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PART I

General Principles Applicable to Criminal Trials

Members of the jury, before I give you my final instructions about the law in this case, I want to express my thanks to you for the time and energy you have devoted to this trial. Jury service is rarely convenient, but without you, justice could not be done in this case.

INSTRUCTION NO. 1

Introduction of Charge

I will now instruct you about the law that you must follow in deciding this case. These legal principles are common and applicable in all Federal criminal trials. Shortly, you will hear the closing arguments of counsel concerning what they believe the evidence shows in this case. My instructions will guide you in considering the evidence and will be divided into three parts:

First, general principles applicable to all criminal trials;

Second, instructions about the crimes charged and what the government must prove; and

Third, instructions about your deliberations.

It will take considerable time for me to read these instructions to you. You have copies of the instructions to read as I read the instructions orally. Do not read ahead, as you must listen carefully and pay close attention to everything I say. You can write on the instructions if you wish.

If the instructions as read vary from the printed version, I will make corrections in the version from which I am reading. My instructions as read and so corrected [if such occurs] are what control. I remind you that if there are any inconsistencies between these instructions and those I read at the beginning of the trial, these are the instructions that control your deliberations.

You will recall that I read instructions to you at the outset of the trial. To the extent that there may be some variation between those instructions and these instructions, these instructions control your deliberations.

INSTRUCTION NO. 2

Jurors' Duties

You have two main duties as jurors. The first is for you to determine what the facts are from the evidence that you saw and heard during the trial, and from the exhibits that will be with you in the jury room. 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.

Your second duty as jurors is to take the law as I give it to you now in these final instructions and apply it to the facts, and decide if the government has proved the defendants guilty beyond a reasonable doubt.

It is my job to instruct you about the law, and you are bound by your oath to follow the instructions that I give to you. This is so, even if you personally disagree with an instruction or legal doctrine. Your personal beliefs can play no role whatsoever in your decision. For example, it would be improper for you to consider, in reaching your decision as to whether the government met its burden of proof, any personal feelings you may have about the individual defendants' culture, national origin, race or religion.

The lawyers may discuss the law during their arguments. But if what they say differs from what I say, you must follow what I say. What I say about the law controls.

All of my instructions are important, and you should consider them together as a whole.

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.

INSTRUCTION NO. 3

Presumption of Innocence; Burden of Proof; Reasonable Doubt

The defendants have pleaded not guilty to the crimes charged in the Indictment. An Indictment is not evidence; it is simply the formal notice to the defendants of the charges against each of them. The mere fact of an Indictment raises no suspicion of guilt.

The government has the burden to prove the charges against the defendants beyond a reasonable doubt, ^{that burden} and stays with the government from start to finish. The defendants have no burden or obligation to prove anything at all. They are presumed innocent. The defendants started this trial with a clean slate, with no evidence at all against them, and the law presumes that they are each innocent. This presumption of innocence stays with each defendant unless and until the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that the defendants are guilty.

If the government fails to meet its burden of proof as to a charge, you must return a verdict of not guilty. If you only “think” or “feel” the defendants may be guilty of a charge, the government has not met its burden of proof as to that charge.

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.

Proof beyond a reasonable doubt does not mean proof to an absolute certainty or all possible doubt. Possible doubts or doubts based only 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. If you find that the evidence in this case could reasonably support either of two conclusions – one of guilt, the other of non-guilt as to any charge – you must return a verdict of not guilty as to that charge. If on the other hand, you are convinced that the government has proved a defendant guilty beyond a reasonable doubt as to one, some, or all of the charges, you may return a verdict of guilty as to that defendant.

INSTRUCTION NO. 4

Evidence Defined

and saw

You must make your decision based only on the evidence that you heard here in court and the exhibits that will be with you in the jury room. Do not let anything else influence your decision in any way.

The evidence includes what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; and stipulations that counsel for all sides agreed to have admitted in evidence.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My questions to witnesses and my legal rulings are not evidence. Anything that I told you to disregard during the trial is not evidence.

Some of you may have taken notes during the trial. Whether or not you took notes, you should rely upon your own memory about the evidence. Notes are only an aid to assist you in recalling the evidence. You should not be overly influenced by your notes. Notes that any of you may have made are solely for the use of the note-taker and may not be given any greater weight or influence in determining the case than your recollections or impressions, and those of other jurors, concerning the evidence. Your conclusions about the evidence is what matters.

Sometimes I sustained objections to questions by the lawyers. Do not speculate about the reasons for my doing so or what you might have learned had I not upheld an objection.

Likewise, do not speculate about what a witness who was not called to testify might have said, or what else a witness who did testify might have said, had he or she been asked additional questions.

Something that you did not hear or see, or were not permitted by me to hear or see, is not evidence. You must not speculate about things that are not in evidence. Make your decision based only on the evidence, as I have defined it here, and nothing else.

