

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTIN COLE,

Defendant.

No. CR 06-2046-MWB

**INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, I am giving you these Instructions to help you better understand the trial and your role in it and to instruct you on the law that you must apply in this case. Consider these instructions, together with all written and oral instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

As I explained during jury selection, in an Indictment, a Grand Jury charges defendant Justin Cole with the following offenses: “possessing with intent to distribute cocaine base” in **Count 1**; “possessing marijuana” in **Count 2**; and “maintaining or managing premises for drug crimes” in **Count 3**. As I also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. The defendant has pled not guilty to the crimes charged against him and is presumed to be innocent of each offense unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of each charge against him. You will find the facts from the evidence. You are the sole judges of the facts, but you must follow the law as stated in these instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law as stated in these instructions. Do not take anything that I have done during jury

selection or that I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from any ruling or other comment that I have made or may make that I have any opinions on how you should decide the case.

Please remember that only defendant Justin Cole, not anyone else, is on trial here. Also, remember that this defendant is on trial *only* for the offenses charged against him in the Indictment, not for anything else.

The defendant is entitled to have the evidence on each charge against him considered separately. *Therefore, you must return a separate, unanimous verdict on each offense charged against the defendant.*

INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific instructions on the offenses charged in this case, I must explain some preliminary matters.

“Elements”

The offenses charged in this case each consist of “elements,” which the prosecution must prove beyond a reasonable doubt against the defendant in order to convict the defendant of that offense. I will summarize in the following instructions the elements of the offenses with which the defendant is charged.

Timing

The Indictment alleges that the offenses charged were committed “on or about” a specific date. The prosecution does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date or time period alleged for that offense in the Indictment.

Controlled substances

In these instructions, when I refer to a “controlled substance,” I mean any drug or narcotic that is regulated by federal law. “Cocaine base” and “marijuana” are “controlled substances.” Although there are various forms of “cocaine base,” the form that is at issue in this case is commonly known as “crack cocaine.” “Crack cocaine” is the street name for a form of cocaine base that is usually prepared by processing cocaine hydrochloride and sodium bicarbonate (baking soda) and that usually appears in a lumpy, rocklike form. You must determine whether

or not any form of “cocaine base” involved in any alleged offense was actually “crack cocaine,” as defined here. If you find that the substance was not “crack cocaine,” as defined here, then you cannot convict the defendant of an offense that allegedly involved “cocaine base.” Therefore, in the rest of these Instructions, I will refer to “crack cocaine” rather than “cocaine base.”

“Intent” and “Knowledge”

The elements of the charged offenses may require proof of what a defendant “intended” or “knew.” Where what a defendant “intended” or “knew” is an element of an offense, the defendant’s “intent” or “knowledge” must be proved beyond a reasonable doubt. “Intent” and “knowledge” are mental states. It is seldom, if ever, possible to determine directly the operations of the human mind. Nevertheless, “intent” and “knowledge” may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence.

An act was done “knowingly” if the defendant was aware of the act and did not act through ignorance, mistake, or accident. The prosecution is not required to prove that a defendant knew that his acts or omissions were unlawful. An act was done “intentionally” if it was done voluntarily, without coercion, and not because of ignorance, mistake, accident, or inadvertence.

“Possession,” “Distribution,” and “Delivery”

Some of the offenses charged in this case allegedly involved “distributing,” “possessing,” or “possessing with intent to distribute” a controlled substance. “Distribution,” in turn, involves “delivery” or transfer of “possession.” The

following definitions of “possession,” “distribution,” and “delivery” apply in these instructions:

The law recognizes several kinds of “possession.” A person who knowingly had direct physical control over an item, at a given time, was then in “actual possession” of it. A person who, although not in actual possession, had both the power and the intention at a given time to exercise control over an item, either directly or through another person or persons, was then in “constructive possession” of it. If one person alone had actual or constructive possession of an item, possession was “sole.” If two or more persons shared actual or constructive possession of an item, possession was “joint.” Whenever the word “possession” is used in these instructions, it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

The term “distribute” means to deliver a controlled substance to the actual or constructive possession of another person. The term “deliver” means the actual, constructive, or attempted transfer of a controlled substance to the actual or constructive possession of another person. It is not necessary that money or anything of value changed hands for you to find that there was a “distribution” of a controlled substance or an “intent to distribute” a controlled substance. The law prohibits “possessing,” “possessing with intent to distribute,” and “distributing” a controlled substance; the prosecution does not have to prove that there was or was intended to be a “sale” of a controlled substance to prove that the controlled substance was “possessed with intent to distribute.”

