

1 BOERSCH SHAPIRO LLP
2 David W. Shapiro (CA Bar No. 219265)
3 Dshapiro@boerschshapiro.com
4 Martha Boersch (CA Bar No. 126569)
5 Mboersch@boerschshapiro.com
6 Lara Kollios (CA Bar No. 235395)
7 Lkollios@boerschshapiro.com
8 235 Montgomery Street, Suite 835
9 San Francisco, CA 94104
10 Telephone: (415) 500-6640

11 Attorneys for Defendant
12 DAVID ALAN HESLOP

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) Case No. CR-12-441(A)-MWF
16)
17 Plaintiff,) **GOVERNMENT’S AND**
18) **DEFENDANTS HESLOP’S AND**
19 v.) **KOVALL’S JOINT JURY**
20) **INSTRUCTIONS**
21 GARY EDWARD KOVALL, DAVID)
22 ALAN HESLOP, PAUL PHILLIP)
23 BARDOS, AND PEGGY ANNE)
24 SHAMBAUGH,)
25)
26)
27)
28)

Defendants.)

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PRELIMINARY INSTRUCTIONS

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1 **INSTRUCTION NO. 1**
2 **DUTY OF JURY**

3 Jurors: You now are the jury in this case, and I want to take a few minutes to
4 tell you something about your duties as jurors and to give you some preliminary
5 instructions. At the end of the trial I will give you more detailed [written]
6 instructions that will control your deliberations. When you deliberate, it will be your
7 duty to weigh and to evaluate all the evidence received in the case and, in that
8 process, to decide the facts. To the facts as you find them, you will apply the law as
9 I give it to you, whether you agree with the law or not. You must decide the case
10 solely on the evidence and the law before you and must not be influenced by any
11 personal likes or dislikes, opinions, prejudices, or sympathy. Please do not take
12 anything I may say or do during the trial as indicating what I think of the evidence or
13 what your verdict should be—that is entirely up to you.

14 Support

15 Ninth Circuit Model Instruction 1.1
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INSTRUCTION NO. 2
WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 1.3

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INSTRUCTION NO. 3
WHAT IS NOT EVIDENCE

The following things are *not* evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 1.4

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INSTRUCTION NO. 4
DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 1.5

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INSTRUCTION NO. 5
RULING ON OBJECTIONS

There are rules of evidence that control what can be received in evidence. When a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 1.6

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INSTRUCTION NO. 6
CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence;
and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 1.7

1 or in any other way try to learn about the case on your own.

2 The law requires these restrictions to ensure the parties have a fair trial based
3 on the same evidence that each party has had an opportunity to address. A juror
4 who violates these restrictions jeopardizes the fairness of these proceedings, and a
5 mistrial could result that would require the entire trial process to start over. If any
6 juror is exposed to any outside information, please notify the court immediately.

7 **Support**

8 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 1.8
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INSTRUCTION NO. 8
NO TRANSCRIPT AVAILABLE TO JURY

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 1.9

1 these defendants are treated the same as other defendants before this Court, and
2 provides continuity within instructions. Defendants’ request puts these white collar
3 defendants, especially Dr. Heslop, on different footing than other defendants. Having
4 a PhD, however, should not mean he is entitled to more sympathy or deference than
5 any other defendant before the Court. Moreover, defendants have already agreed to
6 use the terms “defendant” and “defendants” in some instructions. *See, e.g.*, Joint
7 Instruction 12 (“Although [Mr. Kovall, Dr. Heslop, and Ms. Shambaugh/defendant
8 Kovall, defendant Heslop, and defendant Shambaugh] are being tried together, you
9 must give separate consideration to each defendant. In doing so, you must determine
10 which evidence in the case applies to each defendant, disregarding any evidence
11 admitted solely against some other defendant. The fact that you may find one of the
12 defendants guilty or not guilty should not control your verdict as to any other
13 defendant.”) (emphasis added). Using the terms “defendant” and “defendants”
14 consistently throughout the instructions provides continuity between and within
15 instructions.