INSTRUCTION NO. 5

Consideration of Evidence

You should use your common sense in weighing the evidence. Consider it 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.

INSTRUCTION NO. 6

Direct and Circumstantial Evidence

Evidence consists generally of two types: “direct” evidence and “circumstantial” evidence. Each type of evidence can be considered by you.

Direct evidence is simply evidence – like the testimony of an eyewitness – which, if you believe it, directly proves a fact. A witness’s statement that “he saw rain” is direct evidence that it was raining, and you could find that it was raining if you believed the witness’s statement.

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.

It is for you to decide how much weight to give the direct and circumstantial evidence in this case. The law makes no distinction between the weight you should or can give to either one, nor is one any better evidence than the other.

You are to consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

INSTRUCTION NO. 7

Recordings and Transcripts of Recordings

During this trial you heard audio and video recordings of conversations lawfully recorded by the government with the knowledge and consent of one of the parties – Mr. Darren Griffin – to the conversation. You are not limited to the literal words on the recordings any more than you are limited to the bald statements of witnesses: you are permitted to draw such reasonable inferences from them as you feel are justified in the light of experience.

Similarly, although you may only hear some of the conversations, but cannot always see the speakers in some of the recordings, you may consider the tone and tenor of what they say as well as their literal words, as you would consider the demeanor and manner of any witness.

A. Transcripts of Conversations and Statements in English

The government and defendants have been permitted to display transcripts of what appears in the recordings, which have been received as evidence. Keep in mind that the transcripts were displayed to you as an aid or guide to assist you in listening to the recordings. The transcripts are not what you heard or saw on the evidence, but rather the recordings themselves are the evidence, with one exception (namely, translations of recordings from Arabic into English) that I will describe in a moment.

When the recordings were played, I advised you to listen very carefully to the recordings themselves. You alone should make your own interpretation of what appears on the recordings based on what you heard. If you think you heard something differently than appeared on the transcript, or noticed any differences between what you heard on the recordings and what you read in the transcripts, then what you heard is controlling. If you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

B. Transcripts of Conversations and Statements in Arabic

Another category of evidence that has been put forth before you includes recordings of conversations in the Arabic language, which have been received in evidence. You were given

transcripts of the portions that have been played before you containing English translations of Arabic in the recordings.

With respect to the translations of these recordings (from Arabic into English), you may consider as evidence the English meaning of the Arabic language terms in question. You may consider this testimony in the context of all the evidence in this case. If there is a dispute as to the meaning of these Arabic language terms, it is up to you to determine the appropriate meaning of these terms based on the entirety of the evidence that has been presented to you.

INSTRUCTION NO. 8

Opinion Testimony

The Federal Rules of Evidence provide that if scientific, technical or other specialized knowledge might assist you in understanding the evidence, or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training or education may testify and state an opinion concerning such matters.

In this case, I have permitted you to hear the testimony of witnesses who were allowed to express opinions as to certain facts in issue. Those witnesses included: Ms. Kelly Mount and Supervisory Special Agent W. Mark Whitworth (FBI Explosives Laboratory); Mr. Joseph Corrigan (FBI Computer Analysis Recovery Team); Mr. Robert Antoon (FBI Arabic Language Specialist); Mr. Evan Kohlmann (Expert on Uses of the Internet in International Terrorism Cases); and Ms. Mona Shakour (Arabic Language Specialist).

You may give this opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You do not have to accept those opinions. In deciding how much weight to give this testimony, you should consider the witness' qualifications and how he or she reached his or her conclusions, his or her opinions, the witness' reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' testimony.

You should not accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment, and common sense. As with the testimony of any other witness, you the jury may decide to accept all, some, or none of the testimony of any opinion witness.

INSTRUCTION NO. 9

Stipulations

During the trial the lawyers notified you that they “stipulated” or “agreed” to certain facts. Stipulations that were provided to you included definitions of terms that the Court provided, and other agreements concerning certain facts and documents that the parties agreed would be proven if certain witnesses were called to testify. Anything that the attorneys have agreed to in this manner may be considered by you along with all the other evidence in the case. The stipulations referenced apply only to the particular facts and circumstances of this case. Stipulations voluntarily entered into by the parties are binding and constitute evidence that you may consider in your deliberations.

INSTRUCTION NO. 10

Lawyers' Objections

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. Do not wonder why they objected or what you might have learned had I not sustained an objection. 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 you decide the case only on evidence that the law permits you to hear or see, and that the trial is fair to both sides.

INSTRUCTION NO. 11

Number of Witnesses

Do not make any decisions based only on the number of witnesses who testified about a particular fact or circumstance. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves.