* * *

I will now give you more specific instructions about the offenses charged in the Indictment.

**INSTRUCTION NO. 3 - COUNT 1: POSSESSING
WITH INTENT TO DISTRIBUTE CRACK COCAINE**

Count 1 of the Indictment charges that, on or about May 2, 2006, defendant Cole knowingly and intentionally possessed with intent to distribute approximately 47.58 grams of crack cocaine. The defendant denies that he committed this offense.

Elements of the offense

For you to find the defendant guilty of this “possessing with intent to distribute” offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

One, on or about May 2, 2006, the defendant possessed crack cocaine.

“Possession” was defined for you in Instruction No. 2. “Crack cocaine” was also defined for you in Instruction No. 2. You must determine whether or not the substance in the defendant’s possession was, in fact, “crack cocaine,” as defined in Instruction No. 2, and if it was not, then you cannot convict the defendant of this offense, even if you find that he possessed some other controlled substance.

Two, the defendant knew that he was, or intended to be, in possession of a controlled substance.

“Knowledge” and “intent” were defined for you in Instruction No. 2. Additionally, the defendant need not have known what the controlled substance was, if the defendant knew that he had possession of some controlled substance.

Three, the defendant intended to distribute some or all of the controlled substance to another person.

Again, “intent” and “distribution” were defined for you in Instruction No. 2. In addition, you may, but are not required to, infer an “intent to distribute” from the following evidence: drug purity, suggesting that the drugs were intended to be “cut” or diluted before distribution, if the evidence shows that the defendant was aware of such purity; the presence of firearms, cash, packaging material, or other distribution paraphernalia; and possession of a large quantity of crack cocaine in excess of what an individual user would consume.

If the prosecution fails to prove these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the “possessing with intent to distribute” offense in **Count 1**.

Quantity of crack cocaine

In addition, if you find the defendant guilty of this “possessing with intent to distribute” offense, then you must also determine beyond a reasonable doubt the quantity of any crack cocaine actually involved in this offense for which the defendant can be held responsible. The offense charged in **Count 1** of the Indictment allegedly involved approximately 47.58 grams of crack cocaine. Even though a specific quantity of crack cocaine is charged, the prosecution does not have to prove that the offense involved the amount or quantity of the crack cocaine that is alleged in the Indictment. However, *if* you find the defendant guilty of the offense charged in **Count 1**, *then* you must determine the following matters *beyond*

a reasonable doubt: (1) whether the offense actually involved crack cocaine, as defined in Instruction No. 2; and if so, (2) the *total quantity*, in grams, of the crack cocaine involved in the offense for which the defendant can be held responsible. In so doing, you may consider all of the evidence in the case that may aid in the determination of these issues.

A defendant guilty of “possessing with intent to distribute crack cocaine,” as charged in **Count 1** of the Indictment, is responsible for the quantities of crack cocaine that he possessed with intent to distribute, as “possession” is explained in Instruction No. 2, and “possession with intent to distribute” is explained more specifically, above, in the explanation to element *three*.

If you find the defendant guilty of the offense charged in **Count 1**, then you must determine *beyond a reasonable doubt* the *total quantity*, in grams, of the crack cocaine involved in that offense for which the defendant can be held responsible. You must then indicate in the Verdict Form the *range* within which that *total quantity* falls. Thus, if you find the defendant guilty of the offense charged in **Count 1**, and that the offense involved “crack cocaine” as defined in Instruction No. 2, then you must determine beyond a reasonable doubt whether the defendant can be held responsible for 5 grams or more, or less than 5 grams of “crack cocaine.” Again, you may find more or less than the charged quantity of crack cocaine, but you must find that the quantity you indicate in the Verdict Form has been proved beyond a reasonable doubt as the quantity for which the defendant can be held responsible on this offense.

In making your determination of quantity as required, it may be helpful to remember that one pound is approximately equal to 453.6 grams, and that one ounce is approximately equal to 28.34 grams.