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INSTRUCTION NO. 11
SEPARATE CONSIDERATION FOR EACH DEFENDANT

Although [Mr. Kovall, Dr. Heslop, and Ms. Shambaugh/defendant Kovall, defendant Heslop, and defendant Shambaugh] are being tried together, you must give separate consideration to each defendant. In doing so, you must determine which evidence in the case applies to each defendant, disregarding any evidence admitted solely against some other defendant. The fact that you may find one of the defendants guilty or not guilty should not control your verdict as to any other defendant.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 1.13

INSTRUCTIONS IN THE COURSE OF TRIAL

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1 **INSTRUCTION NO. 12**
2 **CAUTIONARY INSTRUCTION—FIRST RECESS**

3 We are about to take our first break. Remember, until the trial is over, do not
4 discuss this case with anyone, including your fellow jurors, members of your family,
5 people involved in the trial, or anyone else, and do not allow others to discuss the
6 case with you. This includes discussing the case in Internet chat rooms or through
7 Internet blogs, Internet bulletin boards, emails or text messaging. If anyone tries to
8 communicate with you about the case, please let me know about it immediately. Do
9 not read, watch, or listen to any news reports or other accounts about the trial or
10 anyone associated with it, including any online information. Do not do any
11 research, such as consulting dictionaries, searching the Internet or using other
12 reference materials, and do not make any investigation about the case on your own.
13 Finally, keep an open mind until all the evidence has been presented and you have
14 heard the arguments of counsel, my instructions on the law, and the views of your
15 fellow jurors.

16 If you need to speak with me about anything, simply give a signed note to the
17 [marshal] [bailiff] [clerk] to give to me.

18 **Support**

19 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 2.1
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1 **INSTRUCTION NO. 13**
2 **BENCH CONFERENCES AND RECESSES**

3 From time to time during the trial, it may become necessary for me to take up
4 legal matters with the attorneys privately, either by having a conference at the bench
5 or, when necessary, by calling a recess.

6 We will do what we can to keep the number and length of these conferences
7 to a minimum. I may not always grant an attorney's request for a conference.

8 **Support**

9 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 2.2
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1 **INSTRUCTION NO. 14**
2 **STIPULATED TESTIMONY**

3 The parties have agreed what [*name of witness*]'s testimony would be if
4 called as a witness. You should consider that testimony in the same way as if it had
5 been given here in court.

6 **Support**

7 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 2.3
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1 **INSTRUCTION NO. 15**
2 **STIPULATIONS OF FACT**

3 The parties have agreed to certain facts that have been stated to you. You
4 should therefore treat these facts as having been proved.

5 **Support**

6 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 2.4
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**INSTRUCTION NO. 16
EVIDENCE FOR LIMITED PURPOSE**

You are about to hear evidence that [*describe evidence to be received for limited purpose*]. I instruct you that this evidence is admitted only for the limited purpose of [*describe purpose*] and, therefore, you must consider it only for that limited purpose and not for any other purpose.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 2.11

INSTRUCTIONS AT END OF CASE

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1 **INSTRUCTION NO. 18**
2 **CHARGE AGAINST DEFENDANT NOT EVIDENCE—**
3 **PRESUMPTION OF INNOCENCE—BURDEN OF PROOF**

4 The indictment is not evidence. [Mr. Kovall, Dr. Heslop, and Ms.
5 Shambaugh/Defendants] have pleaded not guilty to the charges. [Mr. Kovall, Dr.
6 Heslop, and Ms. Shambaugh/Defendants] are presumed to be innocent unless and
7 until the government proves [Mr. Kovall, Dr. Heslop, or Ms.
8 Shambaugh/defendants] guilty beyond a reasonable doubt. In addition, [Mr.
9 Kovall, Dr. Heslop, and Ms. Shambaugh/defendants] do not have to testify or
10 present any evidence to prove innocence. The government has the burden of
11 proving every element of the charges against [Mr. Kovall, Dr. Heslop, and Ms.
12 Shambaugh/each defendant] beyond a reasonable doubt.

13 **Support**

14 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.2
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INSTRUCTION NO. 19
DEFENDANT’S DECISION NOT TO TESTIFY

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that [Mr. Kovall, Dr. Heslop, or Ms. Shambaugh/a defendant] did not testify.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.4

1 **INSTRUCTION NO. 20**
2 **REASONABLE DOUBT—DEFINED**

3 Proof beyond a reasonable doubt is proof that leaves you firmly convinced a
4 defendant is guilty. It is not required that the government prove guilt beyond all
5 possible doubt.

6 A reasonable doubt is a doubt based upon reason and common sense and is
7 not based purely on speculation. It may arise from a careful and impartial
8 consideration of all the evidence, or from lack of evidence.

9 If after a careful and impartial consideration of all the evidence, you are not
10 convinced beyond a reasonable doubt that any defendant is guilty, it is your duty to
11 find that defendant not guilty. On the other hand, if after a careful and impartial
12 consideration of all the evidence, you are convinced beyond a reasonable doubt that
13 a defendant is guilty, it is your duty to find that defendant guilty.

14 **Support**

15 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.5
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INSTRUCTION NO. 21
WHAT IS EVIDENCE

3 The evidence you are to consider in deciding what the facts are consists of:

- 4 (1) the sworn testimony of any witness;
5 (2) the exhibits received in evidence; and
6 (3) any facts to which the parties have agreed.

