

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VINCENT BERTLING and KARL  
RAYMOND BERTLING,

Defendants.

No. CR 05-4125-MWB

**INSTRUCTIONS  
TO THE JURY**

---

**TABLE OF CONTENTS**

<b>INSTRUCTIONS</b> .....	1
NO. 1 - INTRODUCTION .....	1
NO. 2 - PRELIMINARY MATTERS .....	3
NO. 3 - COUNT 1: NATURE OF THE CONSPIRACY .....	6
NO. 4 - COUNT 1: ELEMENTS OF THE CONSPIRACY .....	8
NO. 5 - COUNT 1: THE OBJECTIVE OF THE CONSPIRACY . . .	14
NO. 6 - COUNTS 2 THROUGH 5: DRUG USER IN POSSESSION OF A FIREARM .....	17
NO. 7 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF .....	20
NO. 8 - REASONABLE DOUBT .....	21
NO. 9 - DEFINITION OF EVIDENCE .....	22
NO. 10 - RECORDED CONVERSATIONS .....	24
NO. 11 - CREDIBILITY AND IMPEACHMENT .....	26
NO. 12 - BENCH CONFERENCES AND RECESSES .....	29
NO. 13 - OBJECTIONS .....	30

NO. 14 - NOTE-TAKING . . . . . 31  
NO. 15 - CONDUCT OF THE JURY DURING TRIAL . . . . . 32  
NO. 16 - DUTY TO DELIBERATE . . . . . 34  
NO. 17 - DUTY DURING DELIBERATIONS . . . . . 37

**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 defendants Vincent Bertling and Karl Raymond Bertling with the following offenses: **Count 1** charges both defendants with “conspiracy to obstruct justice”; **Counts 2 through 4** charge defendant Vincent Bertling with separate “drug user in possession of a firearm” offenses; and **Count 5** charges defendant Karl Raymond Bertling with a “drug user in possession of a firearm” offense. As I also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. Each defendant is presumed to be innocent of a particular offense charged unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt. The defendants have pled not guilty to the crimes charged against them.

Your duty is to decide from the evidence whether the defendants are not guilty or guilty of each of the charges against them. 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, which I will give you in my instructions, to the facts to reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my 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 I give it to you. Do not take anything 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 I may make that I have any opinions on how you should decide the case.

Please remember that only defendants Vincent Bertling and Karl Raymond Bertling, not anyone else, are on trial here. Also, remember that each defendant is on trial *only* for the offenses charged against him in the Indictment, not for anything else.

Each defendant is entitled to be considered separately and to have each charge against him considered separately based solely on the evidence that applies to him. *Therefore, you must return a separate, unanimous verdict on each offense charged against each 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 a defendant in order to convict that defendant of that offense. I will summarize in the following instructions the elements of the offenses with which the defendants are charged.

### *Timing*

The Indictment alleges that the offenses charged were committed “from about” one date “through” another date or “on or about” a certain 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. Methamphetamine and amphetamine, for example, are both “controlled substances.”

### ***“Intent” and “Knowledge”***

The elements of the charged offenses require proof of what the defendant charged with that offense “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. However, “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 a particular defendant and all of the facts and circumstances in evidence to aid you in the determination of that defendant’s “knowledge” or “intent.”

An act was done “knowingly” if the defendant in question 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”***

The “drug user in possession of a firearm” offenses charged in the Indictment allegedly involved “possession” of firearms or ammunition. The following definition of “possession” applies 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.

\* \* \*

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

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

The Indictment charges that, beginning on a date unknown and continuing until at least December 9, 2005, defendants Vincent Bertling and Karl Raymond Bertling unlawfully, willfully, and knowingly conspired with other persons, known and unknown to the Grand Jury, to corruptly endeavor to influence, obstruct, and impede the due administration of justice in the case of *United States v. Vincent Bertling*, No. CR 05-4125-MWB, a case then pending in the United States District Court for the Northern District of Iowa, by murdering or otherwise intimidating witnesses. Each defendant denies committing this “conspiracy” offense.