**INSTRUCTION NO. 4 - COUNT 2: POSSESSING
MARIJUANA**

Count 2 of the Indictment charges that, on or about May 2, 2006, defendant Cole knowingly and intentionally possessed an unspecified quantity of marijuana. The defendant denies that he committed this “possession” offense.

For you to find the defendant guilty of this “possession” offense, the prosecution must prove *both* of the following essential elements beyond a reasonable doubt:

One, on or about May 2, 2006, the defendant possessed marijuana.

“Possession” was defined for you in Instruction No. 2. You must ascertain whether or not any substance in the defendant’s possession was, in fact, marijuana.

Two, the defendant knew that he was, or intended to be, in possession of a controlled substance.

“Knowledge” and “intent” were defined for you in Instruction No. 2. Additionally, the defendant need not have known what the controlled substance was, if the defendant knew that he had possession of some controlled substance.

If the prosecution fails to prove these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the “possession” offense in **Count 2**.

If you find the defendant guilty of this offense, you do not have to determine the quantity of marijuana involved in the offense.

**INSTRUCTION NO. 5 - COUNT 3: MAINTAINING
OR MANAGING PREMISES FOR DRUG CRIMES**

Count 3 charges that, on or about May 2, 2006, defendant Cole did either or both of the following:

(a) knowingly opened and maintained the residence at 531 Sherman Avenue, Waterloo, Iowa, for the purpose of distributing and using controlled substances, including crack cocaine and marijuana, and

(b) managed and controlled the residence at 531 Sherman Avenue, Waterloo, Iowa, as a lessee, and knowingly and intentionally made the residence available for use, with or without compensation, for the purpose of unlawfully storing, distributing, or using controlled substances, including crack cocaine and marijuana.

Defendant Cole denies that he committed this “maintaining or managing premises for drug crimes” offense.

There are two alternatives for this offense. I will explain the elements of these alternatives separately.

First alternative: Opening or maintaining the premises for drug crimes

For you to find defendant Cole guilty of this offense, under the first alternative, the prosecution must prove *both* of the following essential elements beyond a reasonable doubt:

One, on or about May 2, 2006, the defendant knowingly opened or maintained the residence at 531 Sherman Avenue, Waterloo, Iowa.

“Knowledge” was defined for you in Instruction No. 2. In order to prove that the defendant “opened or maintained” the residence, the prosecution must prove that the defendant had a substantial connection to the residence and must have been more than a casual visitor. Therefore, acts showing that the defendant maintained the residence include his control of the residence, his duration and continuity at the residence, his acquisition of the residence, his renting or furnishing the residence, his repairing the residence, and his supervising, protecting, or supplying food to those at the residence.

Two, the defendant did so for the purpose of distributing or using a controlled substance or controlled substances.

The defendant opened or maintained a place “for the purpose of distributing or using a controlled substance” if the defendant maintained the place for the specific purpose of distributing or using the controlled substance. The specific purpose need not have been the sole purpose for which the place was used, but it must have been one of the primary or principal uses for which the place was used. The defendant must have had the required purpose; it is not enough for the prosecution to show that someone else had the required purpose.

An isolated instance of drug use or drug distribution at the residence is not enough to prove that the residence was opened or maintained for the purpose of distributing or using controlled substances. A casual drug user did not maintain a residence for the required purpose, because he maintained the residence for the primary purpose of using it as a residence, and his drug use was merely incidental

to that purpose. “For the purpose,” therefore, means having acted as a supervisor, manager, or entrepreneur in a drug enterprise, as opposed to merely having facilitated a drug enterprise. Evidence that the residence was being used to run a drug enterprise may include investment in the tools of the trade, such as scales, laboratory equipment, guns and ammunition, packaging materials, financial records, profits, and the presence of multiple employees or customers.

If the prosecution fails to prove these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the offense in **Count 3** under this “opening and maintaining” alternative.

Second alternative: Managing or controlling premises for drug crimes

For you to find defendant Cole guilty of this offense, under the second alternative, the prosecution must prove *all* of the following essential elements beyond a reasonable doubt:

One, on or about May 2, 2006, the defendant managed or controlled the residence at 531 Sherman Avenue, Waterloo, Iowa.

The defendant “managed or controlled” a residence if he lived in it as his primary residence.

Two, the defendant did so as lessee of the residence.

