United States Attorney Prosecutions

CRIMINAL LAW DIVISION

The Judge Advocate General's School
United States Army
Charlottesville, Virginia
22903-1781

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This deskbook is prepared to guide Special Assistant United States Attorneys in all aspects of criminal practice in U.S. District Court

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Memorandum of Understanding, Evidence, Witness, Brief, Motions, Warrants, Discovery, Subpoena, Pleas, Indictments

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PE - Program Element	WU - Work Unit Accession No.

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PREFACE

This deskbook is prepared by the Criminal Law Division, The Judge Advocate General's School, U.S. Army, to guide Special Assistant United States Attorneys (SAUSAs) in all aspects of criminal practice in U.S. District Court.

TAB A provides a sample Memorandum of Understanding for the creation of a SAUSA program at the installation level.

TAB B is a brief outline of current practice before U.S. Magistrate Judges in U.S. District Court, including references, jurisdiction, pre-trial and trial procedure, penalties, and sentencing.

TAB C contains sample forms and formats for use before U.S. Magistrate Judges.

TAB D is a brief outline of current felony practice in U.S. District Court, including references, jurisdiction, penalties, pre-trial and grand jury procedure, and sentencing.

TABs E through U contain sample documents for use in U.S. District Court, including search warrants and affidavits, arrest warrants and affidavits, indictments and informations, voir dire, jury instructions, and plea agreements.

Users who have suggestions or comments for improving this text should send them to the Commandant, The Judge Advocate General's School, U.S. Army, ATTN: JAGS-ADC, Charlottesville, Virginia 22903-1781.

TABLE OF CONTENTS

18. Criminal information (sample-E.D. Va.)

19. Implied consent notification (sample-E.D. Va.)

20. Detention of civilians on military reservations (SOP, SJA, Fort Belvoir, VA)

TAB D . . . . . United States District Court Prosecutions

TAB E . . . . . Target letter

TAB F . . . . . Criminal Complaint

TAB G . . . . . Search warrant (AO 93); Application and affidavit for search warrant

Search warrant; Application and affidavit for search warrant; Affidavit (sample-United States v. A & S Council Oil)

TAB H . . . . . Warrant for arrest (A0 442)

Warrant for arrest; criminal complaint; affidavit (sample-United States v. Senior)

TAB I . . . . . Motion to compel blood, hair & fingerprints (sample-United States v. Onar)

TAB J . . . . . Response to pre-trial motions (sample-United States v. Koblitz)

TAB K . . . . . Voir dire (sample-United States v. Massuet)

TAB L . . . . . Indictments-Title 15

Conspiracy to restrain competition by price fixing (anti-trust) (15 U.S.C. § 1)

(sample-United States v. Allen's Moving & Storage Co.)

TAB M . . . . . Indictments-Title 18

1. Assault with dangerous weapon with intent to do bodily harm (18 U.S.C. § 113(c))

   Larceny of personal property (18 U.S.C. SS 661); criminal contempt (18 U.S.C. S 402)

2. Conspiracy to commit murder (18 U.S.C. §§ 1111 & 371)

   Assault with intent to commit murder (18 U.S.C. § 113(a))

   Use of firearm in crime of violence (18 U.S.C. § 924(c)) (sample-United States v. Higgs)

3. Larceny of U.S. property (18 U.S.C. § 641)

   Criminal contempt (18 U.S.C. § 401) (sample-United States v. Monroe)

4. Conspiracy to defraud (larceny and false statements) (18 U.S.C. § 371)

   Aiding and abetting (18 U.S.C. § 2)

   Larceny of U.S. property (18 U.S.C. § 641) (sample-United States v. Williams)

5. Conspiracy to defraud U.S. with respect to claims (18 U.S.C. s 286)

   Making false, fictitious and fraudulent claim (18 U.S.C. § 287) (sample-United States v. Sellers Oil Company)

6. Conspiracy to receive stolen property (18 U.S.C. § 371)

   Knowing receipt of stolen property (18 U.S.C. § 662)

   Larceny of private property (18 U.S.C. § 661) (sample-United States v. Holt)

7. Manslaughter (18 U.S.C. § 1112) (sample-United States v. Heyward)

8. Felon in possession of firearm (18 U.S.C. § 922(g)(1)) (sample-United States v. McCall)

9. Kidnapping (18 U.S.C. § 1201) (sample-United States v. Smitherman)

10. Bank robbery (18 U.S.C. § 2113(a)) (sample-United States v. Allen)

11. Larceny of U.S. property (18 U.S.C. § 641) (sample-United States v. MacInnis)

TAB N . . . . . Indictments-Title 21

1. Distribution of Marihuana (21 U.S.C. § 841(a)(1) & (b)(1)(c)

   Use of firearm in drug offense (18 U.S.C. § 924(c)(1))

   Maintaining place for purpose of manufacturing and distributing drugs (21 U.S.C. § 856(a)(1) (sample-United States v. Dubay)

2. Continuing criminal enterprise involving drugs (21 U.S.C. § 848)

   Conspiracy to violate drug laws (21 U.S.C. § 841); interstate travel in aid of racketeering (18 U.S.C. § 1952(a))

   Tampering with witness, victim or informant (18 U.S.C. § 1512) (sample-United States v. King et al)

3. Importation of controlled substances (21 U.S.C. § 952)

   Conspiracy to distribute controlled substances (21 U.S.C. § 841 & 846) (sample-United States v. Wexler et al)

TAB O . . . . . Indictments-Title 26

1. Possession of destructive device (26 U.S.C. § 5861 (d))

   Making destructive device (26 U.S.C. § 5861(f)) (sample-United States v. Vick)

TAB P . . . . . Informations and waiver of indictment

1. False loan or credit application (18 U.S.C. § 1014) (sample-United States v. Horne)

2. Conspiracy to defraud U.S. by bid-rigging on contract (18 U.S.C. § 371) (sample-United States v. Mace)

TAB Q . . . . . Juvenile delinquency information & record certification

TAB R . . . . . Memorandum of plea agreement

1. Universal format (sample-E.D.N.C.)

2. United States v. Graham (18 U.S.C. § 286)

3. United States v. Holt (18 U.S.C. § 662)

4. United States v. Transpower Constructors Inc. (18 U.S.C. 1001)

5. United States v. Putchaconis (21 U.S.C. § 846)

TAB S . . . . . Juvenile plea agreement

TAB T . . . . . Jury instructions

1. United States v. Davis (18 U.S.C. § 2243)

2. United States v. Sellers (18 U.S.C. § 286 & 287)

3. United States v. Cummings (21 U.S.C. § 841 & 846; 18 U.S.C. § 924(c))

TAB U . . . . . Certificate of service

TAB

A

MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES ATTORNEY FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
AND
STAFF JUDGE ADVOCATE
XVIII AIRBORNE CORPS & FORT BRAGG
FORT BRAGG, NORTH CAROLINA

SUBJECT: Fort Bragg Special Assistant United States Attorney (SAUSA) Program

1. Purpose: To record understandings related to the civil and criminal SAUSA program at Fort Bragg.

2. Reference:

a. Title 28, United States Code, section 543.

b. Army Regulation 27-40, Litigation.

3. Understanding:

a. The Staff Judge Advocate will select Army attorneys who, with the approval of the United States Attorney, will be appointed as SAUSA's under Title 28, United States Code, section 543. These SAUSA's will practice civil and criminal law at the direction of the United States Attorney.

b. SAUSA's will be assigned cases in which the Department of the Army has an interest. Cases may include, but are not limited to, prosecution of felonies and misdemeanors, litigation of medical care and property damage claims, and defense of tort claims in U.S. District and Magistrate's Courts.

c. The United States Attorney agrees not to solicit any Fort Bragg SAUSA for employment in a civilian capacity for two years following completion or termination of that SAUSA's service with the United States Attorney, without prior approval of the Staff Judge Advocate.

d. This MOU remains in effect unless rescinded by either the United States Attorney or the Staff Judge Advocate.

John R. Boseman
Colonel, U.S. Army
Staff Judge Advocate

Margaret Person Currin
U.S. Attorney, E.D.N.C.
Raleigh, North Carolina

TAB

B

TAB B

PROSECUTIONS BEFORE U.S. MAGISTRATE JUDGES

I. References.

A. Federal Criminal Code and Rules, West Publishing Company, published annually.

B. United States Attorneys' Manual, Criminal Division, Volume III(a), U.S. Department of Justice, updated annually.

C. Federal Sentencing Guidelines Manual, West Publishing Company, published annually.

D. J. Cissell, Federal Criminal Trials (2d ed.) (1987).

E. Fletcher, Federal Criminal Prosecutions on Military Installations, The Army Lawyer, Aug. 1987, at 21.

F. Garver, A Legal Guide to Magistrate's Court, The Army Lawyer, Aug. 1987, at 27.

II. Criminal jurisdiction. 18 U.S.C. § 3401.

A. Adults. Triable for all misdemeanors.

B. Juveniles (less than 18 years).

1. Triable only for petty offenses (Class B, C, or infraction).

2. No sentence to imprisonment.

C. Soldiers. FORSCOM and TRADOC installations have discretion to use UCMJ or to prosecute minor traffic offenses (including DWIs) before U.S. Magistrate Judges in U.S. District Court.

D. Consent court. Defendants can demand trial by jury in U.S. District Court.

III. Penalties.

A. Imprisonment IAW classification. 18 U.S.C. § 3559.

1. Class A: over 6 months to 1 year imprisonment.

2. Class B: over 30 days to 6 months.

3. Class C: over 5 days to 30 days.

4. Infraction: 0 to 5 days.

B. Fines IAW 18 U.S.C. § 3571. Individual defendants:

1. Any misdemeanor resulting in death: $250,000 maximum.

2. Class A (not resulting in death): $100,000 maximum.

3. Class B or C (not resulting in death): $5,000 maximum.

4. Infraction: $5,000 maximum.

5. Increased fines for organizations: 18 U.S.C. § 3571(c).

6. Alternative fine based on gain or loss: 18 U.S.C. § 3571(d).

IV. Pre-Trial Procedure.

A. Generally. Rules of Procedure for the Trial of Misdemeanors before United States Magistrates were abolished on 1 Dec 90.

