

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FREDDY BERNAL,

Defendant.

No. CR18-4013-LTS

**JURY INSTRUCTIONS**

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## No. 1 — INTRODUCTION

Congratulations on your selection as a juror! These Instructions will help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged Freddy Bernal with three offenses involving possession of a firearm as an unlawful drug user, possession of a firearm with an obliterated serial number, and cyberstalking. An Indictment is simply an accusation – it is not evidence of anything. The defendant has pled not guilty to the offenses charged against him, and he is presumed absolutely not guilty of the offenses, unless and until the prosecution proves his guilt on those offenses beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant's guilt on each of the offenses charged against him beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, these instructions, and any additional oral or written instructions that I may give you.

Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Freddy Bernal, and not anyone else, is on trial. Also, he is on trial *only* for the offenses charged in the Indictment, and not for anything else.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

## **No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charge, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty of any offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.
- This burden means that you must find the defendant not guilty of a charged offense unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

### **No. 3 — REASONABLE DOUBT**

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may also arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs
- Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

## No. 4 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

### *Elements*

The offenses charged consist of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of an offense charged against the defendant for you to find him guilty of that offense.

### *Timing*

The Indictment alleges an approximate time period or an approximate date for the charged offenses.

- The prosecution does not have to prove that the offenses occurred on an exact date
- The prosecution only has to prove that the offenses occurred at a time that was reasonably close to or within the period or the dates alleged for the offenses in the Indictment

### *Possession*

A person possessed something if both of the following are true:

- the person knew about it, and
- the person had
  - physical control over it,
  - the power, or ability, and the intention to control it, or

- control over a place in which it was concealed

More than one person may have possessed something at the same time.

*Location*

The prosecution must prove that the possession occurred in the Northern District of Iowa.

\* \* \*

I will now give you the “elements” instructions on the charged offenses. The “elements” themselves are set out in **bold**.

**No. 5 — COUNT 1: THE ALLEGED “POSSESSION OF A FIREARM BY A PROHIBITED PERSON” OFFENSE**

**Count 1** of the Indictment charges the defendant with “possession of a firearm by a prohibited person.” The defendant denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

**One, before about December 5, 2017, the defendant was prohibited by federal law from possessing firearms and/or ammunition.** The parties have stipulated – that is to say they have agreed – that the defendant was prohibited by federal law from possessing firearms. This element should be considered proved.

**Two, on or about December 5, 2017, the defendant knowingly possessed the handgun and/or ammunition identified in the Indictment.**

“Possession” was defined for you in Instruction No. 4.

The Indictment identifies the following items allegedly involved in this offense:

- a Kahr Arms .40 caliber handgun;
- three rounds of ammunition.

You must determine whether the defendant knowingly possessed one or more of these items.

- A prohibited person is prohibited from possessing even a single firearm or a single round of ammunition.
- You must unanimously agree on which one or more of the charged items (the handgun or the ammunition), if any, the defendant possessed.

The prosecution does not have to prove:

- that defendant knew that he was prohibited from possessing a firearm; or

- who “owned” the firearm.

***Three, the handgun and/or ammunition that the defendant illegally possessed had been transported across a state line at some time before the defendant allegedly possessed them.***

The parties have stipulated – that is to say they have agreed – that the handgun and ammunition had been transported across a state line at some time before the defendant possessed them. This element should be considered proven.

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of this offense.



**No. 6 — COUNT 2: THE ALLEGED “POSSESSION OF A FIREARM WITH AN OBLITERATED SERIAL NUMBER” OFFENSE**

Count 2 of the Indictment charges the defendant with possessing a firearm that had the serial number removed, obliterated, or altered. The defendant denies that he committed this offense. For you to find the defendant guilty of the “possession of a firearm with an obliterated serial number” offense, the prosecution must prove beyond a reasonable doubt all of the following elements:

***One, on or about December 5, 2017, the defendant knowingly possessed the firearm described in the Indictment.***

This means the defendant possessed the firearm purposely and voluntarily, and not by accident or mistake. It also means that the defendant knew that the object was a firearm. The firearm at issue in this count is identified as a Kahr Arms .40 caliber handgun.

***Two, that the serial number of the firearm had been removed, obliterated, or altered.***

***Three, that the defendant knew that the serial number had been removed, obliterated, or altered.***

The government is not required to prove that the defendant himself removed, obliterated, or altered the serial number.