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

*One*, between about a date unknown and December 9, 2005, two or more persons reached an agreement or came to an understanding to corruptly endeavor to obstruct the due administration of justice in *United States v. Vincent Bertling*, CR 05-4125-MWB, by murdering or otherwise intimidating witnesses;

*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;

*Four*, while the agreement or understanding was in effect, a person or persons who had joined in the

agreement knowingly did one or more “overt acts” for the purpose of carrying out or carrying forward the agreement or understanding.

For you to find a particular 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 as to that defendant. Otherwise, you must find that defendant not guilty of the “conspiracy” offense charged in **Count 1** of 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**

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

*One*, between about a date unknown and December 9, 2005, two or more persons reached an agreement or came to an understanding to corruptly endeavor to obstruct the due administration of justice in *United States v. Vincent Bertling*, CR 05-4125-MWB, by murdering or otherwise intimidating witnesses.

The prosecution must prove that the defendant in question 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 unlawfully agreed to corruptly endeavor to influence, obstruct, and impede the due administration of justice in the case of *United States v. Vincent Bertling*, No. CR 05-4125-MWB, a case then pending in the United States

District Court for the Northern District of Iowa, by murdering or otherwise intimidating witnesses. To assist you in determining whether there was an agreement to commit the “obstruction of justice” offense identified as the objective of the conspiracy, you should consider the elements of that offense. I will explain the elements of “obstruction of justice” in Instruction No. 5.

Keep in mind that the prosecution must prove that there was an *agreement* to commit this “objective” to establish the guilt of the defendant on the conspiracy charge. The prosecution is *not* required to prove that this “objective” *was actually committed*. In other words, the question is whether the defendant *agreed* to obstruct justice by murdering or otherwise intimidating witnesses, not whether that 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 in question did not join in that agreement, or did not know the purpose of the agreement, then you cannot find that 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, a

particular defendant's mere knowledge of the existence of a conspiracy, or mere knowledge that the objective of the conspiracy is being contemplated or attempted, is not enough to prove that particular defendant joined in the conspiracy; rather, the prosecution must establish some degree of knowing involvement and cooperation by the defendant in question.

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 a particular defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of that defendant's 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 in question 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 a particular defendant knew the purpose of the agreement or understanding if you find that defendant was simply

careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding that a defendant knew the purpose of the agreement or understanding.

*Four*, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more “overt acts” for the purpose of carrying out or carrying forward the agreement or understanding.

It is not necessary that the “overt act” done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself. Nor is it necessary that the defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of “partnership,” so that under the law, each member is an agent or partner of every other member, and each member is bound by or responsible for the acts of every other member done to further their scheme.

The prosecution does not have to prove that more than one act was done in furtherance of the conspiracy. It is sufficient if the prosecution proves beyond a reasonable doubt that *one* act was done in furtherance of the conspiracy. However, you must unanimously agree upon which “overt act” or “overt acts” were committed in furtherance of the conspiracy.

The Indictment alleges that the following “overt acts” were committed in furtherance of this conspiracy:

(a) On or about December 7, 2005, at approximately 1:55 p.m., Vincent Bertling placed a recorded telephone call from the Woodbury County Jail to Karl Raymond Bertling;

(b) During this December 7, 2005, phone call Vincent Bertling informed Karl Raymond Bertling of the identities of two of the witnesses against him;

(c) Karl Raymond Bertling responded to this information by twice stating either “its time to get a murder run” or “its time to get a murder on”;

(d) Vincent Bertling responded, “Something.”

(e) Karl Raymond Bertling further announced either “I got it in for her” or “I got an enforcer”;

(f) Vincent Bertling then told Karl Raymond Bertling the witnesses lived on a certain block on a certain street at their “grandma’s house”;

(g) Further Vincent Bertling informed Karl Raymond Bertling the witness’s home was “lime green”;

(h) Similarly, Vincent Bertling informed Karl Raymond Bertling that “Amber knows where it’s at”;

(i) In addition, during this phone call, Vincent Bertling and Karl Raymond Bertling discussed where one of the witnesses was employed;

(j) Vincent Bertling later stated, “Yep, she’s ratting out everybody”;

(k) Vincent Bertling then explained to Karl Raymond Bertling that he was also worried, but not sure, that another individual may also be assisting the United States;

(l) Later Karl Raymond Bertling said, “I’ve got a couple more little thingies on my to do list.”