INSTRUCTION NO. 12

Credibility of Witnesses

Another part of your job as jurors is to decide how credible or believable each witness was when testifying. This is your job, not mine. It is up to you to decide if a witness' 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. Let me suggest some things for you to consider in evaluating each witness' testimony:

- 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.
- Ask yourself how good the witness' memory seemed to be. Did the witness seem able to accurately remember what happened?
- Ask yourself if there was anything else that may have interfered with the witness' ability to perceive or remember the events?
- Ask yourself how the witness acted while testifying? Did the witness appear honest, or did the witness appear to be lying?
- Ask yourself if the witness had any relationship to the government or the defendants, or anything to gain or lose from the case that might influence the witness' testimony?
- Ask yourself if the witness had any bias, 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?
- Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did anything (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' testimony any 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?

- Ask yourself how believable the witness' testimony was in light of all the other evidence in this case? Was the witness' testimony supported or contradicted by other evidence that you found believable? If you believe that a witness' 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.

These are only some of the things that you may consider in deciding how believable each witness was while testifying. You may also consider other things that you think shed some light on the witness' 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.

INSTRUCTION NO. 13

Testimony of a Paid Cooperating Witness

You have heard the testimony of Mr. Darren Griffin, who worked on the government's behalf throughout this case. Use of a paid cooperating witness is common and permissible.

You should consider the testimony of such a witness with more caution than the testimony of other witnesses.

In assessing this testimony, you should consider whether, and the extent to which, the witness' testimony may have been influenced by the benefits that the government gave him.

With regard to Mr. Griffin, you should, in assessing his credibility, consider as well all the factors outlined in the preceding instruction with regard to assessing the credibility of any witness, in light of all the evidence in the case.

You cannot find a defendant guilty beyond a reasonable doubt on the unsupported testimony of such a witness, standing alone, unless you believe the witness's testimony beyond a reasonable doubt.

INSTRUCTION NO. 14

Right Not To Testify

It is not necessary that the defendants testify.

Every defendant has an absolute right not to testify. Indeed, each defendant has the absolute right not to present any evidence at all.

The fact that a defendant did not testify or present evidence cannot be considered by you for any purpose or in any way whatsoever.

Remember, the government alone has the burden of proving its charges against each defendant beyond a reasonable doubt. There is no burden upon the defendants to prove anything.

INSTRUCTION NO. 15

Summaries and Other Materials Not Admitted in Evidence

During the trial, you have seen counsel use summaries, charts or similar materials, including some marked as exhibits, but not offered into evidence, and some that remained unmarked, and which likewise were not offered into evidence.

Counsel use such summaries, charts and similar materials to help their presentation and your understanding of the evidence.

These items and materials are not themselves evidence, and must not by themselves be considered proof of any facts.

INSTRUCTION NO. 16

Court's Rulings and Other Actions

Nothing that I have said or done during the trial was meant to influence your decision in any way.

Do not interpret my rulings on the lawyers' 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.

Likewise, do not speculate on how I think the case should come out. My views are not evidence.

To the extent that you think I have any view or opinion, you must disregard those thoughts entirely. It is your duty – and yours alone – to decide the facts and determine whether the government has met its burden of proving a defendant guilty as charged in the Indictment.

This concludes my instructions about the general rules that apply in every criminal case.

PART II

Specific Instructions about the Crimes Charged

I will next explain what the government must prove as to each of the charges against each of the defendants.

Before doing so, I emphasize that the defendants are only on trial for the particular crimes charged in the Indictment. Your job is limited to deciding whether the government has proven beyond a reasonable doubt that the defendants are guilty as charged.

Whether someone else could be prosecuted for the alleged crime is not a proper matter for you to consider. The possible or actual guilt of others is not a defense to a criminal charge. The possible or actual guilt of others cannot influence your decision in any way.

INSTRUCTION NO. 17

Nature and Function of the Indictment

An Indictment is not evidence; it is not proof of anything. It is simply the formal notice to the defendants of the government's allegations against them.

The Indictment alleges that the defendants committed the following crimes:

One: Conspiracy to Kill or Maim Persons in a Foreign Country [All Defendants];

Two: Conspiracy to Provide Material Support or Resources to Terrorists [All Defendants];

Three: Distribution of Information Concerning Explosives or Destructive Devices with the Intent to Further a Federal Crime of Violence [Defendants Amawi and El-Hindi are Each Charged with Two Separate Violations of this Offense].

INSTRUCTION NO. 18

Multiple Defendants and Charges

The defendants Mohammad Amawi, Marwan El-Hindi, and Wassim Mazloum have each been charged with committing ~~the~~ two separate crimes: Conspiracy to Kill, Kidnap, Maim, or Injure Persons in a Foreign Country; and Conspiracy to Provide Material Support to Terrorists.

Defendants Amawi and El-Hindi have also been charged with two counts each of an additional crime that is the same: Distribution of Information Concerning Explosives or Destructive Devices with the Intent to Further a Federal Crime of Violence.

I will explain to you in more detail the exact elements of each crime but before I do so, I want to emphasize several things.

The fact that the defendants have not been “charged” with all of the same crimes should not influence your decision in any way. The number of criminal offenses (*e.g.*, one, two, three, or four) that a defendant has been charged with is not evidence of guilt of any one of them, and this should not influence your decision in any way.

