

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERTO VILLALPANDO, a/k/a
“Beto,” a/k/a “Betio,

Defendant.

No. CR 06-4027-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 explained during jury selection, in an Indictment, a Grand Jury charges defendant Alberto Villalpando with two separate offenses that I have described as “conspiracy” and “distribution.” 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 entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts that have been established by the evidence. You will then apply the law, as stated in these instructions and any instructions given during the course of trial, to the facts to reach your verdict. 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 Alberto Villalpando, 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.

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 offense 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 him of that offense. I will summarize in the following instructions the elements of the offenses with which the defendant is charged.

Nicknames

In the Indictment, the Grand Jury alleges that defendant Alberto Villalpando sometimes goes by the nickname or is also known as or identifies himself as “Beto” or “Betio.” The identity of a defendant as the person who committed a crime is an element of every crime. Therefore, the government must prove beyond a reasonable doubt not only that a crime alleged was actually committed, but also that the defendant charged was the person who committed it. Defendant Alberto Villalpando does not have to prove that he did not commit the charged offenses, that someone else committed those offenses, or that he is not the person identified as either “Beto” or “Betio.” Therefore, if the facts and circumstances that will be introduced in evidence leave you with a reasonable doubt as to whether or not Alberto Villalpando is the person who committed a crime charged against him, then you must find him not guilty of that offense.

Timing

The Indictment alleges that the offenses charged were committed “between about” two dates or “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 the manufacture, possession, possession with intent to distribute, or distribution of which is prohibited or regulated by federal law. The offenses charged in this case allegedly involved one or more of three such controlled substance that I will call in these instructions “a methamphetamine mixture,” “actual (pure) methamphetamine,” and “powder cocaine.” A “methamphetamine mixture” is a mixture or substance containing a detectable amount of “actual (pure) methamphetamine.” On the other hand, “actual (pure) methamphetamine” is methamphetamine itself—that is, either by itself or contained in a mixture or substance. Finally, “powder cocaine” is the common name for “cocaine salt.”

“Intent” and “Knowledge”

The elements of the charged offenses may require proof of what the defendant “intended” or “knew.” Where what a defendant “intended” or “knew” is an element of an offense, the defendant’s “intent” and “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. Therefore, you may consider any statements made or acts done by the defendant and all of the facts and circumstances in evidence to aid you in the determination of his “knowledge” or “intent.”

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 the 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”

The offenses charged in the Indictment allegedly involved “distribution” of controlled substances or conspiracy to “distribute” controlled substances. 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 has direct physical control over an item, at a given time, is then in “actual possession” of it. A person who, although not in actual possession, has both the power and the intention at a given time to exercise control over an item, either directly or through another person or persons, is then in “constructive possession” of it. If one person alone has actual or constructive possession of an item, possession is “sole.” If two or more persons share actual or constructive possession

of an item, possession is “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.

In addition, mere presence where an item was found or mere physical proximity to the item is insufficient to establish “possession” of that item. Knowledge of the presence of the item, at the same time one has control over the item or the place in which it was found, is required. Thus, in order to establish a person’s “possession” of an item, the prosecution must establish that, at the same time, (a) the person knew of the presence of the item; (b) the person intended to exercise control over the item or place in which it was found; (c) the person had the power to exercise control over the item or place in which it was found; and (d) the person knew that he had the power to exercise control over the item or place in which it was found.

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 change hands. The law prohibits “distribution” of a controlled substance and “conspiracy” to distribute 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 distribution or conspiracy to distribute that controlled substance.

* * *

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

**INSTRUCTION NO. 3 - COUNT 1: NATURE OF THE
CONSPIRACY OFFENSE**

Count 1 of the Indictment charges that, between about November 2005 and continuing through March 21, 2006, defendant Villalpando knowingly and unlawfully conspired with other persons known to the Grand Jury to commit one or more of the following separate offenses: (1) distribution of 500 grams or more of a methamphetamine mixture; (2) distribution of 50 grams or more of actual (pure) methamphetamine; and (3) distribution of an unspecified quantity of powder cocaine. The defendant denies that he committed this “conspiracy” offense.

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

One, between about November 2005 and continuing through March 21, 2006, two or more persons reached an agreement or came to an understanding to commit one or more of the offenses alleged to be objectives of the conspiracy;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

For you to find the defendant guilty of the “conspiracy” offense charged in **Count 1** of the Indictment, the prosecution must prove *all* of the essential elements

of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the “conspiracy” offense charged in the Indictment.

In the next instructions, I will explain each of these elements in more detail.

**INSTRUCTION NO. 4 - COUNT 1: ELEMENTS OF
THE CONSPIRACY OFFENSE**

The elements of the “conspiracy” offense, in more detail, are the following.