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Support

8 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.6
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INSTRUCTION NO. 22
WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. [In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.]
3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.7

1 **INSTRUCTION NO. 23**
2 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

3 Evidence may be direct or circumstantial. Direct evidence is direct proof of a
4 fact, such as testimony by a witness about what that witness personally saw or heard
5 or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or
6 more facts from which you can find another fact.

7 You are to consider both direct and circumstantial evidence. Either can be
8 used to prove any fact. The law makes no distinction between the weight to be given
9 to either direct or circumstantial evidence. It is for you to decide how much weight to
10 give to any evidence.

11 **Support**

12 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.8
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1 **INSTRUCTION NO. 24**
2 **CREDIBILITY OF WITNESSES**

3 In deciding the facts in this case, you may have to decide which testimony to
4 believe and which testimony not to believe. You may believe everything a witness
5 says, or part of it, or none of it.

6 In considering the testimony of any witness, you may take into account:

- 7 (1) the witness's opportunity and ability to see or hear or know the things
8 testified to;
- 9 (2) the witness's memory;
- 10 (3) the witness's manner while testifying;
- 11 (4) the witness's interest in the outcome of the case, if any;
- 12 (5) the witness's bias or prejudice, if any;
- 13 (6) whether other evidence contradicted the witness's testimony;
- 14 (7) the reasonableness of the witness's testimony in light of all the evidence;
15 and
- 16 (8) any other factors that bear on believability.

17 The weight of the evidence as to a fact does not necessarily depend on the
18 number of witnesses who testify. What is important is how believable the witnesses
19 were, and how much weight you think their testimony deserves.

20 **Support**

21 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.9
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1 **INSTRUCTION NO. 25**
2 **ACTIVITIES NOT CHARGED**

3 You are here only to determine whether [Mr. Kovall, Dr. Heslop, or Ms.
4 Shambaugh/each defendant] is guilty or not guilty of the charges in the indictment.
5 [Mr. Kovall, Dr. Heslop, and Ms. Shambaugh/Defendants] are not on trial for any
6 conduct or offense not charged in the indictment.

7 **Support**

8 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.10
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1 **INSTRUCTION NO. 26**
2 **SEPARATE CONSIDERATION OF MULTIPLE COUNTS—**
3 **MULTIPLE DEFENDANTS**

4 A separate crime is charged against [Mr. Kovall, Dr. Heslop, or Ms.
5 Shambaugh/one or more defendants] in each count. The charges have been joined
6 for trial. You must decide the case of each defendant on each crime charged against
7 that defendant separately. Your verdict on any count as to any defendant should not
8 control your verdict on any other count or as to any other defendant.

9 All the instructions apply to each defendant and to each count unless a specific
10 instruction states that it applies only to a specific defendant or count.

11 **Support**

12 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 3.13
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CONSIDERATION OF PARTICULAR EVIDENCE

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INSTRUCTION NO. 27
IMPEACHMENT EVIDENCE—WITNESS

You have heard evidence that [*name of witness*], a witness, [*specify basis for impeachment*]. You may consider this evidence in deciding whether or not to believe this witness and how much weight to give to the testimony of this witness.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 4.8

1 **INSTRUCTION NO. 29**
2 **OPINION EVIDENCE, EXPERT WITNESS**

3 You have heard testimony from persons who, because of education or
4 experience, were permitted to state opinions and the reasons for their opinions.

5 Such opinion testimony should be judged like any other testimony. You may
6 accept it or reject it, and give it as much weight as you think it deserves, considering
7 the witness's education and experience, the reasons given for the opinion, and all the
8 other evidence in the case.

9 **Support**

10 Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 4.14
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JURY DELIBERATIONS

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INSTRUCTION NO. 34
USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

Support

Manual of Model Criminal Jury Instructions for the Ninth Circuit Model 7.3

1 Respectfully Submitted,

2 Dated: February 17, 2014

BOERSCH SHAPIRO LLP

3
4
5 /s/ David W. Shapiro

David W. Shapiro

6 Martha Boersch

7 Lara Kollios

Attorneys for Defendant David Alan Heslop

8
9 Dated: February 17, 2014

LAW OFFICE OF EDWARD M. ROBINSON

10
11 /s/ Edward M. Robinson

Edward M. Robinson

12 Attorney for Defendant Gary Kovall

13
14 Dated: February 17, 2014

ANDRE BIROTTE JR.

United States Attorney

16 ROBERT E. DUGDALE

Assistant United States Attorney

17 Chief, Criminal Division

18
19 /s/ Brandon D. Fox

20 Brandon D. Fox

21 Meghan A. Blanco

Assistant United States Attorneys

22 Public Corruption & Civil Rights Section

23 Attorney for Plaintiff United States of America