In our system of justice, guilt or innocence is personal and individual. It is your duty to consider the evidence against each defendant separately, and to return a separate verdict for each defendant concerning each charge.

For each of the separate charges, you must decide whether the government has proved each defendant guilty beyond a reasonable doubt.

Your decision on one defendant, whether it is guilty or not guilty, should not influence your decision on any of the other defendants.

I will now explain the charges in this case.

INSTRUCTION NO. 19

Criminal Conspiracy - Generally

It is crime for two or more persons to conspire, or agree to commit a criminal act, even if they never actually achieve their goal.

A criminal conspiracy is a kind of criminal partnership. There are specific elements for each conspiracy count that each defendant has been charged with, and I will explain to you the specific elements that the government must prove for each charge, beyond a reasonable doubt, in a few moments.

At the outset, I will explain some basic legal principles about criminal conspiracy that exist regardless of the kind of criminal conspiracy with which a defendant has been charged.

Agreement

To prove a criminal conspiracy, the government must prove, beyond a reasonable doubt, that two or more persons conspired, or agreed, to cooperate with each other to commit the crimes charged. This requires proof that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit the crimes charged.

To prove a conspiratorial agreement, the government need not prove that there was a formal written or spoken agreement. Nor must the government prove that everyone involved agreed on all the details.

Facts and circumstances which indirectly lead to the conclusion that an agreement existed can suffice to prove a conspiracy. But it is up to the government to convince you beyond a reasonable doubt that such facts and circumstances existed with regard to each defendant.

Proof that people simply met together from time to time and talked about common interests, such as political views or religious beliefs, or engaged in similar conduct, is not enough to establish

a criminal agreement. You may consider these things in deciding whether the government has proved an agreement, but without more, they are not enough.

A defendant cannot conspire with only a government agent. Thus Mr. Darren Griffin, the government's agent, cannot be the only other member, along with only a single defendant, of a conspiracy.

**Connection to the Conspiracy:
Knowingly and Voluntarily Joining the Conspiracy**

If you are convinced beyond a reasonable doubt that an unlawful agreement existed, you must decide whether the government has proved that the defendants knowingly and voluntarily joined that agreement. You must consider each defendant separately in this regard.

To convict any defendant, the government must prove beyond a reasonable doubt that he knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

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. The government must convince you beyond a reasonable doubt that such facts and circumstances existed.

This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member 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.

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 you may consider in

deciding whether the government has proved that a defendant joined a conspiracy. Without more they are not enough.

I will next explain the elements of the specific Counts [or charges] alleged in this case, and the law regarding those Counts.

INSTRUCTION NO. 20

Conspiracy to Kill, Kidnap, Maim, or Injure Persons in a Foreign Country

[18 U.S.C. § 956(a)]

Count One of the Indictment alleges that from on or about as early as June 2004, through on or about February 19, 2006, the defendants Mohammed Amawi, Marwan El-Hindi, and Wassim Mazloun conspired to murder or maim persons in a foreign country in violation of 18 U.S.C. § 956(a). That statute provides that:

Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other persons are located, to commit at any place outside the United States an act that would constitute the offense of murder... or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be [subject to punishment].

Elements of the Offense

To satisfy its burden of proof, the government must prove the following elements beyond a reasonable doubt:

First, two or more people conspired (or agreed) to murder or maim a person or persons at some place outside the United States as I will define those terms;

Second, the defendants knowingly and voluntarily joined the conspiracy;

Third, the defendants were within the jurisdiction of the United States when they entered into the agreement; and

Fourth, during the existence of the agreement, one of the conspirators – but not necessarily one of the defendants – committed at least one overt act within the jurisdiction of the United States in furtherance of any object of the agreement.

The government need not prove that the defendants themselves (or others) actually murdered or maimed persons in a foreign country, or that there were specific targets or victims identified.

Definitions

“Murder” means the unlawful killing of a human being with malice aforethought.

“Malice aforethought” means, at the time of a killing, the offender, intended to take the life of a human being, or to act in callous and wanton disregard of the consequences to human life.

“Maim” means to disfigure, cut, bite, or slit the nose, ear or lip, or cut out or disable the tongue, or put out or destroy an eye, or disable a limb or any member of another person; or throw or pour upon another person any scalding water, corrosive acid, or caustic substance.

“Outside the United States” means any place outside the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

First Element – Agreement to Murder or Maim Outside the United States

The government must first prove beyond a reasonable doubt that the defendants entered into an agreement, that is each defendant conspired (or agreed) with at least one other person who is not a government agent to murder or maim another person at a place outside the United States as I have defined those terms for you.

The elements regarding the entry into an agreement under conspiracy law that I gave you in Instruction No. 19 apply in their entirety to the first element of this charge.