Three, the defendant knowingly and intentionally made the residence available, with or without compensation, for the purpose of unlawfully storing, distributing, or using a controlled substance.

“Knowledge” and “intent” were explained for you in Instruction No. 2. The prosecution must prove either that the defendant had the purpose of using the residence for an unlawful purpose, or that the person or persons to whom the defendant made the residence available had the required purpose. If the defendant did not have the unlawful purpose, the prosecution must show that the defendant knew of the unlawful activity of others in the residence.

Thus, this element may be satisfied if the defendant knowingly and intentionally made the residence available to others, and he knew that those others were engaged in the illegal conduct of storing, distributing, or using a controlled substance at the residence. In other words, the defendant made the residence available for an unlawful purpose if a significant purpose of the location for those to whom he made the residence available was the unlawful storing, distributing, or using of a controlled substance, and the defendant knew those persons had that purpose. Storing, distributing, or using a controlled substance need not have been the sole purpose of the residence for those to whom the residence was made available, but it must have been one of the primary or principal uses for which those persons used the place. Thus, an isolated instance of drug storage, drug use, or drug distribution at the residence is not enough to prove that the residence was made available for the purpose of storing, using, or distributing controlled substances.

This element may also be proved, even if the defendant did not have the purpose of engaging in

unlawful activity, if the defendant was aware of a high probability that such unlawful activity was occurring at the residence, but deliberately avoided learning the truth. The defendant's knowledge of unlawful activity may be inferred if you find that he deliberately closed his eyes to what would otherwise have been obvious to him. You may not find that the defendant acted knowingly, however, if you find that the defendant actually believed that no unlawful drug activity was occurring at the residence or if you find that he was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to prove that the defendant knowingly and intentionally made the residence available for the purpose of unlawful drug activity.

If the prosecution fails to prove these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the offense in **Count 3** under this “managing and controlling” alternative.

**INSTRUCTION NO. 6 - PRESUMPTION OF INNOCENCE
AND BURDEN OF PROOF**

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the defendant's arrest or charge or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome as to a particular charge against the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of the offense in question against the defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant to prove his innocence. Therefore, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution. Similarly, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of an offense charged against him, you must find the defendant not guilty of that offense.

INSTRUCTION NO. 7 - REASONABLE DOUBT

I have previously instructed you that, for you to find the defendant guilty of a charged offense, the prosecution must prove the elements of that offense “beyond a reasonable doubt” as to the defendant. A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. A reasonable doubt may also arise from the prosecution’s lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. On the other hand, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 8 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other instructions that may be given to you during the trial. Evidence is:

1. Testimony.
2. Exhibits that are admitted into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be “direct” or “circumstantial.” The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony that I tell you to disregard.
4. Anything that you see or hear about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the

weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict the witness's testimony. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 9 - CREDIBILITY AND IMPEACHMENT

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If the defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters in that field and may also state the reasons for their opinions. You should consider

expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason the expert may be biased, and all of the other evidence in the case.

Just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credence to such a witness's testimony than you give to any other witness's testimony.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness are admitted into evidence, they will not be admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

You may hear evidence that some witnesses have each been convicted of a crime. You may use that evidence only to help you decide whether or not to believe these witnesses and how much weight to give their testimony.

You may hear evidence that certain witnesses are testifying pursuant to plea agreements and hope to receive reductions in their sentences in return for their cooperation with the government in this case. If the prosecutor handling such a witness's case believes that the witness has provided "substantial assistance," the

prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for such a witness for substantial assistance unless the U.S. Attorney files a motion requesting such a reduction. If the motion for reduction of sentence for substantial assistance is filed by the U.S. Attorney, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so, how much to reduce it. You should treat the testimony of such witnesses with greater caution and care than that of other witnesses, but you may give the testimony of such witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the witness's hope of receiving a reduction in sentence is for you to decide.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

**INSTRUCTION NO. 10 - EVIDENCE OF THE DEFENDANT'S
PRIOR CONVICTIONS AND OTHER "BAD ACTS"**

You may also hear evidence that the defendant has previously been convicted of felony drug offenses or that he engaged in similar, but uncharged drug activity. You may not use this evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment in this case. However, if you are convinced beyond a reasonable doubt, on other evidence introduced, that the defendant did carry out the acts involved in the crimes charged in the Indictment, then you may use this evidence of his prior conviction of a similar offense or evidence that he engaged in similar, but uncharged drug activity to help you determine the defendant's intent, knowledge, motive, and lack of mistake or accident in carrying out the acts involved in the crimes charged in the Indictment in this case.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged in the Indictment in this case, and you may consider the evidence of prior convictions and prior "bad acts" only on the issues of the defendant's intent, knowledge, motive, and lack of mistake or accident in carrying out the acts involved in the crimes charged in the Indictment in this case.