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 as to the defendant. Otherwise, you must find the defendant not guilty of the “conspiracy” offense charged in **Count 1** of the Indictment.

Finally, if you find beyond a reasonable doubt that the conspiracy charged in the Indictment existed, and that a particular defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by that defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to that defendant, even though those acts were done or those statements were made in that defendant's absence and without his knowledge. This includes acts done or statements made before that defendant joined the conspiracy. On the other hand, an act or statement by someone other than a defendant that was not made during and in furtherance of the conspiracy cannot be attributed to a defendant in this way.

**INSTRUCTION NO. 5 - COUNT 1: THE OBJECTIVE  
OF THE CONSPIRACY**

The Indictment charges that the “objective” of the “conspiracy” charged in **Count 1** was to corruptly endeavor to influence, obstruct, and impede the due administration of justice in the case of *United States v. Vincent Bertling*, No. CR 05-4125-MWB, a case then pending in the United States District Court for the Northern District of Iowa, by murdering or otherwise intimidating witnesses. I have described this “objective” as “obstruction of justice.” To assist you in determining whether there was an agreement to commit the “obstruction of justice” offense identified as the objective of the conspiracy, you should consider the elements of this “obstruction of justice” offense.

To prove that a person committed the offense of “obstruction of justice,” the prosecution would have to prove the following elements beyond a reasonable doubt against that person:

*One*, the person endeavored to murder or otherwise intimidate witnesses in the case of *United States v. Vincent Bertling*, No. CR 05-4125-MWB.

To prove that a person is a “witness,” the prosecution must prove that the person knew or was supposed to know facts material to the case, and was expected to testify about those facts, or to be called to testify about them, either before a grand jury or at trial. A person is still a “witness,” even when judicial proceedings have already occurred as long as there is a possibility that the person would testify or be called upon to testify in the future. The witness does not have to be

scheduled to testify at the time of the offense, nor does the witness actually have to give testimony at a later time. To prove that the person “endeavored” to murder or intimidate one or more witnesses, the prosecution would have to prove beyond a reasonable doubt that the person made some effort or some act, however attempted, to murder or intimidate that witness or those witnesses. It does not matter whether the result intended by the person was not achieved or was impossible to achieve.

*Two*, the case of *United States v. Vincent Bertling*, No. CR 05-4125-MWB, was then pending and the person knew that the case was then pending.

The person charged with the offense must have endeavored to murder or intimidate one or more witnesses in a case “then pending” and must have known that the case was “then pending.” “Knowledge” was defined for you in Instruction No. 2. A case is “then pending” if an indictment has been handed down, but a case is also “then pending,” even before an indictment is handed down, if a grand jury investigation has commenced or if the United States Attorney’s Office has assigned an investigation to a regularly sitting grand jury and has subpoenaed and called a witness to testify or has otherwise acted to secure the presentation of evidence before a grand jury. The grand jury does not actually have to have heard testimony or have taken any role in the decision to issue the subpoena to the witness or the decision to commence the investigation.

*Three*, by endeavoring to murder or intimidate one or more witnesses, the person corruptly endeavored to influence, obstruct, or impede the due administration of justice in the case of *United States v. Vincent Bertling*, No. CR 05-4125-MWB.

To prove that the person acted “corruptly,” the prosecution would have to prove that the person intended to obstruct justice in the case of *United States v. Vincent Bertling* and that the person knew that obstruction of justice in that case would or could result from murdering or intimidating that witness or those witnesses. Again, “knowledge” and “intent” were defined for you in Instruction No. 2. To prove that the person “endeavored” to obstruct justice, the prosecution would have to prove beyond a reasonable doubt that the person made some effort or some act, however attempted, to obstruct justice. It does not matter whether the result intended by the person was not achieved or was impossible to achieve. The murder or intimidation of witnesses that the person “corruptly endeavored” to achieve must have had a relationship in time, causation, or logic to the case of *United States v. Vincent Bertling*. If the person lacked knowledge that his or her actions were likely to affect the judicial proceedings, then that person lacked the required intent to obstruct justice.

