. 2010) (same).

United States v. Epley, 52 F.3d 571, 575-76 (6th Cir. 1995) (same).

United States v. Brown, 49 F.3d 1162, 1165–66 (6th Cir. 1995) (same).

United States v. Couch, 59 F.3d 171 (6th Cir. 1995) (upholding the following instruction in the § 242 context: “. . . an act is done willfully if it is done voluntarily and intentionally, and with the specific intent to do something which the law forbids; that is, with an intent to violate a specific protected right.”) (Emphasis in original).

United States v. O'Dell, 462 F.2d 224, 231 (6th Cir. 1972) (“A willful effort to deprive a citizen of such right, or to intimidate him in its exercise, if mounted under color of state law, violates 18 U.S.C. § 242. A conspiracy to effect such ends, whether directed against citizens or mere inhabitants of the United States, is punishable under 18 U.S.C. § 241.”).

Thinking in legal terms not required

Screws v. United States, 325 U.S. 91, 106 (1945) (“The fact that the defendants may not have been thinking in constitutional terms is not material” to whether they acted willfully).

United States v. Brown, 49 F.3d 1162, 1165–66 (6th Cir. 1995) (holding in the § 241 context that “[t]he United States need not prove that the defendant actually knew it was a constitutional right being conspired against or violated.”) (internal citations omitted).

United States v. O’Dell, 462 F.2d 224, 232, n10 (6th Cir. 1972) (holding in a § 242 and § 241 case that “In determining whether such specific intent existed, the jury in any new trial need not, in order to convict, determine that Appellants actually knew that it was a Constitutional right that they were violating or conspiring against.”) (*citing Screws*, 325 U.S. at 106).

United States v. Johnstone, 107 F.3d 200, 209-10 (3d Cir. 1997) (“You may find that a defendant acted with the required specific intent even if you find that he had no real familiarity with the Constitution or with the particular constitutional right involved . . .”).

Eighth Circuit Model Jury Instructions, No. 6.18.242 (Deprivation of Civil Rights (18 U.S.C. § 242) (“You may find the defendant acted willfully even if you find that [he/she] had no real familiarity with the Constitution or with the particular constitutional right involved.”) (2023 ed.).

Fifth Circuit Pattern Jury Instructions (Criminal Cases), No. 2.12 (18 U.S.C. § 242) (“To find that the defendant was acting willfully, it is not necessary for you to find that the defendant knew of a specific Constitutional provision or federal law that his [her] conduct violated.”) (2019 ed.).

A slight connection is sufficient & may be inferred from circumstantial evidence

United States v. Robinson, 813 F.3d 251, 256 (6th Cir. 2016) (“The existence of a criminal conspiracy, need not be proven by direct evidence, a common plan may be inferred from circumstantial evidence. . . . Furthermore, once a conspiracy has been established, only slight evidence is necessary to implicate a defendant.”) (internal citations and quotations omitted).

United States v. Gresser, 935 F.2d 96, 101 (6th Cir. 1991) (same).

United States v. Lanham 617 F.3d 873 (6th Cir. 2010) (“a defendant's participation in the conspiracy's common purpose and plan may be inferred from the defendant's actions and reactions to the circumstances.”), *see also id.*, at 886 (clarifying that “a conspirator ‘need not have personally performed the deed for which he is being held liable. A conspirator can be held criminally liable for the actions of his co-conspirators committed during and in

furtherance of the conspiracy.”) quoting *United States v. Gresser*, 935 F.2d 96, 101 (6th Cir.1991).

United States v. White, 788 F.2d 390, 393 (6th Cir.1986) (concluding evidence supported conviction of conspiracy in violation of § 241 where, although the defendant did not participate in the arson of a Black family’s home, he had made statements such as, “if that black son of a bitch [re]built ... across the street from me ... I'd burn it down”).

United States v. Whitney, 229 F.3d 1296, 1301 (10th Cir. 2000) (“[T]he defendant's participation in, or connection to, the conspiracy need only be slight, if there is sufficient evidence to establish that connection beyond a reasonable doubt. Moreover, an agreement may be inferred from a variety of circumstances, such as, sharing a common motive, presence in a situation where one could assume participants would not allow bystanders, repeated acts, mutual knowledge with joint action, and the giving out of misinformation to cover up the illegal activity.”) (internal quotations and citations omitted).