**INSTRUCTION NO. 11 - BENCH
CONFERENCES AND RECESSES**

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 12 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

INSTRUCTION NO. 13 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

INSTRUCTION NO. 14 - CONDUCT OF THE JURY DURING TRIAL

You must decide this case based *solely* on the evidence presented in court, in light of your own observations, experiences, reason, and common sense. Therefore, to insure fairness, you, as jurors, must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case or about anyone involved with it until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it, or about any news story, rumor, or gossip about this case, or ask you about your participation in this case until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial, you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you

when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it, or let anyone tell you anything about any such news reports. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Do not discuss this case with anyone, not even with other jurors, until I send you to the jury room for deliberations after closing arguments. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform me of any problem.

INSTRUCTION NO. 15 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. *Your verdict on each charge against the defendant must be unanimous.* It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced that it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on an offense charged against him, then he should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on an offense, then your vote should be for a verdict of guilty against the defendant on that charge, and if all of you reach that conclusion, then the

verdict of the jury must be guilty for the defendant on that offense. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of an offense charged against the defendant, or you cannot find the defendant guilty of that offense.

Remember, also, that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

INSTRUCTION NO. 16 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if the defendant is guilty of a charged offense, then the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case against him beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically.*

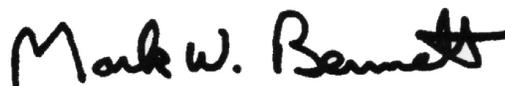
Fourth, your verdict must be based solely on the evidence and on the law in these instructions. Therefore, you must return a separate, unanimous verdict on each charge against the defendant. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Fifth, in your consideration of whether the defendant is not guilty or guilty of an offense charged, you must not consider that defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the

defendant on any charge unless you would return the same verdict on that charge without regard to the defendant's race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

Finally, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 7th day of May, 2007.



MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTIN COLE,

Defendant.

No. CR 06-2046-MWB

VERDICT FORM

As to defendant Justin Cole, we, the Jury, unanimously find as follows:

COUNT 1: POSSESSING WITH INTENT TO DISTRIBUTE CRACK COCAINE		VERDICT
Step 1: Verdict	On the “possessing with intent to distribute crack cocaine” offense, as charged in Count 1 of the Indictment and explained in Instruction No. 3, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Quantity of Crack Cocaine	<i>If you found the defendant “guilty” of the offense charged in Count 1, please indicate the quantity of crack cocaine involved in the offense for which the defendant can be held responsible. (Quantity of crack cocaine is also explained in Instruction No. 3.)</i>	
	<input type="checkbox"/> 5 grams or more of crack cocaine <input type="checkbox"/> less than 5 grams of crack cocaine	

COUNT 2: POSSESSING MARIJUANA		VERDICT
On the charge of “possessing marijuana,” as charged in Count 2 of the Indictment and explained in Instruction No. 4, please mark your verdict.		___ Not Guilty ___ Guilty
COUNT 3: MAINTAINING OR MANAGING PREMISES FOR DRUG CRIMES		VERDICT
Step 1: Verdict	On the charge of “maintaining or managing premises for drug crimes,” as charged in Count 3 of the Indictment and explained in Instruction No. 5, please mark your verdict.	___ Not Guilty ___ Guilty
Step 2: Alternative	<i>If you found the defendant guilty of this offense, do you find him guilty under the “opening or mantaining” alternative or the “managing or controlling” alternative” or both? (Please mark all alternatives on which you find the defendant guilty.)</i>	
	___ “opening or maintaining” alternative	___ “managing or controlling” alternative
CERTIFICATION		
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the race, color, religious beliefs, national origin, or sex of the defendant.		

_____ Date

_____ Foreperson

_____ Juror

_____ Juror

_____ Juror

Juror