Again, the prosecution must prove that there was an *agreement* to commit this “objective” to establish the guilt of the defendant on the conspiracy charge. The prosecution is *not* required to prove that this “objective” *was actually committed*. In other words, the question is whether the defendant *agreed* to obstruct justice by murdering or otherwise intimidating witnesses, not whether that defendant or someone else *actually committed* such an “obstruction of justice” offense.

**INSTRUCTION NO. 6 - COUNTS 2 THROUGH 5:  
DRUG USER IN POSSESSION OF A FIREARM**

**Counts 2** through **5** of the Indictment charge separate offenses that I will call the “drug user in possession of a firearm” charges. More specifically, **Count 2** charges that, between about December 18, 2003, and about February 7, 2004, defendant Vincent Bertling, then being an unlawful user of controlled substances, knowingly possessed, in and affecting commerce, a firearm identified as a Mossberg shotgun, Model 590, serial number K691960. **Count 3** charges that, on or about June 30, 2004, defendant Vincent Bertling, then being an unlawful user of controlled substances, knowingly possessed, in and affecting commerce, a firearm identified as a Savage Arms, Stevens Model 62, .22 rifle, serial number L360139. **Count 4** charges that, on or about July 26, 2004, defendant Vincent Bertling, then being an unlawful user of controlled substances, knowingly possessed, in and affecting commerce, a firearm identified as an Astra, Model A100, 9 mm handgun, serial number 9925D. **Count 5** charges that, on or about December 9, 2005, defendant Karl Raymond Bertling, then being an unlawful user of controlled substances, knowingly possessed, in and affecting commerce, ammunition, that is, eleven rounds of .22 caliber ammunition manufactured by Remington outside of the State of Iowa. You must consider each of these charges separately.

For you to find a defendant guilty of one of these offenses, the prosecution must prove *all* of the following essential elements beyond a reasonable doubt as to that defendant for that offense:

*One*, on or about the date alleged, the defendant in question knowingly possessed the firearm or one or more rounds of the ammunition alleged in the Count in question.

“Knowledge” and “possession” were both defined for you in Instruction No. 2. For you to find that this element has been proved for a particular Count, you must unanimously agree that the defendant possessed the firearm or ammunition charged in that Count. **Count 5** charges that defendant Karl Raymond Bertling possessed eleven rounds of ammunition. It is an offense for an unlawful user of a controlled substance knowingly to possess a single firearm or a single round of ammunition. Therefore, the prosecution does not need to prove that the defendant was in possession of more than one round of ammunition. However, for each Count, you must unanimously agree that the defendant in question possessed the firearm or one or more rounds of the ammunition alleged in that Count for you to find that this element has been proved.

*Two*, during the time that the defendant in question possessed the firearm or ammunition, he was an unlawful user of a controlled substance.

An “unlawful user of a controlled substance” is a person who uses a controlled substance in a manner other than as prescribed by a licensed physician. The prosecution does not need to prove that the defendant in question was actually using or addicted to drugs at the exact moment he possessed the firearm or ammunition alleged in a particular Count in order to prove that the defendant was an “unlawful user” in possession of that firearm or ammunition. The prosecution must only prove that the defendant was an “unlawful user” or addicted to

a controlled substance during the time that he possessed the firearm or ammunition in question. Also, it is not enough if the defendant's use of a controlled substance was infrequent, only an isolated incident, or in the distant past. Instead, the defendant's unlawful use of a controlled substance must be consistent and prolonged, as well as contemporaneous with the possession of the firearm or ammunition alleged in the Count in question. That means that the defendant's unlawful use must have occurred recently enough to indicate that he was actively engaged in such conduct at the time that he possessed the firearm or ammunition in question.