1. Effective 1 Dec 90 all proceedings before U.S. Magistrate Judges are governed by Fed. R. Crim. P.

2. Fed. R. Crim. P. 58 now provides Procedure for Misdemeanors and Other Petty Offenses; Magistrate Judge may follow provisions of these rules as he or she "deems appropriate" for petty offenses not permitting sentence to imprisonment.

B. Adults.

1. Follow IV. A., above.

2. Detention IAW 18 U.S.C. §§ 3141 and 3142.

C. Juveniles.

1. Follow 18 U.S.C. §§ 5031-5036.

2. Detention. If detained prior to disposition, must arraign and try within 30 days or information is dismissed IAW 18 U.S.C. § 5036. Information may not be reinstituted "except in extraordinary circumstances".

V. Trial Procedure.

A. Generally. Fed. R. Crim. P. 23-31.

B Trial by jury.

1. Class A only.

2. No right to trial by jury where sentence of imprisonment is 6 months or less. Blanton v. City of Las Vegas, 489 U.S. 538 (1989).

VI. Sentencing Procedure.

A. Generally. Fed. R. Crim. P. 32.

B. U.S. Sentencing Guidelines. See Federal Sentencing Guidelines Manual, West Publishing Company, published annually.

1. Effective 1 November 1987; significant amendments have occurred in each succeeding year so that current Sentencing Guidelines may not apply to charged offense(s).

2. Apply to Class A misdemeanors only. U.S.S.G. Chapter One, Part A., para 5.; U.S.S.G. § 1B1.9.

3. Apply to crimes assimilated under 18 U.S.C. § 13. U.S.S.G. § 2X5.1. See e.g., United States v. Young, 916 F.2d 147 (4th Cir. 1990).

4. Do not apply to Class B, C, or infractions. U.S.S.G. § 1B1.9.

5. Do not apply to any juvenile proceedings.

TAB

C

TAB C

DOCUMENTS FOR USE BEFORE U.S. MAGISTRATE JUDGES

There are 93 Districts and 93 United States Attorneys. Each has his or her own formats for documents used in court. The forms in this deskbook are examples only; use them with the local U.S. Attorney's approval.

A. Complaint (sample-W.D. Wash.)

B. Discovery checklist (sample-W.D. Wash.)

D. Subpoena for expert witness (sample-W.D. Wash.)

E. Plea agreement (2) (samples-W.D. Wash.)

F. Evidence list (sample-W.D. Wash.)

G. Witness list (sample-W.D. Wash.)

H. Trial brief (sample-W.D. Wash.)

I. Response to motion to suppress (sample-W.D. Wash.)

J. Government's requested jury instructions (sample-W.D. Wash.)

K. Motion to dismiss (sample-W.D. Wash.)

L. Order dismissing complaint (sample-W.D. Wash.)

M. Motion to dismiss and quash bench warrant (sample-W.D. Wash.)

N. Order to dismiss and quash bench warrant (sample-W.D. Wash.)

O. Verdict form (sample-W.D. Wash.)

P. Letter to Chief, General Litigation, DOJ, requesting permission to prosecute juvenile adult

Q. Motion requesting defendant be transferred to adult jurisdiction

R. Practice Note, Prosecuting Juveniles as Adults in United States District Court: Some Practical Guidance, The Army Lawyer, July 1991, at 21.

S. Criminal information (sample-E.D. Va.)

T. Implied consent notification (sample-E.D. Va.)

U. Detention of civilians on military reservations (SOP, SJA, Fort Belvoir, VA)

December 4, 1990
MAGISTRATE HULSCHER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN L. DOE, Defendant.	Case No. COMPLAINT

FIRST COUNT

VIOLATION OF: 18 U.S.C. Sections 7 and 13; R.C.W. 46.61.502

The undersigned complainant, being duly sworn, states: That on or about November 2, 1990, at Fort Lewis, Washington, within the special maritime and territorial jurisdiction of the United States, JOHN L. DOE, did drive a motor vehicle while under the influence of intoxicating liquor/drugs.

SUPPORTING AFFIDAVIT

After reviewing police reports and all witness statements, the undersigned complainant, a duly appointed judge advocate in the United States Army, Fort Lewis, Washington, stated that on the above date at approximately 8:05 p.m., Fort Lewis Military Police Officer (MP) BRIAN D. JOHNSON observed a vehicle, operated by the DEFENDANT, stop at Jackson Avenue, adjacent to the Madigan Gate. MP JOHNSON sent his partner, MP KURT R. MUELLER, to check on the DEFENDANT. MP MUELLER informed MP JOHNSON that the DEFENDANT was

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Fort Lewis, Washington 98433-0695
(206) 967-4601

"wasted" inside his vehicle. MP JOHNSON then approached the vehicle and observed the DEFENDANT asleep in the vehicle, which had a strong odor of alcohol.

The DEFENDANT was asked to submit to a field sobriety test, administered by MP JOHNSON, which the DEFENDANT failed. The DEFENDANT was falling, needed support and swaying in his balance. The DEFENDANT was likewise falling and swaying in his walking and was staggering in his turning. The DEFENDANT was vomitting and his speech was mumbled, mush-mouthed and confused. In the opinion of MP JOHNSON, the DEFENDANT was obviously intoxicated and unfit to drive.

The DEFENDANT was apprehended and transported to the Military Police Station at Fort Lewis, Washington. The DEFENDANT was advised of his legal rights and the implied consent warnings under Washington law and refused to submit to a Breath Alcohol Content Verification Analysis.

The DEFENDANT was further processed, cited and transported to the Madigan Army Medical Center (MAMC) Emergency Room, where he was treated for alcohol poisoning. The DEFENDANT was later released to his wife with a court date set.

Special Assistant US Attorney
Post Office Box 33695
Fort Lewis, Washington 98433-0695
(206) 967-4601

The complainant further states that she believes MPs BRIAN D. JOHNSON, KURT R. MUELLER and WENDI S. COMBS and TONY E. CARPENTER to be material witnesses in relation to this charge.

_____
DEBORAH K. CHRISTOPHER
Complainant

Complaint sworn to before me, and subscribed in my presence, this _____ day of _____, 1990.

_____
U. S. Magistrate

Special Assistant US Attorney
Post Office Box 33695
Fort Lewis, Washington 98433-0695
(206) 967-4601

DISCOVERY CHECKLIST

Delivered/Mailed _____
(Date)

By Whom _____

_____ DD 1805, Violation Notice

_____ DA 3975 MP Report, Typed

_____ DA 3975 MP Report, Handwritten

_____ DA 3881, Rights Warning Procedure/Waiver Certificate

_____ BAC Verifier Datamaster/Implied Consent Warning For Breath

_____ BAC Verifier Datamaster -- Alcohol/Drug Arrest Report

_____ BAC Verifier Printout (Breath Analysis)

_____ DD 1920, Alcoholic Influence Report

_____ Sobriety Tests

_____ BAC Verifier Datamaster Calibration #_____
- _____ Status Report
- _____ Test Certification
- _____ Sealed Certification
- _____ Data Master Installation
- _____ Repairs and/or Adjustments

_____ BAC Verifier Database (Printout)

_____ Solution Certificate Records
External Standard Batch #_____

_____ Driving Record

_____ Traffic Accident/Incident Report

_____ DA 2883, Sworn Statement

_____ Evidence/Property Custody Document

_____

_____

_____

_____

AO 89 (Rev. 5/85) Subpoena

United States District Court

WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA

V.

GAREY N. RICKHER

SUBPOENA

CASE NUMBER: 90-0840M

TYPE OF CASE	SUBPOENA FOR
☐ CIVIL ☒ CRIMINAL	☒ PERSON ☐ DOCUMENT(S) or OBJECT(S)

TO:

A Forensic Toxicologist on Batch #90130
Washington State Toxicology Lab
Harborview Medical Center, ZA-88
325 Ninth Avenue
Seattle, WA 98104-2499

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE	COURTROOM
US Courthouse 11th and A Street Tacoma, Washington	Magistrate Court (fourth floor)
	DATE AND TIME 01/29/91 @ 0900

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s): *

All documents and demonstrative exhibits necessary to testify about the BAC Verifier Datamaster Instrument #707513 used on November 4, 1990, with Batch #90130.

☐ *See additional information on reverse*

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE OR CLERK OF COURT	DATE
(BY) DEPUTY CLERK	

This subpoena is issued upon application of the:

☐ Plaintiff ☐ Defendant ☒ U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:

CPT WILLIAM T. BARTO
SPECIAL ASSISTANT US ATTORNEY
POST OFFICE BOX 33695
FORT LEWIS, WA 98433-0695

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

(206) 967-4601

*If not applicable, enter "none".

AO 89 (Rev. 5/85) Subpoena

RETURN OF SERVICE(1)

RECEIVED BY SERVER	DATE	PLACE
SERVED	DATE	PLACE

SERVED ON (NAME)	FEES AND MILEAGE TENDERED TO WITNESS(2) ☐ YES ☐ NO AMOUNT $ _____
SERVED BY	TITLE

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER (2)

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ _____
Date *Signature of Server*

_____
Address of Server

ADDITIONAL INFORMATION

(1) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the deponent upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

January 24, 1991
MAGISTRATE HULSCHER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN DOE, Defendant.	Case No. 90-0123M PLEA AGREEMENT

COMES NOW the United States of America, by and through its attorney, WILLIAM T. BARTO, Special Assistant Attorney and the DEFENDANT, JOHN DOE, and his counsel, JEREMY STONE, and enter into the following plea agreement pursuant to Rule 11(e) of the Federal Rules of Criminal procedure:

1. The DEFENDANT agrees to plead guilty to Count One of the complaint, charging him with possession of a controlled substance in violation of 21 U.S.C. Section 844, the penalty for which is a minimum fine of $1,000 or imprisonment for not more than one year, or both.