United States v. Gatling, 96 F.3d 1511, 1518 (D.C. Cir. 1996) (“In order to prove that an agreement [sufficient to support a conspiracy against civil rights] existed, the government need only show that the conspirators agreed on the essential nature of the plan, not that they agreed on the details of their criminal scheme.”).

COUNT 1 – 18 U.S.C. § 241: OVERT ACTS NOT REQUIRED

The Indictment sets forth a number of specific actions that the defendant is alleged to have committed in furtherance of the conspiracy charged in Count 1. You are instructed that proof of these specific actions is not an element of Count 1. The United States is not required to prove that the defendant or any co-conspirator committed any such acts set forth in the Indictment, but you may consider any act which you believe occurred to help determine whether the conspiracy was formed and who joined it.

Authority:

No Overt Act Requirement in Section 241

18 U.S.C. § 241 (containing no express overt act requirement), *compare* 18 U.S.C. § 371 (requiring proof that “one or more of such persons do any act to effect the object of the conspiracy”).

United States v. Shabani, 513 U.S. 10, 13-14 (1994) (holding that the drug conspiracy statute, 21 U.S.C. § 846, does not require proof of overt act, since the statute, like § 241, is silent about such a requirement).

United States v. Rosser, No. 22-3887, 2023 WL 4080095, at *4 (6th Cir. June 20, 2023) (clarifying that “mention of that ‘overt act’ requirement [in *United States v. Brown*, 49 F.3d 1162, 1165 (6th Cir. 1995)] was dicta[,]” as that “issue wasn’t before the Court[,]” and thus “*Brown* does not govern whether a § 241 conspiracy charge requires an overt act.”), citing *United States v. Conatser*, 514 F.3d 508, 519 n.4 (6th Cir. 2008) (collecting cases from other circuits that determine that § 241 does not have an overt-act requirement and stating that *Brown*’s mention of an overt act was dicta).

United States v. Colvin, 353 F.3d 569, 576 (7th Cir. 2003) (holding that “*Shabani* compels a conclusion that an overt act is not required under § 241” because the language “does not specify an overt-act requirement and the Supreme Court has never inferred such a requirement when the statute did not specify one”).

United States v. Whitney, 229 F.3d 1296, 1301 (10th Cir. 2000) (§ 241 has no overt act requirement).

United States v. Skillman, 922 F.2d 1370, 1375 (9th Cir. 1990) (§ 241 has no overt act requirement).

United States v. Morado, 454 F.2d 167 (5th Cir. 1972) (§ 241 has no overt act requirement).

Overt Acts May Be Considered in Deciding Whether Conspiracy Existed

United States v. Redwine, 715 F.2d 315, 320 (7th Cir. 1983) (“circumstantial evidence and reasonable inferences drawn therefrom concerning the relationship of the parties, their overt acts, and the totality of their conduct may serve as proof of § 241 conspiracy”).

United States v. Irvin, 787 F.2d 1506, 1516 (11th Cir. 1986) (the United States could introduce evidence of overt acts to show furtherance of a § 241 conspiracy).

**COUNT 2 – DAMAGE TO RELIGIOUS PROPERTY (18 U.S.C. 247(c)):
STATUTE DEFINING THE OFFENSE**

Count 2 of the indictment accuses the defendant of causing Damage to Religious Property in violation of federal law, and is brought under Section 247(c) of Title 18 of the United States Code which provides in pertinent part, that:

Whoever intentionally defaces, damages, or destroys any religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property, or attempts to do so, shall be punished. . .” . . .

they shall be guilty of an offense.

Authority:

18 U.S.C. § 247(c)

**COUNT 2 – DAMAGE TO RELIGIOUS PROPERTY (18 U.S.C. 247(c)):
ELEMENTS**

For you to find the defendant guilty of the offense crime of damage to religious property as charged in Count 2, the government must prove each of the following elements beyond a reasonable doubt:

(1) First, that the defendant intentionally defaced, damaged, or destroyed religious real property, here the Temple Jacob Synagogue, or attempted to do so; and

(2) Second, that the defendant did so because of the race, color, or ethnic characteristics of any individual associated with that religious property.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of this charge.