***Four, that the firearm had been transported across a state line at some time before the defendant possessed it.***

The parties have stipulated – that is to say they have agreed – that the handgun and ammunition had been transported across a state line at some time before the defendant possessed them. This element should be considered proven.

If the prosecution does not prove all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the “possession of a firearm with an obliterated serial number” offense.

## **NO. 7 – COUNT 3: THE ALLEGED “CYBERSTALKING” OFFENSE**

Count 3 of the indictment charges the defendant with “Cyberstalking.” The defendant denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt all of the following elements against him:

***One*, between on or about December 5, 2017, and December 20, 2017, in the Northern District of Iowa, defendant Freddy Bernal used (1) any interactive computer service; (2) any electronic communication service; (3) any electronic communication system of interstate commerce; and/or (4) any other facility of interstate or foreign commerce.**

An “interactive computer service” is any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

An “electronic communication service” is any service which provides to its users the ability to send or receive wire or electronic communications.

Transmitting a communication using the telephone or Internet constitutes use of a “facility of interstate commerce” regardless of whether the communication actually crossed a state line. However, you must find beyond a reasonable doubt that the specific communication in question was actually transmitted by means of the telephone or Internet.

***Two*, defendant used any of the above to engage in a course of conduct with the intent to harass, intimidate, or cause substantial emotional distress to “C.A.”**

“Course of conduct” means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

*Three*, there are two alternative ways to establish element three:

**Alternative One: as a result of that course of conduct, “C.A.” was placed in reasonable fear of death or of serious injury to herself; and/or**

**Alternative Two: by that course of conduct defendant caused, attempted to cause, or would be reasonably expected to have caused substantial emotional distress to “C.A.”**

“Serious bodily injury” means bodily injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss of impairment of the function of a bodily member, organ, or mental faculty.

The government may prove either alternative or both alternatives to support conviction. It need not prove both alternatives for defendant to be convicted. The jury must unanimously agree, however, which – if either – of the alternatives it has found beyond a reasonable doubt.

If the prosecution does not prove all of these elements beyond a reasonable doubt as to the defendant, then you must find the defendant not guilty of the “cyberstalking” offense.

## No. 8 — DEFINITION OF EVIDENCE

Evidence is the following:

- testimony,
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you,
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved.

The following are not evidence:

- testimony that I tell you to disregard,
- exhibits that are not admitted into evidence,
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections,
- anything that you see or hear about this case outside the courtroom.

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact. An example is testimony by a witness about what that witness personally saw or heard or did.
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact. An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window.
- You should consider both kinds of evidence, because the law makes no distinction between their weight.

- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens.
- I will instruct you on the purposes for which the evidence can and cannot be used.

## **No. 9 — TESTIMONY OF WITNESSES**

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 whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You may need to decide whether a contradiction is an innocent misrecollection or lapse of memory or, instead, an intentional falsehood. This may depend on whether the contradiction involves an important fact or only a small detail.

In deciding what testimony of any witness to believe, consider the witness' intelligence, the opportunity the witness had to see or hear the things he or she testifies about, the quality of the witness' memory, any motives the witness may have for testifying a certain way, the witness' demeanor, whether the witness said something different at an earlier time, the witness' drug or alcohol use or addiction, if any, the general reasonableness of the testimony, the extent to which the testimony is consistent with other evidence that you believe and any other factors that you find bear on believability or credibility.

You should not give any more or less weight to a witness' testimony just because the witness is a public official, a law enforcement officer or an expert.

You may give any witness' opinion whatever weight you think it deserves, but you should consider the reasons and perceptions on which the opinion is based, any reason that the witness may be biased and all of the other evidence in the case.

You may hear that a witness was once convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give to the witness' testimony.

You must consider with greater caution and care the testimony, if any, of a witness who is testifying:

- that he or she participated in the charged offense,
- that he or she was an informant who was paid or received some other benefit for providing information to law enforcement or the prosecution,
- after a promise from the prosecution not to use that witness' testimony, to a grand jury or at this trial, against that witness in a criminal case, or
- pursuant to a plea agreement.
  - The plea agreement may be a “cooperation” plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided “substantial assistance.”
  - A judge cannot reduce a sentence for “substantial assistance” unless the prosecution asks the judge to do so, but if the prosecution does ask, the judge decides if and how much to reduce the witness' sentence.

It is for you to decide:

- what weight you think the testimony of such a witness deserves, and
- whether or not such a witness' testimony has been influenced by
  - the desire to please the prosecution,
  - any promises by the prosecution,
  - any payment or other benefit provided by the prosecution, or
  - a plea agreement.