2. The United States agrees not to oppose any defense request that this Court impose a deferred entry of judgment pursuant to Title 18, United States Code, Section 3607, should the defendant qualify for such deferral. The United States and the DEFENDANT recommend that the Court defer sentencing the DEFENDANT

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on Count One for a period of twelve (12) months to allow the DEFENDANT to demonstrate his good behavior. The United States recommends that the Court impose the following conditions:

a. The DEFENDANT shall not violate any federal, state, or local law, excluding minor traffic infractions.

b. The DEFENDANT shall continue to reside in the Western District of Washington. If he intends to move out of the district, he shall notify the Special Assistant United States Attorney so that appropriate transfer of program responsibility can be made.

c. The DEFENDANT shall attend school or work regularly at a lawful occupation or otherwise comply with the conditions set forth herein.

d. The DEFENDANT shall follow the program and conditions as set forth by his probation officer, which may include random urinalysis and weekly contact.

3. The DEFENDANT acknowledges and understands that sentencing rests within the sound discretion of the Court, and that if the Court should find this agreement unacceptable, that he will be allowed to withdraw his plea of guilty.

Special Assistant US Attorney
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(206) 967-4601

4. There are no terms, expressed or implied, to this agreement other than set forth in writing in this document.

DATED this _____ day of _____, 1991.

_____
JOHN DOE
Defendant

_____
JEREMY STONE
Attorney for the Defendant

_____
WILLIAM T. BARTO
Special Assistant U.S. Attorney

Special Assistant US Attorney
Post Office Box 33695
Fort Lewis, Washington 98433-0695
(206) 967-4601

December 14, 1990
MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN DOE, Defendant.	Case No. 90-0733M PLEA AGREEMENT

COMES NOW the United States of America, by and through its attorney, WILLIAM T. BARTO, Special Assistant Attorney and the DEFENDANT, JOHN DOE, and his counsel, JOE QUAINTANCE, and enter into the following plea agreement:

The DEFENDANT agrees to plead guilty to Count One of the Complaint charging him with driving while intoxicated in violation of R.C.W. 46.61.502, the maximum penalty for which is a fine of $1000.00 or imprisonment for not more than one year, or both.

2. The United States Government agrees to a fine of $350.00, 365 days of imprisonment (364 days suspended), and attendance and completion of an Alcohol Information School.

3. The DEFENDANT acknowledges and understands that sentencing rests within the sound discretion of the Court, and that if the Court should find this agreement unacceptable, that he will be allowed to withdraw his plea of guilty and enter a plea of not guilty.

4. The Government further agrees to dismiss Count Two and Count Three of the complaint at the time of sentencing.

Special Assistant US Attorney
Post Office Box 33695
Port Lewis, Washington 98433-0695
(206) 967-4601

5. There are no terms, express or implied, to this agreement other than set forth in writing in this document.

JOHN DOE
Defendant

JOE QUAINTANCE
Attorney for the Defendant

WILLIAM T. BARTO
Special Assistant U.S. Attorney

Special Assistant US Attorney
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January 18, 1991
MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN DOE, Defendant.	Case No. 90-0821M EVIDENCE LIST

The Government intends to Introduce the following evidence:

1. DD Forms 1805, Violation Notices.
2. WSP-FF-223, Breath Alcohol Content Results.
3. DA Form 3975, Military Police Report (typed).
4. DA Form 3975, Military Police Report (handwritten).
5. DA Form 2823, Sworn Statement of Rodney C. HARDEE.
6. DA Form 1920, Alcoholic Influence Report.
7. An Implied Consent Warning for Breath.
8. A Voluntary Blood/Urine/Breath Statement.
9. DA Form 3881, Rights Warning Procedure/Waiver Certificate.

DATED this _____ day of _____, 1991

Respectfully submitted,

_____
WILLIAM T. BARTO
Special Assistant U.S. Attorney

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January 18, 1991
MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN DOE, Defendant.	Case No. 90-0821M WITNESS LIST

The Government intends to call the following witness(es):

1. Darrell E. DOUGLAS, Fort Lewis Traffic Section, 967-3561.
2. Kelvin W. ASHE, Fort Lewis Traffic Section, 967-3561.
3. Rodney C. HARDEE, 170th MP Company, 967-3361.
4. Theodore EARHART, 170th MP Company, 967-3361.

DATED this _____ day of _____, 1991.

Respectfully submitted,

_____
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January 4, 1991
MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN DOE, Defendant.	Case No. 90-0775M TRIAL BRIEF

FACTS

On September 14, 1990, at approximately 11:15 p.m., the Military Police Station was notified of a motor vehicle accident. Investigation revealed that a vehicle, operated by the DEFENDANT with RONALD J. ADERHOLD and DENNIS J. JOHNSON as passengers, was traveling on Flora Road at a high rate of speed and in a reckless manner. The DEFENDANT lost control of his vehicle causing the vehicle to exit the roadway and roll over three times striking two directional signs. JOHNSON and ADERHOLD were transported to Madigan Army Medical Center (MAMC) Emergency Room by a privately owned vehicle, where JOHNSON was treated by Doctor PETERSON for a fractured arm and admitted to the hospital. ADERHOLD was treated for a bruised knee and released.

Upon arrival to the scene of the accident, Military Police Officer (MP) DARRELL E. DOUGLAS was taken to the DEFENDANT, who was lying face down in some bushes, by a witness who had been following the DEFENDANT. MP DOUGLAS detected a strong odor of an alcoholic beverage on the DEFENDANT'S breath.

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An ambulance arrived and transported the DEFENDANT to MAMC Emergency Room where the DEFENDANT was treated by Doctor SNUFFIN for head injuries and admitted to the hospital. The DEFENDANT refused to submit to a blood sample being taken and tested for Blood Alcohol Content.

Further investigation by MP DOUGLAS revealed that neither the DEFENDANT nor JOHNSON were wearing seat belts and the DEFENDANT did not have a litter bag in the vehicle. Statements by witnesses also revealed that the DEFENDANT had been drinking prior to the accident and that the DEFENDANT had been doing approximately 55 mph upon entering the curve where he lost control of his vehicle. JOHNSON and the DEFENDANT were processed and cited.

DISCUSSION

Washington Revised Code 46.61.502 provides, in part:

> A person is guilty of driving while under the influence of intoxicating liquor or any drug if he drives a vehicle within this state while:
>
> (1) He has a 0.10 percent or more by weight of alcohol in his blood as shown by chemical analysis of his breath, 46.61.506 as now or as hereafter amended;
>
> (2) He is under the influence of or is affected by intoxicating liquor or any drug;
>
> (3) He is under the combined influence of or is affected by intoxicating liquor or any drug.

Washington Revised Code 46.61.500 provides, in part:

> Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

Washington Revised Code 46.61.688 provides, in part:

> Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

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Washington Revised Code 70.93.100 provides, in part:

> The owner of any vehicle or watercraft who fails to keep and use a litter bag in his vehicle or watercraft, shall be guilty of a violation of this section and shall be subject to a fine as provided in this chapter.

United States Code Title 18, Section 1361 provides, in part:

> Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, ... is guilty of destruction of government property.

The Government will offer into evidence the testimony of Military Police Officers DARRELL E. DOUGLAS and TERRY G. JANEWAY, Military Police Investigator LARRY R. LAWSON, RONALD J. ADERHOLD, JASON C. LEONTITISIS, KELLY N. HARCHIS, MALNIE A. PROCTOR, NEESA N. ARTZ, and DENNIS A. JOHNSON. The Government will also introduce violation notices, military police reports, a military police accident report, an implied consent warning for blood, a rights warning waiver/procedure certificate, a certified copy of the DEFENDANT'S driving record, and written sworn statements of DARRELL E. DOUGLAS, JASON C. LEONTITSIS, KELLY N. HARCHIS, NEESA N. ARTZ, and MALNIE A. PROCTOR.

CONCLUSION

With the introduction of the above named documents and testimony, the Government will show beyond a reasonably doubt that the Defendant was on September 14, 1990, driving while intoxicated, driving in a reckless manner, driving without seat belts or a litter bag, and did destroy Government property in violation of Washington State Law and United States Law.

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Submitted this _____ day of _____, 1991.

Respectfully submitted,

_____
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January 23, 1991
MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN DOE, Defendant.	Case No. 90-0830M RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS AND DISMISS

In the United States District Court for the Western District of Washington at Tacoma;

COMES NOW, the United States of America, by and through its undersigned attorney, WILLIAM T. BARTO, requests the Court deny the motion of the DEFENDANT.

DISCUSSION

I. THE COURT SHOULD ADMIT ALL EVIDENCE LEADING UP TO AND FOLLOWING FROM THE DEFENDANT'S APPREHENSION BECAUSE THE APPREHENSION ITSELF WAS LAWFUL.

A. THE INITIAL STOP OF THE DEFENDANT WAS REASONABLE IN LIGHT OF THE REGULATORY POWER OF MILITARY COMMANDERS TO CONTROL ACCESS TO CLOSED POSTS.

The commander of a military installation is responsible for the maintenance of law and order within the installation's boundaries. To facilitate this task, the commander may exclude civilians from the installation, either individually or by closing the post. See Greer v. Spock, 424 U.S. 828, 838 (1976); Cafeteria & Restaurant Workers Union Local 473 v. McElroy, 367 U.S. 886, 893 (1961). When a post is closed, access is

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limited to persons with prior authorization to enter the installation. See 32 C.F.R. Section 552.108(a)(1)(1988). Public access to a closed post may only be had through static security posts manned by military police empowered to grant or deny access to persons, materiel, or both. Id. Section 552.108(a)(2).