Authority:

In General

18 U.S.C. § 247(c).

Jewish Persons as a Protected Class

Shaare Tefila Congregation v. Cobb, 481 U.S. 615, 617 (1987) (holding Jews are race for purposes of 42 U.S.C. § 1982)

United States v. Nelson, 277 F.3d 164, 175-91 (holding that Jews are a race for purposes of 18 U.S.C. § 245, as protected under Congress' power under Thirteenth Amendment);

Kanivets v. Gonzales, 424 F.3d 330, 332 (3rd Cir. 2005) (“[T]here is no objective basis for the respondent's subjective claim that he has been the victim of persecution in Kyrgyzstan because of his Jewish *ethnicity*.”) (emphasis added).

United States v. Bowers, No. CR 18-292, 2020 WL 6196294 (W.D. Pa. Oct. 15, 2020) (holding that Jews are a race for purposes of 18 U.S.C. § 249)

**COUNT 2 – DAMAGE TO RELIGIOUS PROPERTY (18 U.S.C. 247(c)):
“DEFACE, DAMAGE, OR DESTROY” RELIGIOUS REAL PROPERTY**

- (1) The first element of Count 2 requires the government to prove that the defendant intentionally defaced, damaged, or destroyed religious real property.
- (2) An intentional act is one that a person desires to take, that is, the specific action was done on purpose, rather than by mistake or accident.
- (3) The terms “deface, damage, or destroy,” should be construed in accordance with their ordinary, everyday meanings.
- (4) The term “religious real property” includes any church, synagogue, mosque, and religious cemetery.

Authority:

“Intentionally”

Black's Law Dictionary (11th ed. 2019) (defining “**intentional act**” as “An act resulting from the actor's will directed to that end. An act is intentional when it is foreseen and desired by the doer, and this foresight and desire resulted in the act through the operation of the will.”).

S. Rep. 95-605, 95th Cong., 1st Sess. at 58-59 (1977) (describing the word intentional as “the mental attitude associated with an act to connote the meaning that the act is being done on purpose; it does not suggest that the act was committed for a particular purpose, evil in nature.”)

“deface, damage, or destroy,”

FDIC v. Meyer, 510 U.S. 471, 476 (1994) (holding that statutory term should be construed in accordance with its ordinary or natural meaning when there is no statutory definition).

Smith v. United States, 508 U.S. 223, 228 (1993) (same).

MERRIAM-WEBSTER DICTIONARY ONLINE (May 23, 2023) (common understandings of “deface” include “to mar the appearance of,” such as a “building [] defaced with graffiti.”).

H.R. Rep. No. 104-621, at 7 *reprinted in* 1996 U.S.C.C.A.N. 1082 at 1088 (referring to acts of vandalism such as “spray painting swastikas”).

“Religious Real Property”

18 U.S.C. § 247(f). (defining “***Religious real property***” as “any church, synagogue, mosque, religious cemetery, or other religious real property, including fixtures or religious objects contained within a place of religious worship, or real property owned or leased by a nonprofit, religiously affiliated organization.”)

**COUNT 2 – DAMAGE TO RELIGIOUS PROPERTY (18 U.S.C. 247(c)):
“BECAUSE OF”**

(1) The second element of Count 2 requires the government to prove that the defendant acted “because of” the race, color, or ethnicity of those associated with the religious property. That is, it must prove beyond a reasonable doubt that the defendant would not have targeted the religious property *but for* the race, color, or ethnic characteristics of any individual associated with that religious property.

(2) In other words, you must find that, despite any other reason the defendant may have had for the alleged defacement, damage, or destruction, it would not have taken place absent the race, color, or ethnicity of anyone associated with the synagogue.

(3) The language “because of” does not require proof that the protected characteristic was the sole cause of the defendant’s actions, and thus a defendant cannot avoid culpability just by citing some other factor that contributed to the action. Indeed, there can be more than one but-for cause. So long as the race, color, or ethnicity of any person associated with the religious property was one but-for cause in his decision to target the synagogue, that is enough to satisfy this element.

Authority:

Bostock v. Clayton Cty., Georgia, 140 S. Ct. 1731, 1739 (2020) (“The ‘because of’ test . . . is established whenever a particular outcome would not have happened ‘but for’ the purported cause. See *Gross*, 557 U.S. at 176, 129 S.Ct. 2343. In other words, a but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause. This can be a sweeping standard. Often, events have multiple but-for causes. . . .”).