*Three*, at some time during or before the defendant's possession of the firearm or ammunition, the firearm or ammunition was transported across a state line.

The prosecution and the defendants have stipulated, that is, they have agreed, that the firearms and ammunition in question were transported across a state line at some time before the defendants received or possessed those items, if the defendants did indeed possess them. Therefore, you must consider this element to be proved.

For you to find a particular defendant guilty of a particular "drug user in possession of a firearm" offense, as charged in **Counts 2** through **5** of the Indictment, the prosecution must prove *all* of these essential elements beyond a reasonable doubt as to that defendant and that charge. Otherwise, you must find the defendant in question not guilty of that offense.

**INSTRUCTION NO. 7 - PRESUMPTION OF INNOCENCE  
AND BURDEN OF PROOF**

Defendants Vincent Bertling and Karl Raymond Bertling are presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of these defendants or the fact that they are here in court. The presumption of innocence remains with each defendant throughout the trial. That presumption alone is sufficient to find each defendant not guilty. The presumption of innocence may be overcome as to a particular defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of an offense charged against that defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a 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 a defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict concerning that defendant.

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

## **INSTRUCTION NO. 8 - REASONABLE DOUBT**

I have previously instructed you that, for you to find a defendant guilty of a charged offense, the prosecution must prove that charge “beyond a reasonable doubt.” A reasonable doubt may arise from the evidence produced by either the prosecution or a 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. However, 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 I may give you during the trial. Evidence is:

1. Testimony.
2. Exhibits that I 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 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 recording admitted into evidence were legally recorded, and you may consider such a recording just like any other evidence. A recording may be accompanied by a typed transcript. You are permitted to view a transcript for the purposes of helping you follow the conversation as you hear the recording or to help you keep track of the speakers.

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.

Remember that the recording itself is the primary evidence of its own contents. Whether the transcript correctly or incorrectly reflects a conversation 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 the transcript of a conversation 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 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.

## **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.

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.

You may hear evidence that a defendant has previously been convicted of one or more crimes. You may use that evidence only to help you decide whether to believe that defendant's testimony and how much weight to give it. That evidence does not mean that the defendant committed the crime charged here, and you must not use that evidence as proof of the crime charged in this case.

You may hear evidence that certain 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 should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You may hear testimony from certain witnesses that they participated in a crime charged against a defendant. Their testimony will be received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may be influenced by his or her desire to please the government or to strike a good bargain with the government about his or her own situation is for you to determine.

2. You may hear evidence that certain witnesses used or were addicted to addictive drugs during the period of time about which the witness testified. You should consider whether the testimony of these witnesses might be affected by their drug use at the time of the events about which they testify.

\* \* \*

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**

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 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. 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. You must decide this case based on the evidence presented in court.

*Seventh*, do not make up your mind during the trial about what the verdict should be. 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.

I will reserve the remaining instructions until after the evidence has been presented and the prosecution and the defense have made their closing arguments to summarize and interpret the evidence for you. However, I remind you that closing arguments, like opening statements, are not evidence.

## INSTRUCTION NO. 16 - DUTY TO DELIBERATE

Now that you have heard the evidence and arguments of the prosecution and defense, it is time for you to retire to deliberate on your verdict. However, before you do so, I must give you some instructions on deliberations.

A verdict must represent the considered judgment of each juror. Each defendant is entitled to be considered separately and to have each charge against him considered separately based solely on the evidence that applies to him. *Therefore, you must return a separate, unanimous verdict on each offense charged against each defendant.* 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 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 a particular defendant's guilt beyond a reasonable doubt on a particular offense

charged, then that defendant 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 that defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes a particular defendant's guilt beyond a reasonable doubt on a particular offense charged, then your vote should be for a verdict of guilty against that defendant on that offense, and if all of you reach that conclusion, then the verdict of the jury must be guilty for that 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 a defendant, or you cannot find that 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 a defendant is guilty, the sentence to be imposed is my responsibility. You may not consider punishment of defendants Vincent Bertling and Karl Raymond Bertling in any way in deciding whether the prosecution has proved its case against them 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.*