Second Element - Knowing and Voluntary Joining the Conspiracy

The government must prove beyond a reasonable doubt that the defendants knowingly and voluntarily joined the conspiracy to murder or maim another person at a place outside the United States as I have defined those terms for you.

The elements regarding knowingly and voluntarily joining the conspiracy that I gave you in Instruction No. 19 apply in their entirety to the second element of this charge.

U. S. A.

**Third Element – Defendants Within the Jurisdiction of the U.S.
When the Unlawful Agreement Was Made**

The government must prove beyond a reasonable doubt that the defendants were within the jurisdiction of the United States at the time when the conspiratorial agreement was made.

With respect to this element, the “jurisdiction of the United States” includes the territory of the States of the United States, the District of Columbia, and the territories and possessions of the United States.

I instruct you, that as a matter of law, the Northern District of Ohio, in which Toledo is located, the Eastern District of Michigan, in which Detroit and its suburbs are located, and the Northern District of Illinois, in which Chicago is located, are within the jurisdiction of the United States.

The government need not show that all of the parties to the agreement were located within this jurisdiction at the time the agreement was made; rather, the law requires only that you find beyond a reasonable doubt that a defendant was within the jurisdiction of the United States at the time the agreement was made.

Fourth Element – Overt Act

The government must also prove beyond a reasonable doubt that one of the members of the conspiracy committed at least one overt act within the jurisdiction of the United States in furtherance of the object of the conspiracy.

To commit an overt act in furtherance of the object of a conspiracy, a participant need not undertake a course of action that is certain or even likely to result in the success of the conspiracy. The law does not require that the act in question be likely to yield an illegal result, or that the act in question even be prohibited by law.

Each defendant need not himself have personally engaged in an act in furtherance of the conspiracy or have knowledge of the identity of the person committing the act. You are not being asked whether the defendant knew, should have known, or could have known that the act in furtherance of the conspiracy took place. Rather, the government must prove that at least one overt act was committed by a member of the conspiracy (within the jurisdiction of the United States), and that it was committed for the purpose of advancing or helping the conspiracy.

The government must prove beyond a reasonable doubt that the act in furtherance of the conspiracy took place during the existence of the illegal agreement (or conspiracy). You may infer from the facts of this case whether the act took place while the illegal agreement actually existed. An act undertaken by a participant in a conspiracy after the agreement has ended cannot meet the government's burden with respect to this element.

When determining whether the alleged act was intended to further an object of the agreement, consider all the facts, and determine whether the circumstances permit you to conclude beyond a reasonable doubt that the act was intended to further an object of the conspiracy.

In conclusion, Count One of the Indictment alleges that from on or about as early as June 2004, through on or about February 19, 2006, the defendants Mohammed Amawi, Marwan El-Hindi, and Wassim Mazloun conspired to murder or maim persons in a foreign country in violation of 18 U.S.C. § 956(a).

If you find that the government has proven beyond a reasonable doubt, each and every element, then you may find the defendants guilty of this charge.

If you find that the government failed to prove each and every element as described beyond a reasonable doubt, then you must find the defendants not guilty.

INSTRUCTION NO. 21

Conspiracy to Provide Material Support or Resources to Terrorists

[18 U.S.C. § 2339A]

Count Two of the Indictment alleges that from at least as early as, in or about June 2004 to on or about February 19, 2006, the defendants Mohammed Amawi, Marwan El-Hindi, and Wasim Mazloun conspired to provide material support or resources to terrorists in violation of Title 18, United States Code, § 2339A. This statute provides in relevant part, that:

Whoever provides material support or resources . . . , knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section . . . 2332 ... of this title . . . or attempts or conspires to do such an act...is guilty of a crime.

The "material support" that triggers Section 2339A need not be to a particular or specified terrorist or terrorist group. Instead, the support must be given in furtherance of one of the enumerated criminal offenses set forth in the statute.

The defendants are charged with providing material support that is alleged to have been in furtherance of a violation of Title 18, United States Code Section 2332, namely, the killing of United States nationals.

Section 2332(a) reads as follows:

(a) Whoever kills a national of the United States, while such national is outside the United States, shall [be punished under this title and section].

Elements of the Offense

To meet its burden of proof on Count Two of the Indictment, the government must establish beyond a reasonable doubt the following three elements with respect to each defendant:

First, the defendant conspired (or agreed) with at least one other person who is not a government agent;

Second, the object of the conspiracy was to provide material support or resources, with all of you agreeing as to what constituted the material support or resources; and

Third, the defendant joined the conspiracy, knowing or intending that the support or resources provided were to be used in preparation for, or in carrying out, the killing of United States nationals outside the United States.

While the government must prove that the defendants knew or intended that the material support or resources in question were to be used in preparation for, or in carrying out, the killing of United States nationals outside of the United States, the government need not prove that the defendants themselves (or others) actually killed United States nationals, or that there were specific targets or victims identified.