One, between about November 2005 and continuing through March 21, 2006, two or more persons reached an agreement or came to an understanding to commit one or more of the offenses alleged to be objectives of the conspiracy.

The prosecution must prove that the defendant reached an agreement or understanding with at least one other person. The other person or persons do not have to be defendants, or named in the Indictment, or otherwise charged with a crime. There is no requirement that any other conspirators be named as long as you find beyond a reasonable doubt that there was at least one other co-conspirator besides the defendant.

The “agreement or understanding” need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme. In determining whether the alleged agreement existed, you may consider the actions and statements of all of the alleged participants, whether they are charged as defendants or not. The agreement may be inferred from all of the circumstances and the conduct of the alleged participants.

The Indictment alleges that the conspirators agreed to commit one or more of the following separate offenses: (1) distribution of 500 grams or more of a methamphetamine mixture; (2) distribution of 50 grams or more of actual (pure) methamphetamine; and

(3) distribution of an unspecified quantity of powder cocaine. These “distribution offenses” are called the “objectives” of the conspiracy. To assist you in determining whether there was an agreement to commit an offense identified as an objective of the conspiracy, you should consider the elements of that offense. The elements of a “*distribution offense*” are the following: (1) on or about the date alleged, a person intentionally distributed a controlled substance to another; and (2) at the time of the distribution, the person knew that what he or she was distributing was a controlled substance.

Keep in mind, however, that to prove the “conspiracy” offense, the prosecution must prove that there was an *agreement* to commit one or more of the objectives alleged. The prosecution is *not* required to prove that any objective *was actually committed*. In other words, the question is whether the defendant *agreed* to commit one or more offenses identified as objectives of the conspiracy, not whether the defendant or someone else *actually committed* such an offense.

If there was no agreement, there was no conspiracy. Similarly, if you find that there was an agreement, but you find that the defendant did not join in that agreement, or did not know the purpose of the agreement, then you cannot find the defendant guilty of the “conspiracy” charge.

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others, or merely associating with others does not prove

that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy, but who happens to act in a way that advances some purpose of one, does not thereby become a member. Similarly, the defendant's mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of the conspiracy is being contemplated or attempted, is not enough to prove that the defendant joined in the conspiracy; rather, the prosecution must establish some degree of knowing involvement and cooperation by the defendant.

On the other hand, a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

In deciding whether the defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of his own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that the defendant said or did.

Three, at the time the defendant joined in the agreement or understanding, the defendant knew the purpose of the agreement or understanding.

The defendant must have known of the existence and purpose of the conspiracy. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his

acts furthered the conspiracy. You may not find that the defendant knew the purpose of the agreement or understanding if you find that the defendant was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding that the defendant knew the purpose of the agreement or understanding.

For you to find the defendant guilty of the “conspiracy” offense charged in **Count 1** of the Indictment, the prosecution must prove beyond a reasonable doubt *all* of the essential elements of this offense. Otherwise, you must find the defendant not guilty of the “conspiracy” offense charged in **Count 1** of the Indictment.

In addition, if you find the defendant guilty of this “conspiracy” offense, then you must also determine beyond a reasonable doubt the quantity of any methamphetamine mixture or actual (pure) methamphetamine actually involved in the conspiracy for which the defendant can be held responsible, as explained in Instruction No. 6.

Finally, if you find beyond a reasonable doubt that the conspiracy charged in **Count 1** of the Indictment existed, and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the defendant’s co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant, even though those acts were done or those statements were made in the defendant’s absence and without his knowledge. This includes acts done or statements made before the defendant joined the conspiracy. On the other hand, an act or statement by someone other than the

defendant that was not made during and in furtherance of the conspiracy cannot be attributed to the defendant in this way.

**INSTRUCTION NO. 5 - COUNT 2:
DISTRIBUTION**

Count 2 of the Indictment charges that, on or about November 22, 2005, the defendant knowingly and intentionally distributed 50 grams or more of actual (pure) methamphetamine. The defendant denies that he committed this offense.

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

One, on or about November 22, 2005, the defendant intentionally distributed actual (pure) methamphetamine to another.

“Distribution” was defined for you in Instruction No. 2. You must ascertain whether or not the substance in question was, in fact, actual (pure) methamphetamine. In so doing, you may consider all of the evidence in the case that may aid in the determination of that issue.

Two, at the time of the distribution, the defendant knew that what he was distributing was a controlled substance.

“Knowledge” was 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.

For you to find the defendant guilty of the “distribution” offense charged in **Count 2** of the Indictment, the prosecution must prove beyond a reasonable doubt

both of these essential elements. Otherwise, you must find the defendant not guilty of the “distribution” offense in **Count 2**.

In addition, if you find the defendant guilty of this “distribution” offense, then you must also determine beyond a reasonable doubt the quantity of any actual (pure) methamphetamine actually involved in the distribution offense for which the defendant can be held responsible, as explained in Instruction No. 6.