Burrage v. United States, 134 S. Ct. 881, 888-89 (2014) (“Because of” normally requires proof “‘that the harm would not have occurred’ in the absence of—that is, but for—the defendant’s conduct.” (quoting *Univ. of Tex. Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338, 346 (2013)). But-for causation is shown where “the predicate act combines with other factors to produce the result, so long as the other factors alone would not have done so—if, so to speak, it was the straw that broke the camel’s back.”).

United States v. Miller, 767 F.3d 585 (6th Cir. 2014) (holding, in the § 249 context, that to satisfy the “because of” element, a protected characteristic need only be the reason the defendant decided to act—that is, the straw that broke the camel’s back.”).

United States v. Duggart, 2016 WL 6537675, at *1 (E.D. Tenn. Nov. 3, 2016) (noting that “the ‘because of’ language in the motive element of § 247(a)(1) requires a showing of but-for causation as to defendant’s motivation, meaning ‘the straw that broke the camel's back.’”).

3.06 UNINDICTED, UNNAMED OR SEPARATELY TRIED CO-CONSPIRATORS

(1) Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted or tried together in one proceeding.

(2) Nor is there any requirement that the names of the other conspirators be known. An indictment can charge a defendant with a conspiracy involving people whose names are not known, as long as the government can prove that the defendant conspired with one or more of them. Whether they are named or not does not matter.

3.07 VENUE

(1) Now, some of the events that you have heard about happened in other places. There is no requirement that the entire conspiracy take place here in the Western District of Michigan. But for you to return a guilty verdict on the conspiracy charge, the government must convince you that either the agreement, or some act in furtherance of the agreement, took place in the Western District of Michigan.

(2) Unlike all the other elements that I have described, this is just a fact that the government only has to prove by a preponderance of the evidence. This means the government only has to convince you that it is more likely than not that part of the conspiracy took place here.

(3) Remember that all the other elements I have described must be proved beyond a reasonable doubt.

6.01 DEFENSE THEORY

(1) That concludes the part of my instructions explaining the elements of the crime. Next, I will explain the defendant's position.

(2) The defense says

6.02 ALIBI

(1) One of the questions in this case is whether the defendant was present

(2) The government has the burden of proving that the defendant was present at that time and place. Unless the government proves this beyond a reasonable doubt, you must find the defendant not guilty.

7.01 INTRODUCTION

That concludes the part of my instructions explaining the elements of the crime [and the defendant's position]. Next, I will explain some rules that you must use in considering some of the testimony and evidence.

7.02A DEFENDANT'S ELECTION NOT TO TESTIFY OR PRESENT EVIDENCE

(1) A defendant has an absolute right not to testify [or present evidence]. The fact that he did not testify [or present any evidence] cannot be considered by you in any way. Do not even discuss it in your deliberations.

(2) Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

7.02B DEFENDANT'S TESTIMONY

(1) You have heard the defendant testify. Earlier, I talked to you about the "credibility" or the "believability" of the witnesses. And I suggested some things for you to consider in evaluating each witness's testimony.

(2) You should consider those same things in evaluating the defendant's testimony.

7.04 IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT NOT UNDER OATH (*If appropriate*)

(1) You have heard the testimony of _____. You have also heard that before this trial he made a statement that may be different from his testimony here in court.

(2) This earlier statement was brought to your attention only to help you decide how believable his testimony was. You cannot use it as proof of anything else. You can only use it as one way of evaluating his testimony here in court.

**7.05B IMPEACHMENT OF A WITNESS OTHER THAN DEFENDANT BY
PRIOR CONVICTION**

(1) You have heard the testimony of Youssef Barasneh. You have also heard that before this trial he was convicted of a crime.

(2) This earlier conviction was brought to your attention only as one way of helping you decide how believable his testimony was. Do not use it for any other purpose. It is not evidence of anything else.

7.07 TESTIMONY OF A WITNESS UNDER GRANT OF IMMUNITY OR REDUCED CRIMINAL LIABILITY

(1) You have heard the testimony of Youssef Barasneh. You have also heard that the government may ask the court to reduce his sentence in exchange for his cooperation.

(2) It is permissible for the government to make such a promise. But you should consider such a witness's testimony with more caution than the testimony of other witnesses. Consider whether his testimony may have been influenced by the government's promise.

(3) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

7.08 TESTIMONY OF AN ACCOMPLICE

(1) You have heard the testimony of Youssef Barasneh. You have also heard that he was involved in the same crime that the defendant is charged with committing. You should consider Mr. Barasneh's testimony with more caution than the testimony of other witnesses.