However, unless the government proves beyond a reasonable doubt that a defendant has committed each element of this offense as I explain it to you, you must find him not guilty.

First Element: Conspiracy (Agreement)

The government must prove beyond a reasonable doubt that each defendant joined the conspiracy (or agreed) with at least one other person who is not a government agent to provide material support or resources, knowing or intending that the support or resources provided were to be used in preparation for, or in carrying out, the killing of United States nationals outside the United States.

The instructions as to a conspiratorial agreement that I gave you in Instruction 19 apply to this element of this charge.

However, unlike the conspiracy law governing Count One [18 U.S.C. § 956(a)(1)], I instruct you that you do not have to find that a member of the conspiracy committed an overt act in

furtherance of the conspiracy in order to find the defendants guilty beyond a reasonable doubt of conspiring to provide material support or resources.

Second Element: Provision of Material Support

The government must prove beyond a reasonable doubt that the object of the conspiracy

joined by each defendant was to provide material support or resources.

THE SUPPORT OR RESOURCES MUST BE PROVEN TO BE MATERIAL.

“Material support or resources” is defined to include any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, training, communications equipment, explosives or personnel.

“Training” means instruction or teaching to impart a specific skill, as opposed to general knowledge.

“Personnel” refers to one or more individuals and may include one or more of the defendants themselves.

A person “provides” material support or resources if he makes available, or physically transfers or sends, the support or resources.

In sum, the government has the burden of proving that each defendant conspired to provide material support or resources either by agreeing to make himself or another person available in preparation for or in carrying out the killing of United States nationals outside the United States, or by agreeing to make available other material support or resources such as money, training, explosives, communications equipment, or computers, intending that they be used in preparation for, or in carrying out, the killing of United States nationals outside the United States.

Third Element: Knowing or Intending Material Support or Resources Would Be Used “in Preparation for” or Carrying Out the Killing of United States Nationals

The third element that the government must prove beyond a reasonable doubt is that each defendant conspired to provide the material support or resources, knowing or intending that the

material support or resources would be used in preparation for, or in carrying out, the killing of United States nationals outside the United States.

An act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

An act is done "intentionally" if it is done deliberately. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence in deciding whether the defendant acted intentionally.

The term "United States" includes all the states, territories, and possessions of the United States, and all places and waters subject to the jurisdiction of the United States.

A "United States national of the United States" is a citizen of the United States or a person owing permanent allegiance to the United States.

The government need not prove that the defendant knew that his actions violated a specific statute or that he was breaking the law. It is sufficient for the government to prove the defendant acted with the knowledge or intent that the material support or resources he conspired to provide would be used in preparation for, or in carrying out, the killing of United States nationals outside the United States.

In conclusion, as I have mentioned, Count Two of the Indictment alleges that from at least as early as in or about June 2004, to on or about February 19, 2006, the defendants Mohammed Amawi, Marwan El-Hindi, and Wasim Mazloun conspired to provide material support or resources to terrorists in violation of Title 18, United States Code, § 2339A.

If you find that the government has proven beyond a reasonable doubt, each of the elements as I have described them to you, then you may find the defendants guilty of this charge.

If you find that the government failed to prove each and every element as described, beyond a reasonable doubt, then you must find the defendants not guilty.

INSTRUCTION NO. 22

**Distribution of Information Concerning Explosives or Destructive Devices
with Intent to Further a Federal Crime of Violence**

[18 U.S.C. § 842(p)(2)(A)]

The defendants Amawi and El-Hindi have been charged with two separate violations each of 18 U.S.C. § 842(p)(2)(A), which states that:

It shall be unlawful for any person to teach or demonstrate the making or use of an explosive, [or] a destructive device...or to distribute by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, [or] destructive device...with the intent that the teaching, demonstration, or information be used for, or in furtherance of, an activity that constitutes a Federal crime of violence....

To summarize, the charges in the Indictment against two of the defendants Mohammed Amawi and Marwan El-Hindi include the following:

Count Three: Mohammed Amawi

This Count relates to evidence consisting of the “Martyrdom Operation Vest Preparation” (or “Bomb-Vest Video”).

The Indictment alleges that on or about January 10, 2005, and on or about January 30, 2005, defendant Mohammed Amawi distributed information pertaining to, in whole or in part, the manufacture or use of an explosive or destructive device (*i.e.*, the Bomb-Vest Video), which depicted the step-by-step construction and use of a suicide bomb vest, an “explosive” and a “destructive device,” with the intent to commit and further a Federal Crime of Violence (*i.e.*, the killing of a U.S. national of the United States outside of the United States, or the killing of any officer or employee of the United States).

Count Four: Mohammed Amawi

This Count relates to evidence consisting of one six-page (and one three-page) written guide(s), referred to in evidence as the “Explosives Cookbook,” describing the step-by-step process for manufacturing chemical explosive compounds constituting an “explosive.”