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

Remember, it is your exclusive right to give any witness' testimony whatever weight you think it deserves.

## **No. 10 — 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.
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible.

## **No. 11 — BENCH CONFERENCES**

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess.
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient.
- We will do our best to keep such conferences short and infrequent.

## No. 12 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence.
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory.
- Do not discuss your notes with anyone before you begin your deliberations.
- Leave your notes and these instructions on your chair during recesses and at the end of the day.
- At the end of trial, you may take your notes with you or leave them to be destroyed.
- No one else will ever be allowed to read your notes, unless you let them.
- If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.
- An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

### **No. 13 — CONDUCT OF JURORS DURING TRIAL**

You must decide this case *solely* on the evidence and the law in these Instructions and any additional written or oral instructions that I may give. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your

verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, through social media—or in any other way conduct any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, in any “blog,” or through social media about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.
- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.

- Do not decide the case based on “implicit biases.” Everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes—that is, “implicit biases”—that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence and the instructions that I give you. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- A Verdict Form is attached to these Instructions. A Verdict Form is simply a written notice of your decision. After your deliberations, if you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, please let me know. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instructions at the end of the evidence.

## No. 14 — DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty of a charged offense, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of a charged offense, say so.
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence and the instructions that I give you.
- You must consider all of the evidence bearing on each question before you.



- Take all the time that you feel is necessary.
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

## **No. 15 — DUTY DURING DELIBERATIONS**

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. 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 CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**IT IS SO ORDERED.**

**DATED** this 20th day of March, 2019.



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Leonard T. Strand, Chief Judge

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FREDDY BERNAL,

Defendant.

No. CR18-4013-LTS

**VERDICT FORM**

As to the defendant Freddy Bernal, we, the Jury, find as follows:

<b>COUNT 1: THE ALLEGED “POSSESSION OF A FIREARM BY A PROHIBITED PERSON” OFFENSE</b>		<b>VERDICT</b>
<b>Step 1: Verdict</b>	On the “possession of firearm by a prohibited person” offense, as charged in <b>Count 1</b> of the Indictment and explained in <b>Instruction 5</b> , please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the question in Step 2. Instead, please go on to consider your verdict for the alleged “possession of a firearm with an obliterated serial number” offense).</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2: Firearms</b>	<i>If you found the defendant “guilty” of the “possession of a firearm by a prohibited person” offense in Step 1, please indicate which of the following items you found defendant possessed:</i>  <input type="checkbox"/> a Kahr Arms .40 caliber handgun; and/or  <input type="checkbox"/> three rounds of ammunition.	

<b>COUNT 2: THE ALLEGED “POSSESSION OF A FIREARM WITH AN OBLITERATED SERIAL NUMBER” OFFENSE</b>	<b>VERDICT</b>
On the “possession of a firearm with an obliterated serial number” offense, as charged in <b>Count 2</b> of the Indictment and explained in <b>Instruction 6</b> , please mark your verdict. <i>(Please go on to consider your verdict for the alleged “cyberstalking” offense)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

<b>COUNT 3: THE ALLEGED “CYBERSTALKING” OFFENSE</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the “cyberstalking” offense, as charged in <b>Count 3</b> of the Indictment and explained in <b>Instruction 7</b> , please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the question in Step 2. Instead, please read the Certification, sign the Verdict Form, and notify the Court Security Officer (CSO) that you have reached a verdict).</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<b>Step 2:</b> Alternatives	<p><i>If you found the defendant “guilty” of the “cyberstalking” offense charged in the Indictment in Step 1, please indicate which of the following alternatives you found with regard to element three:</i></p> <p><input type="checkbox"/> Alternative 1: As a result of the course of conduct, “C.A.” was placed in reasonable fear of death or serious injury to herself; and/or</p> <p><input type="checkbox"/> Alternative 2: By his course of conduct defendant caused, attempted to cause, or would be reasonably expected to have caused substantial emotional distress to “C.A.”</p>	

<b>CERTIFICATION</b>
<p>By signing below, each juror certifies the following:</p> <p>(1) that consideration of the defendant’s race, color, religious beliefs, national origin, or sex was not involved in reaching the juror’s individual decision, <i>and</i></p> <p>(2) that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the defendant’s race, color, religious beliefs, national origin, or sex.</p>

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Date

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Foreperson

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Juror

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Juror

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Juror

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