INSTRUCTION NO. 6 - QUANTITY OF CONTROLLED SUBSTANCES

The offenses charged in the Indictment allegedly involved various quantities of certain controlled substances. Where a specific quantity of a controlled substance is charged, the prosecution does not have to prove that the offense involved the amount or quantity of the controlled substance alleged in the Indictment. However, *if you find the defendant guilty of the “conspiracy” offense charged in **Count 1** or the “distribution” offense charged in **Count 2**, then for such an offense you must determine the following matters *beyond a reasonable doubt*: (1) whether that offense actually involved the controlled substance or controlled substances alleged; and (2) the *total quantity*, in grams, of any methamphetamine mixture or actual (pure) methamphetamine involved in that offense for which the defendant can be held responsible. For **Count 1**, you must also determine whether the “conspiracy” offense actually involved powder cocaine, but you need only determine whether that offense involved a detectable amount of powder cocaine rather than any specific quantity of powder cocaine.*

In making the required determinations of quantity of controlled substances for **Counts 1** and **2**, you may consider all of the evidence in the case that may aid in the determination of these issues. You may find more or less than the charged quantity of any controlled substance, 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 that offense.

Responsibility

A defendant guilty of ***conspiracy to distribute*** a controlled substance, as charged in **Count 1**, is responsible for the quantities of that controlled substance that he actually distributed or agreed to distribute. Such a defendant is also responsible for those quantities of the controlled substance that fellow conspirators distributed or agreed to distribute, if you find that the defendant could have reasonably foreseen, at the time that he joined the conspiracy or while the conspiracy lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy. Controlled substances acquired for personal use should be included when determining the drug quantity for a “conspiracy” offense.

A defendant guilty of ***distribution*** of a controlled substance, as charged in **Count 2** of the Indictment, is responsible for the quantities of that controlled substance that he actually distributed, as “distribution” is explained in Instruction No. 2.

Determination of quantity and verdict

If you find the defendant guilty of either **Count 1** or **Count 2**, you must determine beyond a reasonable doubt the *total quantity*, in *grams*, of any methamphetamine mixture of actual (pure) methamphetamine involved in the offense in question for which you find that 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 “conspiracy” charge in **Count 1**, and that the offense involved a methamphetamine mixture, then you must determine beyond a reasonable doubt whether the defendant can be held responsible for 500

grams or more, 50 grams or more but less than 500 grams, or less than 50 grams of a methamphetamine mixture. Similarly, if you find the defendant guilty of the “conspiracy” charge in **Count 1**, and that the offense involved actual (pure) methamphetamine, then you must determine beyond a reasonable doubt whether the defendant can be held responsible for 50 grams or more, 5 grams or more but less than 50 grams, or less than 5 grams of actual (pure) methamphetamine. Again, for **Count 1**, you must also determine whether the “conspiracy” offense involved powder cocaine, but you need only determine whether that offense involved a detectable amount of powder cocaine rather than any specific quantity of powder cocaine. If you find the defendant guilty of the “distribution” charge in **Count 2**, then you must determine beyond a reasonable doubt whether the defendant can be held responsible for 50 grams or more, 5 grams or more but less than 50 grams, or less than 5 grams of actual (pure) methamphetamine.

You may find more or less than the charged quantity of any controlled substance, 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 that 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. 7 - PRESUMPTION OF INNOCENCE
AND BURDEN OF PROOF**

Defendant Alberto Villalpando is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from his 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 him 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.

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. 8 - 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.” A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that no defendant ever 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. 9 - 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 admit 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 you saw or heard 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 his testimony. The quality and weight of the evidence are for you to decide.

**INSTRUCTION NO. 10 - RECORDED
CONVERSATIONS**

As part of the evidence in this case, you may hear one or more recordings. The conversations on any such recordings were legally recorded, and you may consider the recordings just like any other evidence. The recordings may be accompanied by typed transcripts. You are permitted to view a transcript for the purposes of helping you follow the conversation as you hear the recording, helping you keep track of the speakers, and also translating statements from Spanish into English.

A transcript, if present, may undertake to identify the speakers engaged in the conversation. However, the identity of the speakers as set out in the transcript is not evidence; rather, it is merely the opinion of the person who transcribed the tape. Whether or not the transcript correctly or incorrectly identifies the speakers is entirely for you to decide based upon what you hear about the preparation of the transcript in relation to what you hear on the recording.

Where the recorded conversations are in English, the recording itself is the primary evidence of its own contents. Whether the transcript correctly or incorrectly reflects a conversation in English is entirely for you to decide based on what you hear about the preparation of the transcript in relation to what you hear on the recording. If you decide that a transcript of a conversation in English is in any respect incorrect or unreliable, then you should disregard it to that extent. Differences in meaning between what you hear in a recording of a conversation in

English and read in a transcript, if available, may be caused by such things as the inflection in a speaker's voice. You should, therefore, rely on what you hear rather than what you read when there is a difference.