The Indictment alleges that on or about February 6, 2005, defendant Mohammed Amawi distributed information pertaining to, in whole or in part, the manufacture or use of an “explosive” or “destructive device,” with the intent to commit and further a Federal Crime of Violence (*i.e.*, the killing of a U.S. national of the United States outside of the United States, or the killing of any officer or employee of the United States).

Count Five: Marwan El-Hindi

This Count relates to evidence consisting of the “Martyrdom Operation Vest Preparation” (or “Bomb-Vest Video”).

The Indictment alleges that on or about February 8, 2005, defendant Marwan El-Hindi distributed information pertaining to, in whole or in part, the manufacture or use of an explosive or destructive device (*i.e.*, the Bomb-Vest Video), which depicted the step-by-step construction and use of a suicide bomb vest, an “explosive” and a “destructive device,” with the intent to commit and further a Federal Crime of Violence (*i.e.*, the killing of a U.S. national of the United States outside of the United States, or the killing of any officer or employee of the United States).

Count Six: Marwan El-Hindi

This Count relates to evidence consisting of an electronically forwarded e-mail message with an attachment containing a photographic slide show, including a written narrative, depicting an attack on United States military personnel in or around the country of Iraq.

The Indictment alleges that on or about February 25, 2005, defendant Marwan El-Hindi distributed information pertaining to, in whole or in part, the manufacture or use of an explosive or destructive device, that demonstrated the preparation and use, against apparent United States military vehicles and personnel, of improvised explosive devices (IED’s), an “explosive,” and a “destructive device,” and that he did so with the intent to commit and further a Federal Crime of Violence (*i.e.*, that these instructional materials would be used to train others in the construction and use of such

IED's to commit the killing of U.S. nationals outside of the United States, or the killing of any officer or employee of the United States).

Elements of the Offense

As to each of these Counts, to satisfy its burden of proof, the government must establish ^{all} ~~each~~ of the following elements beyond a reasonable doubt:

First, the defendants distributed by any means, information pertaining to, in whole or in part, the manufacture or use of an explosive, or destructive device; and

Second, the defendant acted with the intent that the information be used for, or in furtherance of, an activity that constitutes a Federal crime of violence; namely the killing of a United States national outside the United States, or the killing of any officer or employee of the United States ~~an officer or employee of the United States~~.

First Element – Distribution of the Manufacture or Use of an Explosive, Destructive Device

The first element that the government must prove beyond a reasonable doubt is that the defendant distributed, by any means, information pertaining to, in whole or in part, the manufacture or use of an explosive or destructive device.

Definitions

The terms used in the first element of this charge have the following meanings:

“Distribute” means to “sell, issue, give, transfer, or otherwise dispose of” by any means.

“Explosive” includes:

gun powders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or detonation of the compound, mixture, or device or any part thereof may cause an explosion.

“Destructive device” includes:

any explosive, incendiary, or poison gas - (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses...and any combination of parts either designed or intended for use in converting any device into any destructive device ~~described in subparagraph (A) or (B)~~ and from which a destructive device may be readily assembled.

A “Federal crime of violence” is either:

- (a) an offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony, and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

“U.S. National of the United States” is:

[A] citizen of the United States or a person who is not a citizen of the United States but who owes permanent allegiance to the United States.

“Officer or Employee of the United States” is:

[A]ny officer or employee of the United States or any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance...

In this case, the government alleges that the federal crime of violence that the defendant intended his information to be used for, or in furtherance of, was either Title 18 U.S.C. § 2332(a), killing of U.S. Nationals outside the United States, or Title 18 U.S.C. § 1114, the Killing of Any Officer or Employee of the United States. Those offenses constitute Federal crimes of violence under the definition that I have just given you.

Second Element – Intent

The government must prove beyond a reasonable doubt that each defendant had the intent to further a Federal crime of violence, namely the killing of a U.S. national of the United States outside the United States or an officer or employee of the United States. “Intent” means that the

defendant's purpose in providing the information was that it be used by the recipients to commit, or for the further commission of, or to be used for, or in furtherance of, a Federal crime of violence.

In conclusion:

Count Three of the Indictment alleges that on or about January 10, 2005, and on or about January 30, 2005, defendant Mohammed Amawi distributed information pertaining to, in whole or part, the manufacture or use of an explosive or destructive device [the "Martyrdom Operation Vest Preparation" or "Bomb-Vest Video"].

Count Four of the Indictment alleges that on or about February 6, 2005, defendant Mohammed Amawi distributed information pertaining to, in whole or in part, the manufacture or use of an explosive or destructive device [The Explosives Cookbook].

Count Five of the Indictment alleges that on or about February 8, 2005, defendant Marwan El-Hindi distributed information pertaining to, in whole or in part, the manufacture or use of an explosive or destructive device [the "Martyrdom Operation Vest Preparation" or "Bomb-Vest Video"].