Fort Lewis is a closed post. Id. Section 552.108(a)(1). The Defendant attempted to gain access to the post on the evening of October 28, 1990. Since his vehicle did not display a decal indicating prior authorization to enter the post, the Defendant was stopped at the 41st Division Drive entrance to Fort Lewis in order to determine whether or not he should be allowed further access to the installation. This type of stop is directly envisioned by the regulatory framework governing closed posts, see id. Section 552.108(a)(2), and is per se reasonable. As such, any evidence derived from such a stop is admissible over the Defendant's objections of unreasonableness.

B. THE INVESTIGATORY DETENTION FOR THE PURPOSE OF CONDUCTING A FIELD SOBRIETY TEST WAS JUSTIFIED BY A REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

Police may stop an individual suspected of criminal activity and question him briefly. Terry v. Ohio, 392 U.S. 1, 22 (1968). The police may initiate such an investigatory detention upon reasonable suspicion of criminal activity. Id. at 21. The Government establishes a reasonable suspicion when it can point to specific and articulable facts, together with rational inferences drawn from those facts, that reasonably suggest possible criminal

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activity. Id. The police may base their suspicion on the personal observations of the officer at the scene. Id. at 30. See also United States v. Sharpe, 470 U.S. 675, 680 (1985).

When the military police stopped the Defendant's vehicle to determine whether he should be granted access to Fort Lewis, they made several observations that created a reasonable suspicion that the Defendant was driving under the influence of alcohol. The military police officer noticed a strong odor of an alcoholic beverage coming from the Defendant, and observed open containers of alcoholic beverages within the Defendant's vehicle. In addition, the Defendant's speech was confused and he failed to understand the directions given to him by the military police officer. These specific and articulable facts reasonably suggested possible criminal activity, and provided a lawful basis for a brief investigatory detention to administer a field sobriety test to the Defendant.

Despite the misstatement to the contrary by defense counsel, see Defendant's Memorandum in Support of Motion to Dismiss and Suppress, at 3 [hereinafter Memorandum], the Defendant failed the field sobriety test. He was swaying and unsure while walking. The Defendant executed both his turns and the finger to nose test hesitantly. The military police rated him as unfit to drive based on the obvious effects of an alcoholic beverage. See Department of Defense, Form 1920, dated October 28, 1990 (enclosure one). It was only at this point that the military police apprehended the Defendant for driving while under the influence of an alcoholic beverage and unlawful possession and consumption of alcohol by a minor. Given these facts, the

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investigatory detention for the purpose of administering a field sobriety test to the Defendant was based upon a reasonable suspicion of criminal activity. Evidence derived from this detention should therefore be admissable at trial over the Defendant's objection. Furthermore, the results of the field sobriety test directly provide, in conjunction with all other observations, probable cause to apprehend the Defendant.

II. THE COURT MAY HEAR THIS CASE BECAUSE THE DEFENDANT COMMITTED TWO OFFENSES WITHIN THE SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES.

Federal Magistrates may try cases involving misdemeanors alleged to have been committed within the special maritime and territorial jurisdiction of the United States. See 18 U.S.C. Section 3401 (1988). All of 41st Division Drive is within the special maritime and territorial jurisdiction of the United States. By his own admission, the Defendant operated a motor vehicle on 41st Division Drive while attempting to enter Fort Lewis on October 28, 1990. See Memorandum, at 1, 4. Therefore, jurisdiction over the offenses alleged in the complaint is properly in this court.

CONCLUSION

The apprehension of the DEFENDANT was legal. All evidence obtained subsequent to that apprenension was lawfully obtained. In addition, the offense described in the complaint occured within the special maritime and territorial jurisdiction of the United States. As such, jurisdiction properly lies with this court. As a result, the DEFENDANT'S motion to suppress and dismiss should be denied.

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Date

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MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	NO. 90-0531M
JOHN DOE, Defendant.	)	

GOVERNMENT'S REQUESTED JURY INSTRUCTION

WILLIAM T. BARTO
Special Assistant US Attorney

DATED: _____

GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case.

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you. You must follow the law as I give it to you, whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return -- that is a matter entirely up to you.

Ninth Circuit Model Jury Instruction - 3.01

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

Count One of the Complaint charges the defendant with driving a motor vehicle while under the influence of intoxicating liquor/drugs. The defendant has plead not guilty to the charge.

The complaint is not evidence. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict.

Ninth Circuit Model Jury Instruction - 3.02 (modified)

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

I have told you that the government must prove the defendant's guilt beyond a reasonable doubt. A reasonable doubt is a doubt based on reason and common sense. This means that you must return a not guilty verdict if, after you have considered all the evidence in this case, you must have a doubt based on reason and common sense that the government has proved the defendant's guilt. You may not convict on the basis of a mere suspicion. On the other hand, the government is not required to prove guilt beyond all possible doubt. You should return a guilty verdict if, but only if, you find the evidence so convincing that an ordinary person would be willing to make the most important decisions in his or her own life on the basis of such evidence.

Ninth Circuit Model Jury Instruction - 3.04

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

The evidence from which you are to decide what the facts are consists of (1) the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; (2) the exhibits which have been received into evidence; and (3) any facts to which all the lawyers have agreed or stipulated.

Ninth Circuit Model Jury Instruction - 3.05

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.

4. Anything you may have seen or heard when the court was not in session is not evidence. Your are to decide the case solely on the evidence received at the trial.

Ninth Circuit Model Jury Instruction - 3.06

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

There are two kinds of evidence; direct and circumstantial. Direct evidence is direct proof of a fact, such a testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

It is for you to decide whether a fact has been proven by circumstantial evidence. In making that decision, you must consider all the evidence in the light of reason, common sense and experience.

Ninth Circuit Model Jury Instruction - 3.07

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

In deciding what the facts are, you must consider all the evidence. In doing this, you must decide which testimony to believe and which testimony not to believe. You may disbelieve all or any part of any witness' testimony. In making that decision, you may take into account a number of factors including the following:

1. Was the witness able to see, or hear, or know the things about which that witness testified?

2. How well was the witness able to recall and describe those things?

3. What was the witness' manner while testifying?

4. Did the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved in the case?

5. How reasonable was the witness' testimony considered in light of all the evidence in the case?

6. Was the witness' testimony contradicted by what that witness has said or done at another time, or by the testimony of other witnesses, or by other evidence.

In deciding whether or not to believe a witness, keep in mind that people sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or with only a small detail.

Ninth Circuit Model Jury Instruction - 3.08

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These are some of the factors you may consider in deciding whether to believe testimony.

The weight of the evidence presented by each side does not necessarily depend on the number of witnesses testifying on one side or the other. You must consider all the evidence in the case, and you may decide that the testimony of a smaller number of witnesses on one side has greater weight than that of a larger number on the other.

All of these matters for you to consider in finding the facts.

Ninth Circuit Model Jury Instruction - 3.08

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

Remember that only this defendant is on trial here, not anyone else, and only for the crime charges, not for anything else. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to these charges against this defendant.

Ninth Circuit Model Jury Instruction - 3.09

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

Count One of the Complaint charges the defendant with driving while under the influence of intoxicating liquor or drugs. The count states that:

FIRST COUNT

On or about May 10, 1990, at Fort Lewis, Washington within the Western District of Washington, and within the special maritime and territorial jurisdiction of the United States, JOHN DOE, did drive a motor vehicle while intoxicated by Alcohol/Drugs.

All in violation of Title 18, United States Code, Section 7 and 13, and Revised Code of Washington 46.61.502.

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

The Revised Code Of Washington 46.61.502, as charged in Count One, provides, in pertinent part, as follows:

> A person is guilty of driving under the influence of intoxicating liquor or any drug if he drives a vehicle within this state while:
>
> (1) He has 0.10 grams or more of alcohol per two hundred liters of breath, as shown by analysis of his breath, blood, or other bodily substance made under Revised Code Of Washington 46.61.506 as now or hereafter amended; or
>
> (2) He is under the influence of or affected by intoxicating liquor or any drug; or
>
> (3) He is under the combined influence of or affected by intoxicating liquor and any drug.

R.C.W 46.61.502

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

To convict the defendant of driving while under the influence as charged in Count One of the Complaint, each of the following elements of the crime must be proven beyond reasonable doubt:

1. That on or about 2:45 a.m., May 10, 1990, the defendant drove a motor vehicle,
2. That while driving, the defendant
   (a) had .10 grams or more of alcohol per 210 liters of breath, blood or other bodily substances (as shown by chemical analysis), or
   (b) was under the influence or affected by alcohol and/or drugs,
3. That the acts occurred on Fort Lewis, Washington.

If you find from the evidence that each of these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

RCW 46.61.502

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

A person is under the influence of or affected by the use of intoxicating liquor if the person's ability to drive a motor vehicle is lessened in any appreciable degree.

State v. Hurd, 3 Wn.2d 308, 105 P.2d 59 (1940)

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. ____

A refusal to submit to a breath test is information that you may consider to infer guilt or innocence on the charge of driving while under the influence of intoxicants.

South Dakota v. Neville, 459 U.S. 553, 103 S. Ct. 916, 74 L.Ed 2d 748 (1983)
State v. Long, 113 Wash 2d 778, 226 P2d 1027 (Wash 1989)

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

The phrase "while under the influence of, or affected by the use of, intoxicating liquor," means an abnormal mental or physical condition due to the influence of alcohol, visible impairment of the judgment, or a derangement or impairment of mental or physical functions.

State v. Hurd, 2 Wn.2d 308, 105 P.2d 59 (1940)
R.C.W. 46.61.502

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

Ninth Circuit Model Jury Instruction - 4.01

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

You have heard evidence that the defendant committed acts similar to the crimes charged here. You may consider such evidence, not to prove that the defendant did the acts charged here, but only to prove defendant's state of mind, that is, that the defendant acted with the necessary intent and not through accident or mistake.

Therefore, if you find:

(1) that the government has proved beyond a reasonable doubt that the defendant committed the acts as charged in the complaint, and

(2) that the defendant committed similar acts at other times,

then you may consider these similar acts as evidence that the defendant committed the acts charges here deliberately and not through accident or mistake.