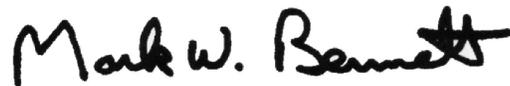
*Fourth*, your verdict must be based solely on the evidence and on the law in these instructions. Therefore, you must return a separate, unanimous verdict on each charge against the defendant. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Fifth*, in your consideration of whether a defendant is not guilty or guilty of the offenses 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 a

defendant on any offense charged unless you would return the same verdict for that charge without regard to that 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 6th day of September, 2006.



---

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

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VINCENT BERTLING and KARL  
RAYMOND BERTLING,

Defendants.

No. CR 05-4125-MWB

**VERDICT FORM**

***I. VINCENT BERTLING***

As to defendant Vincent Bertling, we, the Jury, unanimously find as follows:

<b>COUNT 1: CONSPIRACY</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	<p>On the “conspiracy” charge in <b>Count 1</b>, as explained in Instruction Nos. 3 and 4, please mark your verdict. <i>(If you found the defendant “not guilty,” do not consider the question in Step 2. Instead, go on to consider your verdict on Count 2. However, if you found the defendant “guilty” of Count 1, please answer the question in Step 2 of this section of the Verdict Form.)</i></p>	<p style="text-align: center;">____ Not Guilty</p> <p style="text-align: center;">____ Guilty</p>
<b>Step 2:</b> Co-conspirators	<p><i>If you found the defendant guilty of the “conspiracy” offense, please identify, by name or description, the one or more other persons with whom you unanimously find the defendant agreed to “obstruct justice” in <i>United States v. Vincent Bertling</i>.</i></p> <p>Co-conspirator(s):</p>	

<b>Step 3:</b> <b>“Overt</b> <b>Act(s)”</b>	<i>If you found the defendant guilty of the “conspiracy” offense, please indicate which one or more of the following “overt acts” you unanimously find were committed in furtherance of this conspiracy.</i>
	_____ (a) On or about December 7, 2005, at approximately 1:55 p.m., Vincent Bertling placed a recorded telephone call from the Woodbury County Jail to Karl Raymond Bertling.
	_____ (b) During this December 7, 2005, phone call Vincent Bertling informed Karl Raymond Bertling of the identities of two of the witnesses against him.
	_____ (c) Karl Raymond Bertling responded to this information by twice stating either “its time to get a murder run” or “its time to get a murder on.”
	_____ (d) Vincent Bertling responded, “Something.”
	_____ (e) Karl Raymond Bertling further announced either “I got it in for her” or “I got an enforcer.”
	_____ (f) Vincent Bertling then told Karl Raymond Bertling the witnesses lived on a certain block on a certain street at their “grandma’s house.”
	_____ (g) Further Vincent Bertling informed Karl Raymond Bertling the witness’s home was “lime green.”
	_____ (h) Similarly, Vincent Bertling informed Karl Raymond Bertling that “Amber knows where it’s at.”
	_____ (i) In addition, during this phone call, Vincent Bertling and Karl Raymond Bertling discussed where one of the witnesses was employed.
	_____ (j) Vincent Bertling later stated, “Yep, she’s ratting out everybody.”
	_____ (k) Vincent Bertling then explained to Karl Raymond Bertling that he was also worried, but not sure, that another individual may also be assisting the United States.
	_____ (l) Later Karl Raymond Bertling said, “I’ve got a couple more little thingies on my to do list.”