(2) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

(3) The fact that Mr. Barasneh has pleaded guilty to a crime is not evidence that the defendant is guilty, and you cannot consider this against the defendant in any way.

7.12 SUMMARIES AND OTHER MATERIALS NOT ADMITTED IN EVIDENCE

During the trial you have seen counsel use [summaries, charts, drawings, calculations, or similar material] which were offered to assist in the presentation and understanding of the evidence. This material is not itself evidence and must not be considered as proof of any facts.

7.13 OTHER ACTS OF DEFENDANT

(1) You have heard testimony that the defendant committed acts other than the ones charged in the indictment. If you find the defendant did those acts, you can consider the evidence only as it relates to the government's claim on the defendant's identity. You must not consider it for any other purpose.

(2) Remember that the defendant is on trial here only for the crimes charged in the indictment, not for the other acts. Do not return a guilty verdict unless the government proves the crimes charged in the indictment beyond a reasonable doubt.

7.17 TRANSCRIPTIONS OF RECORDINGS

(1) You have heard some tape recordings that were received in evidence, and you were given some written transcripts of the tapes.

(2) Keep in mind that the transcripts are not evidence. They were given to you only as a guide to help you follow what was being said. The tapes themselves are the evidence. If you noticed any differences between what you heard on the tapes and what you read in the transcripts, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the tapes, you must ignore the transcripts as far as those parts are concerned.

7.21 STIPULATIONS

The government and the defendant have agreed, or stipulated, to certain facts. Therefore, you must accept the following stipulated facts as proved: [*insert facts stipulated*].

8.01 INTRODUCTION

(1) That concludes the part of my instructions explaining the rules for considering some of the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

(2) The first thing that you should do in the jury room is choose someone to be your foreperson. This person will help to guide your discussions and will speak for you here in court.

(3) Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

(4) If you want to see any of the exhibits that were admitted in evidence, you may send me a message, and those exhibits will be provided to you.

(5) One more thing about messages. Do not ever write down or tell anyone, including me, how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.

8.02 EXPERIMENTS, RESEARCH, INVESTIGATION AND OUTSIDE COMMUNICATIONS

(1) Remember that you must make your decision based only on the evidence that you saw and heard here in court.

(2) 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 device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry, or computer, the Internet, any Internet service, or any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube or Twitter, 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, 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. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

(3) You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the Internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result, which would require the entire trial process to start over.

8.03 UNANIMOUS VERDICT

(1) Your verdict, whether it is guilty or not guilty, must be unanimous as to each count.

(2) To find the defendant guilty of a particular count, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.

(3) To find him not guilty of a particular count, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

(4) Either way, guilty or not guilty, your verdict must be unanimous as to each count.

8.04 DUTY TO DELIBERATE

(1) Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

(2) But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that--your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

(3) No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So, you should all feel free to speak your minds.

(4) Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the defendant guilty beyond a reasonable doubt.

8.05 PUNISHMENT

(1) If you decide that the government has proved the defendant guilty, then it will be my job to decide what the appropriate punishment should be.

(2) Deciding what the punishment should be is my job, not yours. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict.

(3) Your job is to look at the evidence and decide if the government has proved the defendant guilty beyond a reasonable doubt.

8.06 VERDICT FORM

(1) I have prepared a verdict form that you should use to record your verdict. The form reads as follows: _____.

(2) If you decide that the government has proved a charge against a defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. If you decide that the government has not proved a charge against a defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. Your foreperson should then sign the form, and date it.

(3) After the verdict form is completed, your foreperson should give a written note to the jury officer indicating that you have reached a verdict. The jury officer will deliver that note to me, you will be called into the courtroom, and your foreperson will deliver the verdict to me in the courtroom. The parties will then be informed of your verdict.

8.08 VERDICT LIMITED TO CHARGES AGAINST THIS DEFENDANT

(1) Remember that the defendant is only on trial for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved the crimes charged.

(2) Also remember that whether anyone else should be prosecuted and convicted for this crime is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved this defendant guilty. Do not let the possible guilt of others influence your decision in any way.

8.09 COURT HAS NO OPINION

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if the government has proved the defendant guilty beyond a reasonable doubt.

8.10 JUROR NOTES

(1) Remember that if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence. You should rely upon your own independent recollection of the evidence or lack of evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.

(2) Whether you took notes or not, each of you must form and express your own opinion as to the facts of the case.