Ninth Circuit Model Jury Instruction - 4.04

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Ninth Circuit Model Jury Instruction - 7.01

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

Ninth Circuit Model Jury Instruction - 7.02 (modified)

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt. In addition, you are not to consider the effect of any administrative fines or civil penalties which may attach to the defendant's conduct in deciding the facts of this case.

Ninth Circuit Model Jury Instruction - 7.03 (modified)

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GOVERNMENT'S REQUESTED JURY INSTRUCTION NO. _____

After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the marshal (or bailiff) outside your door that you are ready to return to the courtroom.

Ninth Circuit Model Jury Instruction - 7.04

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January 11, 1991
MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JANE DOE, Defendant.	Case No. 90-0744M MOTION TO DISMISS

In the United States District Court for the Western District of Washington at Tacoma;

COMES NOW, the United States of America, by and through its undersigned attorney pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, and moves this honorable court for a dismissal of the charges in the aforesaid case without prejudice.

Further investigation has revealed that there is insufficient evidence available to support the charges previously alleged to have been committed by the above-named defendant, JANE DOE.

The UNDERSIGNED ATTORNEY verily believes that the interests of the United States will be best served by a dismissal of the charges in this citation.

_____
Date

_____
WILLIAM T. BARTO
Special Assistant U.S. Attorney

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January 11, 1991
MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JANE DOE, Defendant.	Case No. 90-0744M ORDER DISMISSING COMPLAINT

This matter having come before this Court by motion of the Attorney for the Government to dismiss the charges in the aforesaid citation, and it appearing that the said Attorney has not abused her discretion to make such a motion, and it further appearing that a trial of this action has not yet commenced;

NOW THEREFORE, it is hereby ordered that the complaint against the aforesaid defendant is hereby dismissed without prejudice. Rules of Criminal Procedure, and moves this honorable court for a dismissal of the charges in the aforesaid case without prejudice.

Dated this _____ day of _____, 1991.

_____
Franklin D. Burgess
U.S. Magistrate

Presented by:

_____
William T. Barto
Special Assistant U.S. Attorney

Special Assistant US Attorney
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MAGISTRATE HULSCHER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JANE DOE, Defendant.	Case No. 89-0818M MOTION TO DISMISS AND QUASH BENCH WARRANT

In the United States District Court for the Western District of Washington at Tacoma.

COMES NOW, the United States of America, by and through its undersigned attorney pursuant to Rule 48(a) of the FRCP, and moves this Honorable Court for a dismissal of all bench warrants thereunder in the aforesaid case.

THE UNDERSIGNED ATTORNEY verily believes that the interests of the United States will be served by a dismissal of the charges and a quashing of all bench warrants thereunder in these cases.

Dated this _____ day of _____, 1991.

_____
WILLIAM T. BARTO
Special Assistant U.S. Attorney

Special Assistant US Attorney
Post Office Box 33695
Fort Lewis, Washington 98433-0695
(206) 967-4701

MAGISTRATE HULSCHER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. JANE DOE, Defendant.	Case No. 89-0818M ORDER TO DISMISS AND QUASH BENCH WARRANT

This matter having come before this court by motion of the Attorney for the Government to dismiss the charges and to quash all bench warrants thereunder, in the aforesaid case, and it appearing that the said Attorney has not abused his discretion to make such a motion, and it further appearing that a trial of this action has not commenced;

NOW THEREFORE, it is hereby ordered that the complaint against the aforesaid defendant is hereby dismissed and all warrants thereunder are hereby quashed.

DATED this _____ day of _____, 1991.

_____
GERALD L. HULSCHER
United States Magistrate

Presented by:

_____
WILLIAM T. BARTO
Special Assistant U.S. Attorney

Special Assistant US Attorney
Post Office Box 33695
Fort Lewis, Washington 98433-0695
(206) 967-4601

MAGISTRATE BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN DOE, Defendant.	NO. 90-0531[illegible] VERDICT FORM

We, the jury in the above-entitled cause, find the defendant, John Doe, _____, (not guilty or guilty) of the crime of driving while intoxicated, as charged in the complaint.

DATED: _____

_____
FOREPERSON

VERDICT FORM
(1993F)

Special Assistant US Attorney
Post Office Box 33695
Fort Lewis, Washington 98433-0695
(206) 967-4601

U.S. Department of Justice

United States Attorney
Eastern District of North Carolina

P.O. Box 26897
Room 874 Federal Building
310 New Bern Avenue
Raleigh, North Carolina 27611

919/856-4530
FTS/672-4530

July 16, 1990

Mr. Larry Lippe, Esq.
Chief, General Litigation
P.O. Box 887
Ben Franklin Station
Washington, D.C. 20044

RE: Stanley Lilly Romulus

Dear Mr. Lippe:

The EDNC requests permission to move for the treatment of one Stanley Lilly Romulus as an adult.

Mr. Romulus' birth date is 10/20/72. On 4/2/90 he and Anthony Coleman (D.O.B. 7/2/70) were found in joint possession of 63 packets of crack cocaine, a loaded .22 cal. pistol, additional ammunition for the .22, and numerous rounds of 5.56mm ammunition. He and Mr. Coleman are known to local law enforcement as crack dealers in a particular suburb of Fayetteville.

The circumstances of their arrest are as follows: Mr. Romulus was the passenger in a 1979 Datsun driven by Mr. Coleman on I 95. When a State police vehicle pulled up behind them, they slowed to 50 mph, despite the 65 mph speed limit, and began weaving within their lane. Mr. Romulus was seen bobbing down as though trying to hide something. Once stopped the officers observed in plain view a billy club and an up-turned baseball cap containing numerous 5.56mm rounds of ammunition. The driver could not produce a registration and when patted down, was found to have a box with eight (8) .22 caliber bullets in his right front pocket. Under the passenger's seat the loaded .22 was found and the 63 packets of crack were found protruding from the underside of the dash. Mr. Coleman had given verbal permission to conduct the search.

Mr. Coleman was released by the State authorities and is at large. Mr. Romulus lied about his age and identity stating his name was Frank Phillips and his birthdate 10/20/70. He was held in State custody until June 29, when he was charged federally.

U.S.

He continued to lie concerning his age and identity during his initial appearance. It was not until he had further contact with the ~~Federal~~ Probation Department that he revealed his true name and age.

Upon learning that he was in fact a minor, he was promptly transferred to a juvenile detention facility, where he quickly made himself persona-non-grata. The staff at this facility reports that he conspired with other youths to overpower the staff and escape. When they tried to counsel him concerning this, he became abusive. When they tried to isolate him from the other youths, he attempted to punch and kick the staff until forcibly subdued and placed in wrist and ankle restraints. He has specifically indicated that he does not want to be housed in a juvenile facility, but prefers to be in an adult facility.

Prior to running away approximately a year ago, he had been living with his Haitian grandmother in New York City. The whereabouts of his mother is unknown. His father resides on Long Island and has new family responsibilities. None of his family has been willing to extend themselves to secure his release.

Mr. Romulus indicates that at age 15 he was arrested on a gun charge in New York City. It has not been possible thus far to secure further details concerning his juvenile record and/or response to rehabilitative efforts.

The State authorities dismissed their charges at the time of the defendant's transfer to Federal jurisdiction and are now refusing to prosecute. Mr. Romulus' proximity to the age of majority, the serious nature of the charges against him, the intelligence from local authorities, as well as his miserable attitude and behavior since his arrest, would seem to militate strongly in favor of treating him as an adult. ~~Mrs. Currin~~ has been personally briefed on this matter and joins in this request.

Sincerely,

MARGARET PERSON CURRIN
United States Attorney

The U.S. Attorney

JOHN S. BOWLER
Assistant United States Attorney

JSB:rmb

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

NO. 90-408-M-3

JUL 25 '90

UNITED STATES OF AMERICA	:	
	:	MOTION REQUESTING
V.	:	DEFENDANT BE TRANSFERED
	:	TO ADULT JURISDICTION
STANLEY LILLY ROMULUS, a/k/a Frank Phillips	:	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves the Court to transfer the juvenile Stanley Lilly Romulus to adult jurisdiction on the bases contained herein. This motion is made pursuant to the provisions of U.S.C., Title 18, § 5032.

1. The defendant's D.O.B. is 10/20/72, making him 18 years of age in less than three (3) months.

2. The defendant, on 4/2/90 was found in joint possession with one other individual of 63 separate packets of crack cocaine (totaling approximately 6 grams), a loaded .22 caliber pistol, additional ammunition for the .22, and numerous rounds of 5.56mm ammunition.

3. These facts would support a prosecution of the defendant, as well as the individual arrested with him, for violation of Title 21, § 841(a)(1) and Title 18, § 924(c)(1). The § 841(a)(1) charge is punishable by imprisonment up to 40 years and carries a mandatory minimum of 5 years pursuant to § 841(B)(iii). The § 924(c)(1) charge carries a mandatory five

year penalty which is mandatorily consecutive to the underlying drug trafficking crime.

4. Lt. Art Binder of the Special Operations Unit, Cumberland County Sheriff's Department, reports that the defendant and his cohort are known manufacturers and dealers of crack cocaine in the Lock Lomond subdivision of Fayetteville.

5. On 4/2/90 the defendant was the sole passenger in a 1979 Datsun being driven by another male who identified himself as David Anthony Coleman, D.O.B. 7/2/70. When approached on I-95 by a State Police vehicle, the Datsun dropped to 50 mph, despite the 65 mph speed limit, and began weaving in its lane. The passenger, Mr. Romulus, was seen ducking down as though to hide something. When the vehicle was stopped the officers saw a billy club and an up-turned baseball cap containing numerous rounds of 5.56mm ammunition in plain view. The driver gave permission to search but could not produce a registration and commented that he didn't know who his passenger was. A pat-down of the driver turned up a box with eight .22 rounds in his right front pants pocket.