Count Six of the Indictment alleges that on or about February 25, 2005, defendant Marwan El-Hindi distributed information pertaining to, in whole or in part, the manufacture or use of an explosive or destructive device [the improvised explosive device (or IED) e-mail document and related explosives information].

As to these four Counts, if you find the government has proven beyond a reasonable doubt each of the elements as I have described them to you, then you may find the charged defendant guilty of the Count with which he is charged.

If you find that the government has failed to prove each and every element as I have described them to you, beyond a reasonable doubt, then you must find the charged defendant not guilty.

INSTRUCTION NO. 23

False Exculpatory Statements - Consciousness of Guilt

You have heard testimony that after the crime was supposed to have been committed, defendant Marwan El-Hindi made a statement to the government.

If you believe that this defendant did so, and that any portion(s) of his statement was false, then you may consider this conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that the defendant committed the crimes charged.

Marwan El Hindi
the defendant: El Hindi
This conduct may indicate that ~~the defendant~~ thought he was guilty and was trying to avoid punishment. On the other hand, sometimes an innocent person may give a false statement for some other reason.

Part III:

Instructions Regarding Deliberations

Members of the jury, you are the finders of fact in this case. You are to take the law as I have now just explained it to you, and apply the law to the evidence in this case to determine your verdicts. A few final legal instructions are necessary for your consideration before you retire to the jury room to begin your deliberations.

INSTRUCTION NO. 24

Deliberations

Before you begin deliberating, choose someone to be your foreperson to help to guide your discussions and speak on your behalf in court.

A foreperson has no greater voice or influence than any other juror, and a foreperson's opinion and vote are no more important than those of any other member of the jury.

Consider and discuss the case only when all twelve of you are present together in the jury room. Do not discuss it outside the jury room with anyone. Do not discuss it unless all jurors are present.

While deliberating, do not talk to the clerk, or to me, or anyone else except each other about the case. If you have any questions or messages, write them down and give them to the clerk, who will give them to me. Questions should be signed by the foreperson.

I will respond as quickly as I can, but it may take some time to do so.

Do not ever tell anyone or otherwise disclose 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 must remain secret until you are finished.

From now until you have reached your verdicts, you may determine the schedule for your deliberations. Please tell the clerk when you are taking recesses or adjourning for the day and when you will be resuming your deliberations.

While in recess or adjournment, do not discuss the case with anyone, and take nothing relating to the case from the jury room. Do not engage in any outside research or otherwise try to find out more about the case. Do not read, listen to or watch accounts about the case.

JURY INSTRUCTION NO. 25

Unanimous Verdict

Your verdicts, whether guilty or not guilty, must be unanimous: to find a defendant guilty of a charge, every one of you must agree that the government has overcome the presumption of innocence and met its burden of proof with evidence that proves his guilt beyond a reasonable doubt.

Likewise, to find a defendant not guilty, every one of you must agree that the government has failed to prove the defendant guilty beyond a reasonable doubt.

Either way, guilty or not guilty, your verdict must be unanimous.

INSTRUCTION NO. 26

Duty to Deliberate

Now that the case is being given to you to decide, it is your duty to talk with each other about the evidence and make every reasonable effort 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 each other has 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.

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.

Remember that you are judges – judges of the facts. You are not partisans or advocates for one side or the other, or for a particular outcome.

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.

Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the defendants under consideration guilty beyond a reasonable doubt.

INSTRUCTION NO. 27

Punishment

In reaching your verdict as to whether the government has proven the defendants guilty beyond a reasonable doubt or has failed to do so, you must not consider the consequences of your verdict.

INSTRUCTION NO. 28

Verdict Forms

I have prepared verdict forms that you should use to record your verdicts.:

[Read Forms]

If you unanimously decide that the government has proved its charges against the defendants beyond a reasonable doubt, have your foreperson mark the appropriate place on the form. If you decide that the government has not proved the charge against the defendant beyond a reasonable doubt, have your foreperson mark the appropriate place on the form or forms.

Each of you should then sign the form or forms.

Then notify the clerk that you have reached your verdicts. Hand the verdicts to her.

Before your verdicts are read in court, do not disclose them to anyone.

I will now discharge the alternates in this case and ask that you return to the jury room to undertake and complete your deliberations in this case. Thank you.

INSTRUCTION NO. 29

Alternate Jurors

Some of you now must be excused as jurors, because only twelve persons can deliberate and reach a verdict.

I instruct you, however, that you must continue to refrain from discussing the case with anyone until you have learned that a verdict has been returned.

You must also refrain from reading, listening to or viewing any news accounts about the case until you have learned that a verdict has been returned.

In the event that something happens that makes it impossible for one of the deliberating jurors to participate until a verdict is reached, it may be necessary to recall you to become a member of the jury. For this reason you must comply with this instruction.

In other words, you must continue to conduct yourself as if you were still a member of the jury.

Once the case is over you can discuss it with anyone or no one. That is your choice.

Sincere thanks for your service in this case.