<b>COUNT 2: DRUG USER IN POSSESSION OF A FIREARM</b>	<b>VERDICT</b>
On the charge of “drug user in possession of a firearm,” involving possession of a Mossberg shotgun, Model 590, serial number K691690, between about December 18, 2003, and about February 7, 2004, as charged in <b>Count 2</b> and explained in Instruction No. 6, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<b>COUNT 3: DRUG USER IN POSSESSION OF A FIREARM</b>	<b>VERDICT</b>
On the charge of “drug user in possession of a firearm,” involving possession of a Savage Arms, Stevens Model 62, .22 rifle, serial number L360139, on or about June 30, 2004, as charged in <b>Count 3</b> and explained in Instruction No. 6, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<b>COUNT 4: DRUG USER IN POSSESSION OF A FIREARM</b>	<b>VERDICT</b>
On the charge of “drug user in possession of a firearm,” involving possession of an Astra, Model A100, 9 mm handgun, serial number 9925D, on or about July 26, 2004, as charged in <b>Count 4</b> and explained in Instruction No. 6, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<b>CERTIFICATION</b>	
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 offenses charged regardless of the race, color, religious beliefs, national origin, or sex of the defendant.	

\_\_\_\_\_ Date

\_\_\_\_\_ Foreperson

\_\_\_\_\_ Juror

\_\_\_\_\_ Juror

\_\_\_\_\_ Juror

---

Juror

**II. KARL RAYMOND BERTLING**

As to defendant Karl Raymond Bertling, we, the Jury, unanimously find as follows:

<b>COUNT 1: CONSPIRACY</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the “conspiracy” charge in <b>Count 1</b> , as explained in Instruction Nos. 3 and 4, please mark your verdict. <i>(If you found the defendant “not guilty,” do not consider the question in Step 2. Instead, go on to consider your verdict on Count 2. However, if you found the defendant “guilty” of Count 1, please answer the question in Step 2 of this section of the Verdict Form.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2: Co-conspirators</b>	<p><i>If you found the defendant guilty of the “conspiracy” offense, please identify, by name or description, the one or more other persons with whom you unanimously find the defendant agreed to “obstruct justice” in United States v. Vincent Bertling.</i></p> <p>Co-conspirator(s):</p>	
<b>Step 2: “Overt Act(s)”</b>	<p><i>If you found the defendant guilty of the “conspiracy” offense, please indicate which one or more of the following “overt acts” you unanimously find were committed in furtherance of this conspiracy.</i></p>	
	<p>_____ (a) On or about December 7, 2005, at approximately 1:55 p.m., Vincent Bertling placed a recorded telephone call from the Woodbury County Jail to Karl Raymond Bertling.</p>	
	<p>_____ (b) During this December 7, 2005, phone call Vincent Bertling informed Karl Raymond Bertling of the identities of two of the witnesses against him.</p>	
	<p>_____ (c) Karl Raymond Bertling responded to this information by twice stating either “its time to get a murder run” or “its time to get a murder on.”</p>	
	<p>_____ (d) Vincent Bertling responded, “Something.”</p>	
	<p>_____ (e) Karl Raymond Bertling further announced either “I got it in for her” or “I got an enforcer.”</p>	

	____ (f) Vincent Bertling then told Karl Raymond Bertling the witnesses lived on a certain block on a certain street at their “grandma’s house.”
	____ (g) Further Vincent Bertling informed Karl Raymond Bertling the witness’s home was “lime green.”
	____ (h) Similarly, Vincent Bertling informed Karl Raymond Bertling that “Amber knows where it’s at.”
	____ (i) In addition, during this phone call, Vincent Bertling and Karl Raymond Bertling discussed where one of the witnesses was employed.
	____ (j) Vincent Bertling later stated, “Yep, she’s ratting out everybody.”
	____ (k) Vincent Bertling then explained to Karl Raymond Bertling that he was also worried, but not sure, that another individual may also be assisting the United States.
	____ (l) Later Karl Raymond Bertling said, “I’ve got a couple more little thingies on my to do list.”
<b>COUNT 5: DRUG USER IN POSSESSION OF A FIREARM</b>	<b>VERDICT</b>
On the charge of “drug user in possession of a firearm,” involving possession of one or more rounds of .22 caliber ammunition manufactured by Remington on or about December 9, 2005, as charged in <b>Count 5</b> and explained in Instruction No. 6, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<b>CERTIFICATION</b>	
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 offenses charged regardless of the race, color, religious beliefs, national origin, or sex of the defendant.	

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
Juror

---

Juror