6. A search of the vehicle revealed a paper bag partially concealed in the lower portion of the dashboard, which contained 63 packets of crack cocaine totaling approximately 6 grams, and a loaded .22 caliber pistol under the passenger's seat.

7. After his arrest Mr. Romulus lied both about his name and his age, stating he was Frank Phillips with a D.O.B. of 10/20/70. He continued this lie even when confronted in open

Court by the Federal Magistrate. He did not reveal his correct name and age until questioned further by a Federal Probation Officer.

8. When his actual birthdate was learned he was transferred to the Cumberland County Juvenile Detention Facility where he quickly made himself persona-non-grata. He was overheard conspiring to escape this facility and when an effort was made to counsel him concerning this, he became verbally abusive. When the staff then tried to isolate him from his cohorts, he attempted to hit and kick until physically subdued and placed in wrist and ankle restraints. He specifically protested his placement in the juvenile facility; demanding to be returned to the adult prison. When a hearing was convened before Magistrate Dixon for the specific purpose of reviewing the Government's motion to return him to the adult prison, the defendant, through his attorney, waived the hearing stating he joined in the request to return him.

9. The State authorities, specifically the Cumberland County DA's Office, who initially had the case against both Mr. Romulus and Mr. Coleman, dismissed their charges when the Federal complaint was filed. This occurred before the defendant's actual age and identity were discovered. They have refused to accept the case back, leaving the Eastern District as the sole jurisdiction in which a prosecution can be effected.

10. Mr. Romulus has indicated that at age 15 he was arrested in New York City on a gun charge. Further efforts will

be made to extract information from the New York City family court system as to what, if any, record he has there and what, if any, rehabilitative efforts were attempted there.

11. The U.S. Probation Department reports the following circumstances concerning the defendant's family background. His parents divorced when he was eight (8) years old and he went to live with his mother in Haiti for approximately four (4) years. His paternal grandmother, also of Haitian background, then reared him from age eleven (11) until he ran away at age sixteen (16). The defendant's father resides on Long Island and has new family responsibilities. He reports that the defendant was a good student until he began having discipline problems as a result of peer influence. The father also reports that there had been no contact with the defendant for over a year. None of the family members were willing and/or able to extend themselves to secure his release.

12. The U.S. Attorney for the Eastern District of North Carolina has reviewed the circumstances of this matter and supports the request to transfer the defendant to adult jurisdiction.

13. Pursuant to Department of Justice Policy, permission for the initiation of this motion has been sought and granted by supervisory authorities therein.

Respectfully submitted this 25th day of July, 1990.

MARGARET PERSON CURRIN
United States Attorney

BY: John S. Bowler
JOHN S. BOWLER
Assistant United States Attorney
Criminal Division

TJAGSA Practice Notes

Instructors, The Judge Advocate General's School

Criminal Law Notes

Prosecuting Juveniles as Adults in United States District Court: Some Practical Guidance

What options does a Special Assistant United States Attorney (SAUSA) have in prosecuting crimes committed by juveniles?[1] Minor misconduct, such as petty theft and vandalism, likely can be prosecuted by information in United States Magistrate's Court, although this court cannot impose a sentence to imprisonment on a juvenile.[2] More serious offenses committed by juveniles on military reservations may be prosecuted in United States district court but, even in this court, only limited imprisonment is possible.[3] When the juvenile offender is at least fifteen years old, however, and is alleged to have committed premeditated murder or to have acted as the leader of a drug-dealing gang on the local installation, a SAUSA should consider prosecuting him or her as an adult.

Normally, a federal prosecution against a juvenile begins with a criminal information.[4] The information should cite the juvenile delinquency provisions and the code section for the specific statute violated. The juvenile case should be captioned without referring to the true name of the defendant.[5] The information also must have attached a certification in writing[6] that no juvenile court or any state has jurisdiction over the juvenile or, if such jurisdiction exists, the respective state has refused to exercise it[7]. If the offense committed by the juvenile is a violent felony or a felony drug offense[8], then the certification also should state these particulars. Courtroom proceedings for juveniles are closed to the public.[9] If the juvenile is found guilty by the court,[10] the juvenile is adjudicated a "juvenile delinquent."[11] Sentencing is at a "dispositional hearing"[12] in which the *Sentencing Guidelines* do *not* apply.[13]

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[1] 18 U.S.C. § 5031 (1988) defines a juvenile as a person "who has not attained his eighteenth birthday." Criminal proceedings, however, may be commenced only against a juvenile who commits the offense *prior* to his 18th birthday *and* is charged with it before his 21st birthday.

[2] *Id.* § 3401(g) ("No term of imprisonment shall be imposed in any such case").

[3] This limited form of imprisonment is called "official detention" under 18 U.S.C. § 5037. Generally, if a juvenile offender is *less than* 18 years old, then any "official detention" may not exceed the person's 21st birthday. If, on the other hand, the juvenile is *between* 18 and 21 years of age, then any "official detention" cannot exceed five years. Several exceptions to this general rule exist, and 18 U.S.C. §§ 5037(c)(1) and 5037(c)(2) must be read carefully to calculate the correct sentence.

[4] Proceedings against a juvenile might begin with a "violation notice or complaint," particularly in United States magistrate's court. *See* 18 U.S.C. § 3401(g) (1988); Fed. R. Crim. P. 3. For juvenile proceedings generally, see United States Attorney's Manual, vol. III(a), § 9-8.000.

[5] Examples of appropriate captions are: "United States v. A Juvenile, Female"; or, in an information involving multiple defendants, "United States v. A Juvenile, Male; A Juvenile Male; A Juvenile, Female".

[6] The certificate required by 18 U.S.C. § 5032 usually is signed by the SAUSA for the United States attorney on the basis of authority delegated to the latter by the Attorney General under Order No. 579-74, 28 C.F.R. § 0.57 (1990). Note that *no* certification is required if the offense occurred within the special territorial jurisdiction of the United States and has a maximum term of imprisonment of less than six months.

[7] If a certification does not claim a lack of state court jurisdiction or refusal to exercise it as the reason for prosecuting a juvenile in United States district court, then section 5032 jurisdiction over a juvenile may be based on a felony offense if "a substantial Federal interest" that warrants the exercise of federal jurisdiction exists.

[8] 21 U.S.C. §§ 841, 952(a), 953, 955, 959, 960(b)(1), 960(b)(2), 960(b)(3) (1988).

[9] Note further that 18 U.S.C. §§ 5038(a) to 5038(c) prohibit unauthorized disclosure of juvenile records; 18 U.S.C. § 5038(e) forbids the publication of the name or picture of any juvenile involved in juvenile delinquency proceedings.

[10] A juvenile receives a bench trial only; no right to trial by jury exists. *See* 18 U.S.C. § 5037 (1988).

[11] *Id.* § 5032.

[12] *Id.*

[13] *See* United States Sentencing Commission, *Questions Most Frequently Asked About the Sentencing Guidelines*, vol. III, at 1.

Even if a juvenile prosecution is commenced in this normal manner, a SAUSA still can decide to proceed against the offender as an adult. Assuming that the local United States attorney agrees that prosecution as an adult is appropriate, the first step is to request permission from the United States Department of Justice (DOJ) to treat the juvenile as an adult.[14] A letter to the Chief, General Litigation,[15] at DOJ must detail the facts and circumstances supporting the request.

As an example, a recent request to DOJ to prosecute a seventeen-year-old juvenile as an adult was approved based on the following facts: During an interstate highway traffic stop, the seventeen-year-old male was found in possession of sixty-three packets of crack cocaine, a loaded .22 caliber pistol, and numerous rounds of ammunition. After his apprehension by the police, the juvenile male lied about his identity and his age; at his initial appearance before a United States magistrate, he persisted in these lies. The federal probation office later learned his true identity and date of birth. After discovering that he was not an adult, the juvenile was transferred by prison authorities to a juvenile detention facility, where he conspired with the other youths to overpower the staff and escape. When counselled by the staff, he attacked the staff and had to be handcuffed. A records check showed that this youth had been arrested at age fifteen on a gun charge in New York City. The United States attorney's letter to DOJ related all these facts and concluded that the juvenile's "proximity to the age of majority, the serious nature of the charges against him, the intelligence [about him] from local authorities, as well as his miserable attitude and behavior since his arrest, would seem to militate strongly in favor of treating him as an adult." DOJ approved the request to treat the juvenile as an adult.

The second step is to move the United States district court to transfer the juvenile to adult jurisdiction. A motion, captioned "Motion Requesting Defendant Be Transferred To Adult Jurisdiction," is made pursuant to 18 U.S.C. section 5032. The motion should detail all the facts that would support a prosecution of the juvenile as an adult. Section 5032 requires that

> [e]vidence of the following factors *shall* be considered, and *findings with regard to each factor shall be made in the record*, in assessing whether a transfer would be in the interest of justice:
>
> 1. the age and social background of the juvenile;
>
> 2. the nature of the alleged offense;
>
> 3. the extent and nature of the juvenile's prior delinquency record;
>
> 4. the juvenile's present intellectual development and psychological maturity;
>
> 5. the nature of past treatment efforts and the juvenile's response to such efforts;
>
> 6. the availability of programs designed to treat the juvenile's behavioral problems.[16]

Stating all facts that fit into any of the six listed categories in the government's motion is particularly important because the United States district court's required findings of fact--which likely will appear in a written "order" after the hearing--should be able to rely upon these factors in making the record.

The juvenile, as well as his or her parents, guardian or custodian, and counsel must receive notice of the request to transfer to adult jurisdiction.[17] In the hearing before the district court on the motion to transfer, any approved transfer of the juvenile to adult jurisdiction must be supported "with findings." The decision to allow a transfer is within the district court's discretion,[18] and the court need not weigh equally all the factors listed in 18 U.S.C. section 5032.[19] The *Federal Rules of Evidence* do not apply at the transfer hearing, and hearsay and other forms of evidence that are generally inadmissible at trial are admissible at the hearing.[20]

After the approved transfer of jurisdiction, the SAUSA must seek an indictment of the defendant as required for all adult offenders because prosecution on the basis of the juvenile information is no longer adequate.[21] After the return of a true bill, the case against the "juvenile" proceeds as would any other prosecution against an adult offender--including a public trial by jury and sentencing under the *Sentencing Guidelines*. Major Borch.