If you find that any portion of a recording is inaudible or partially inaudible, because of such things as actual gaps in the recording or other noise on the recording, or if you hear something different from what is indicated in the transcript in a portion of the recording that is inaudible or partially inaudible, then you must disregard the transcript to the extent that the transcript attempts to indicate what the persons on the recording said during the inaudible or partially audible portions. You may also consider whether inaudible or partially audible portions of the recording indicate that the recording has been altered or damaged, such that it is unreliable, in whole or in part. Again, where the recorded conversation is in English, the recording itself, not any transcript, is the primary evidence of the contents of the recording.

On the other hand, where the conversations were in a language other than English, such as Spanish, you should not rely in any way on any knowledge you may have of that other language; your consideration of conversations in a language other than English should be based on the evidence introduced in the trial, including a translation in a transcript. However, whether a transcript provides an accurate translation, in whole or in part, is for you to decide. In considering whether a translation accurately describes the meaning of a conversation, you should consider the testimony, if any, regarding how, and by whom, the translation was made. You may also consider any evidence concerning the knowledge, training, and experience

of the translator, as well as the nature of the conversation and the reasonableness of the translation in light of all the evidence in the case.

INSTRUCTION NO. 11 - 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 were admitted into evidence, they were not 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.

* * *

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. 12 - 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. 13 - 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. 14 - 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. 15 - 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. 16 - 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. 17 - 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, 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.*

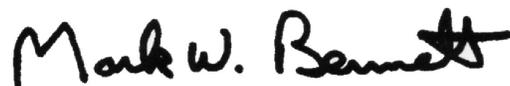
Fourth, your verdict must be based solely on the evidence and on the law in these instructions. Therefore, you must return a separate, unanimous verdict on each charge against the defendant. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

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 for 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 5th day of March, 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
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALBERTO VILLALPANDO, a/k/a

“Beto,” a/k/a “Betio,

Defendant.

No. CR 06-4027-MWB

VERDICT FORM

As to defendant Alberto Villalpando, we, the Jury, unanimously find as follows:

COUNT 1: CONSPIRACY		VERDICT
Step 1: Verdict	On the “conspiracy” offense charged in Count 1 of the Indictment, as explained in Instruction No. 4, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not consider the questions in Step 2. Instead, please go on to consider your verdict on Count 2. However, if you find the defendant “guilty” of the “conspiracy” offense, please answer the questions in Step 2 of the Verdict Form for this Count.)</i>	____ Not Guilty ____ Guilty

<p>Step 2: “Objectives” and quantity of controlled substances</p>	<p><i>If you found the defendant “guilty” of the “drug conspiracy” charge in Count 1, please indicate the “objective” or “objectives” of the conspiracy and the quantities of methamphetamine mixture or actual (pure) methamphetamine, if any, involved for which the defendant can be held responsible. (Quantity of controlled substances is explained in Instruction No. 6. You do not need to indicate a specific quantity of powder cocaine for which the defendant can be held responsible, even if you find that the “conspiracy” offense involved powder cocaine.)</i></p>	
	<p>_____ Distribution of a methamphetamine mixture</p>	<p>_____ 500 grams or more _____ 50 grams or more, but less than 500 grams _____ less than 50 grams</p>
	<p>_____ Distribution of actual (pure) methamphetamine</p>	<p>_____ 50 grams or more _____ 5 grams or more, but less than 50 grams _____ less than 5 grams</p>
	<p>_____ Distribution of powder cocaine</p>	
<p>COUNT 2: DISTRIBUTION</p>		<p>VERDICT</p>
<p>Step 1: Verdict</p>	<p>On the “distribution” offense charged in Count 2 of the Indictment, as explained in Instruction No. 5, please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not consider the questions in Step 2. Instead, please review the certification, sign the Verdict Form, and tell the Court Security Officer that you have reached a verdict. However, if you find the defendant “guilty” of the “distribution” offense, please answer the question in Step 2 of the Verdict Form.)</i></p>	<p>_____ Not Guilty _____ Guilty</p>
<p>Step 2: Quantity of actual (pure) methamphet- amine</p>	<p><i>If you found the defendant “guilty” of the “distribution” charge in Count 2, please indicate the quantity of actual (pure) methamphetamine involved in the offense for which the defendant can be held responsible. (Quantity of controlled substances is explained in Instruction No. 6.)</i></p> <p>_____ 50 grams or more of actual (pure) methamphetamine _____ 5 grams or more, but less than 50 grams of actual (pure) methamphetamine _____ less than 5 grams of actual (pure) methamphetamine</p>	

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