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[14] *See* United States Attorney's Manual, vol. III(a), § 9-2.143.

[15] Mr. Larry Lippe, Chief, General Litigation, P.O. Box 887, Ben Franklin Station, Washington, D.C. 20044.

[16] 18 U.S.C. § 5032 (1988) (emphasis added).

[17] *Id.*

[18] *See* United States v. Doe, 871 F.2d 1248 (5th Cir. 1989).

[19] *Id.* at 1252.

[20] United States v. H.S., 717 F. Supp. 911 (D.D.C. 1989).

[21] Unless the defendant consents to trial by information, a waiver of indictment must have been made. *See* Fed. R. Crim. P. 7(b).

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	:	CASE NO. AXXXXXXX/AXXXXXXX
v	:	
LAST, FIRST MIDDLE INITIAL ADDRESS CITY, STATES ZIP CODE	:	MAGISTRATES' DOCKET NO. _____ COURT DATE: AUG 5, 1991

CRIMINAL INFORMATION

COUNT I

THE UNITED STATES ATTORNEY CHARGES THAT:

On or about June 13, 1991, at Fort Belvoir, Virginia, within the special maritime and territorial jurisdiction of the United States in the Eastern District of Virginia, the defendant, XXXXXXXXXXXXXXXXX, did unlawfully operate a motor vehicle while having a blood alcohol concentration of 0.10 percent or more by weight by volume as indicated by a chemical test.

Violation of Title 18, United States Code, Section 13 (assimilating Section 18.2-266(i), Code of Virginia 1950, as amended).

COUNT II

THE UNITED STATES ATTORNEY CHARGES THAT:

On or about June 13, 1991, at Fort Belvoir, Virginia, within the special maritime and territorial jurisdiction of the United States in the Eastern District of Virginia, the defendant, XXXXXXXXXXXXXXXXX, did unlawfully operate a motor vehicle while under the influence of alcohol.

Violation of Title 18, United States Code, Section 13 (assimilating Section 18.2-266(ii), Code of Virginia 1950, as

amended).

COUNT III

THE UNITED STATES ATTORNEY CHARGES THAT:

On or about June 13, 1991, at Fort Belvoir, Virginia, within the special maritime and territorial jurisdiction of the United States in the Eastern District of Virginia, the defendant, XXXXXXXXXXXXXXXXX, did unlawfully operate a motor vehicle upon a highway recklessly and in a manner so as to endanger life, limb or property of any person.

Violation of Title 18, United States Code, Section 13 (assimilating Section 46.2-852, Code of Virginia 1950, as amended).

HENRY E. HUDSON
UNITED STATES ATTORNEY

By: _____
JAMES M. SAWYERS
Special Assistant
United States Attorney

Fort Belvoir, VA

Date _____

IMPLIED CONSENT STATUTE

1. I am charging you with Driving Under the Influence of intoxicants.

2. You are advised that any person who operates a motor vehicle on the public highways of this military installation is deemed, as a condition to such operation, to have consented to have a sample of his or her breath taken for a chemical test to determine the alcoholic content of his or her blood.

3. You are further advised that the unreasonable refusal to consent to having a sample of breath taken for a chemical test constitutes grounds for the revocation of your privilege of operating a motor vehicle upon the special maritime and territorial jurisdiction of the United States during the period of a year commencing on the date of arrest upon which such tests or tests were refused, and such refusal may be admitted into evidence in any case arising from such person's driving while under the influence of a drug or alcohol in such jurisdiction. Persons shall be charged under United States Code, Title 18, USC Section 3117.

4. In addition to this sample, the arresting officer may require a blood sample be taken for drug determination.

Subjects Initials: Submit _____ Refuse _____

_____ _____

Officer's Signature Subject's Signature

_____ _____

Time & Date Time & Date

OFFICE OF THE STAFF JUDGE ADVOCATE
STANDARD OPERATING PROCEDURE

CRITERIA FOR THE DETENTION OF CIVILIANS WHO COMMIT CRIMES ON POST

1. Purpose. The purpose of this Standard Operating Procedure is to memorialize the policies of the United States Attorney's office, Eastern District of Virginia, in the detention of civilians who commit crimes on post. The requirements contained in this SOP are mandatory and cannot be skipped.

2. Criteria. The following type of arrests constitute a guideline for the types of cases requiring immediate detention in the Alexandria City Jail.

a. Crimes of Violence that:

(1) constitute an immediate threat to the community;
(2) constitute an immediate threat to an individual; or
(3) would probably result in incarceration if convicted.

b. Class one misdemeanors where, in all likelihood, the accused would not be within the Eastern District of Virginia or close enough for extradition at the time of trial. Examples are:

(1) Accused with an out of state drivers license other than Maryland or the District of Columbia.
(2) Accused who lives in Virginia but at a distance of more than 150 miles from Ft. Belvoir.
(3) Accused who makes a claim that they will never come to court.
(4) Reserve soldiers on active duty training who meet either (1), (2), or (3) above.

The type of class one misdemeanors subject to the above are:

- DWI
- Reckless Driving if the NCIC reveals any extremely aggravating circumstance.

3. JAG Responsibilities:

a. If the military police (MP) are following their own SOP (enclosed) they should first attempt to contact a criminal law JAG with a Special Assistant United States Attorney (SAUSA) designation. If they have not completed that procedure, require them to.

b. After number 3a. is attempted without success, advise the MP on whether or not the civilian should be detained. Use the criteria in II above in making your determination. If advice is given to detain, remind the MP's that the following

mandatory procedures must be followed:

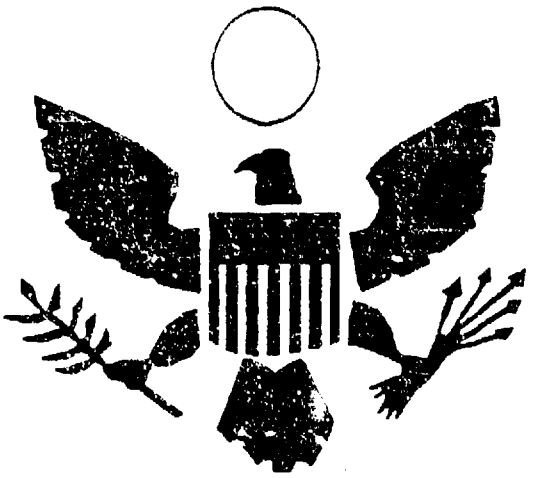
(1) The FBI must be contacted to determine if they are interested in the case. If they are, the FBI becomes responsible for the case.

(2) If the FBI is not interested, refer the MP desk sergeant to the MP SOP number 3a and tell them to follow all necessary procedure.

c. If the MP's show reluctance to follow any of these procedures, do not allow detention of the civilian.

Grifton E. Carden

GRIFTON E. CARDEN
LTC, JA
Deputy Staff Judge Advocate



TAB

D

TAB D

UNITED STATES DISTRICT COURT

PROSECUTIONS

I. References.

A. Federal Criminal Code and Rules, 1990 edition, West Publishing Company, published annually.

1. Federal Rules of Criminal Procedure.

2. Federal Rules of Evidence.

3. Title 18, U.S. Code, Crimes and Criminal Procedure.

4. Title 21, Chapter 13, U.S. Code, Drug Abuse Prevention and Control.

5. Title 26, Chapter 53, U.S. Code, Machine Guns, Destructive Devices, and Certain Other Firearms.

B. United States Attorneys' Manual, Title 9, Criminal Division, Volume III (a), U.S. Department of Justice, updated annually.

C. United States Sentencing Guidelines Manual, U.S. Sentencing Guidelines Commission, 1990 edition, West Publishing Company, published annually.

D. Annual Review of Criminal Procedure, Georgetown Law Journal, published annually.

E. J. Cissell, Federal Criminal Trials (2d ed.) (1987).

F. D. Fletcher, Federal Criminal Prosecutions on Military Installations, The Army Lawyer, Aug. & Sep. 1987.

G. C. Wright, Federal Practice and Procedure: Criminal (2d ed. 1982).

H. C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure: Jurisdiction and Related Materials (2d ed. 1982).

II. Criminal jurisdiction. 18 U.S.C. § 3231 et seq.

A. Adults. Triable for all felonies.

B. Juveniles (less than 18 years).

1. May prosecute by information. 18 U.S.C. § 5031 et seq.

a. Must certify factors permitting jurisdiction IAW 18 U.S.C. § 5032.

b. Must deliver prior juvenile records (or proof of no record) to court IAW 18 U.S.C. § 5032.

c. Detention permitted IAW 18 U.S.C. § 5035, but must arraign and try within 30 days or information may be dismissed IAW 18 U.S.C. § 5036.

2. No jury (judge adjudicates issue of juvenile delinquency at dispositional hearing). 18 U.S.C. § 5037.

III. Penalties.

A. Imprisonment IAW individual statute.

B. Fines. 18 U.S.C. § 3571.

1. Individuals: up to $250,000.

2. Organizations: up to $500,000.

C. Alternative fine based on gain or loss. 18 U.S.C. § 3571(d).

D. Restitution. 18 U.S.C. § 3663.

IV. Pre-Trial Procedure.

A. Federal Rules of Criminal Procedure.

1. Complaint. Rule 3.

2. Arrest warrant or summons. Rule 4.

3. Initial appearance. Rule 5.

4. Probable cause hearing. Rule 5.1.

5. Grand jury. Rule 6. See also 18 U.S.C. § 3321.

   a. 23 members; 16 for quorum; 12 to return "true bill". Fed. R. Crim. P. 6(f) & (g).

   b. Regular grand jury sits for up to 18 months. Fed. R. Crim. P. 6(g).

   c. Grand jury determines whether probable cause exists to believe that a federal crime (jurisdiction) has been committed and within the District (venue). United States v. Calandra, 414 U.S. 338 (1974).

   d. Power of grand jury to gather evidence.

      (1) Subpoena Ad Testificandum
      Subpoena Duces Tecum
      Forthwith subpoena

      (2) Grand jury subpoena is not a search and seizure within the meaning of the Fourth Amendment. United States v. Calandra, supra. No probable cause needed to issue grand jury subpoena; grand jury is entitled to "everyman's evidence". United States v. Hayes, 408 U.S. 665, 668 (1972). Only a "very limited number of privileges provide legitimate grounds for refusing to comply with a grand jury subpoena." In re Sealed Case, 676 F. 2d 793, 806 (D.C. Cir. 1982).

      (3) Make sure return date on subpoena is one on which a grand jury is sitting. United States v. Miller, 500 F. 2d 751 (5th Cir. 1974).

      (4) Can allow compliance with subpoena by mail or delivery of documents to agents.

   e. Rule of secrecy. Rule 6(e). Grand jury proceedings are protected. A court order is usually required before disclosure. See generally, United States v. Baggott, 463 U.S. 476 (1983); United States v. Sells, 463 U.S. 418 (1983).

6. Indictments and informations. Rule 7.

   a. No indictment required for prosecution of juvenile; may use information. See 18 U.S.C. § 5031 et seq.

   b. No indictment required for prosecution of corporation; may use information.

7. Warrant or summons upon indictment or information. Rule 9.

8. Arraignment. Rule 10.

9. Pleas. Rule 11.

   a. Plea of guilty is constitutionally permissible even though defendant claims innocence where there is a factual basis for the plea. North Carolina v. Alford, 400 U.S. 25 (1970). But will the judge accept an Alford plea?

   b. Plea of nolo contendere permitted. Rule 11(b). But will judge accept such plea?

10. Plea agreements. Rule 11(e).

   a. Court may reject plea agreement. Rule 11(e)(4).

   b. Do not enter into plea agreement without considering U.S. Sentencing Guidelines; plea agreement may be rejected by court at sentencing proceedings if agreement "undermines" Guidelines; court is not bound by factual stipulations in plea agreement. U.S.S.G. §§ 6B1.2 & 4.

11. Pleadings and motions before trial. Rule 12.

12. Notice of alibi and insanity. Rules 12.1 & 2.

13. Discovery. Rule 16.

14. Subpoena for witness or document. Rule 17.

V. Trial. Fed. R. Crim. P. 23-31.

VI. Sentencing.

A. Fed. R. Crim. P. 32-36.

B. U.S. Sentencing Guidelines. See Federal Sentencing Guidelines Manual, West Publishing Company, published annually.

1. Effective 1 November 1987; significant amendments have occurred in each succeeding year so that current Sentencing Guidelines may not apply to charged offense(s).

2. Apply to all felonies and class A misdemeanors. U.S.S.G. Chapter One, Part A., para. 5.; U.S.S.G. § 1B1.9.

3. Apply to crimes assimilated under 18 U.S.C. § 13. U.S.S.G. § 2X5.1. See, e.g., United States v. Young, 916 F. 2d 147 (4th Cir. 1990).

4. Do not apply to juveniles.

5. U.S.S.G. provisions may cause rejection of plea agreements if not IAW U.S.S.G. § 6B1.2 (agreement cannot "undermine the statutory purposes of sentencing.")

VII. Documents for use in U.S. District Court (TABS E through U).

There are 93 Districts and 93 United States Attorneys. Each has his or her own formats for documents used in U.S. District Court. The forms in this deskbook are examples only; use them with the local U.S. Attorney's approval.

TAB E. Target letter (sample-E.D.N.C.).

TAB F. Criminal complaint (AO 91).

TAB G. Search warrant (AO 93); Application and affidavit for search warrant (AO 106).

Search warrant; Application and affidavit for search warrant; Affidavit (sample-United States v. A & S Council Oil).

TAB H. Warrant for arrest (AO 442).

Warrant for arrest; criminal complaint; affidavit (sample-United States v. Senior).

TAB I. Motion to compel blood, hair & fingerprints (sample-United States v. Onar).

TAB J. Response to pre-trial motions (sample-United States v. Roblitz).

TAB K. Voir dire (sample-United States v. Massuet).

TAB L. Indictments-Title 15.

Conspiracy to restrain competition by price fixing (anti-trust) (15 U.S.C. § 1)

(sample-United States v. Allen's Moving & Storage Co.)

TAB M. Indictments-Title 18.

1. Assault with dangerous weapon with intent to do bodily harm (18 U.S.C. § 113(c));

larceny of personal property (18 U.S.C. § 661); criminal contempt (18 U.S.C. § 402)

(sample-United States v. Drummond)

2. Conspiracy to commit murder (18 U.S.C. §§ 1111 & 371);

assault with intent to commit murder (18 U.S.C. § 113(a));

use of firearm in crime of violence (18 U.S.C. § 924(c))

(sample-United States v. Higgs)

3. Larceny of U.S. property (18 U.S.C. § 641);

criminal contempt (18 U.S.C. § 401)

(sample-United States v. Monroe)

4. Conspiracy to defraud U.S. (larceny and false statements) (18 U.S.C. § 371);

aiding and abetting (18 U.S.C. § 2);

larceny of U.S. property (18 U.S.C. § 641)

(sample-United States v. Williams)

5. Conspiracy to defraud U.S. with respect to claims (18 U.S.C. § 286);

making false, fictitious and fraudulent claim (18 U.S.C. § 287)

(sample-United States v. Sellers Oil Company)

6. Conspiracy to receive stolen property (18 U.S.C. § 371);

knowing receipt of stolen property (18 U.S.C. § 662);

larceny of private property (18 U.S.C. § 661)

(sample-United States v. Holt)

7. Manslaughter (18 U.S.C. § 1112)

(sample-United States v. Heyward)

8. Felon in possession of firearm (18 U.S.C. § 922(g)(1))

(sample-United States v. McCall)

9. Kidnapping (18 U.S.C. § 1201)

(sample-United States v. Smitherman)

10. Bank robbery (18 U.S.C. § 2113(a))

(sample-United States v. Allen)

11. Larceny of U.S. property (18 U.S.C. § 641)

(sample-United States v. MacInnis)

TAB N. Indictments-Title 21.

1. Distribution marihuana (21 U.S.C. § 841(a)(1) & (b)(1)(c));

   use of firearm in drug offense (18 U.S.C. § 924(c)(1));

   maintaining place for purpose of manufacturing and distributing drugs (21 U.S.C. § 856(a)(1)

   (sample-United States v. Dubay)

2. Continuing criminal enterprise involving drugs (21 U.S.C. § 848);

   conspiracy to violate drug laws (21 U.S.C. § 841); interstate travel in aid of racketeering (18 U.S.C. § 1952(a));

   tampering with witness, victim or informant (18 U.S.C. § 1512)

   (sample-United States v. King et al)

3. Importation of controlled substances (21 U.S.C. § 952);

   conspiracy to distribute controlled substances (21 U.S.C. § 841 & 846)

   (sample-United States v. Wexler et al)

TAB O. Indictments-Title 26.

Possession of destructive device (26 U.S.C. § 5861 (d));

making destructive device (26 U.S.C. § 5861(f))

(sample-United States v. Vick)

TAB P. Informations and waiver of indictment.

1. False loan or credit application (18 U.S.C. § 1014)

   (sample-United States v. Horne)

2. Conspiracy to defraud U.S. by bid-rigging on contract (18 U.S.C. § 371)

   (sample-United States v. Mace)

TAB Q. Juvenile delinquency information & record certification.

TAB R. Memorandum of plea agreement.

1. Universal format

(sample-E.D.N.C.)

2. United States v. Graham (18 U.S.C. § 286).

3. United States v. Holt (18 U.S.C. § 662).

4. United States v. Transpower Constructors Inc. (18 U.S.C. 1001)

5. United States v. Putchaconis (21 U.S.C. § 846).

TAB S. Juvenile plea agreement.

TAB T. Jury instructions.

1. United States v. Davis (18 U.S.C. § 2243)

2. United States v. Sellers (18 U.S.C. § 286 & 287)

3. United States v. Cummings (21 U.S.C. § 841 & 846; 18 U.S.C. § 924(c))

TAB U. Certificate of service.

TAB

E

December 12, 199X

Ms. Jane Smith
1234 Old Town Road
Smithfield, Texas 78234

Dear Ms. Smith:

This office recently received a U.S. Army Criminal Investigation Division Report of Investigation (ROI) which identifies you as the subject of a criminal investigation. The ROI alleges that you conspired to steal over $25,000 of U.S. military property from Fort Lakota, in violation of Title 18, U.S.C. § 371.

By means of this letter, this office is providing you with the opportunity, through retained counsel or otherwise, to respond to these allegations. This offer provides you with the opportunity to consider disposing of this matter by way of an information and plea agreement. If that is your preference, please so indicate in your reply.

Please contact this office, either personally or through your representative, no later than the 25th of December. If this office does not receive a reply by that date, we will assume that resolution of this matter is not possible, and that you do not wish to discuss these allegations prior to any presentment of this matter to the Grand Jury.

Thank you for your prompt attention to this matter. If there are any questions, please do not hesitate to contact this office.

Sincerely,

JOHN PAUL JONES
United States Attorney

BY: James T. Kerk
Special Assistant U.S. Attorney
Criminal Division

TAB

F

United States District Court

DISTRICT OF

UNITED STATES OF AMERICA
V.

CRIMINAL COMPLAINT

CASE NUMBER:

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about _____ in _____ county, in the _____ District of _____ defendant(s) did, (Track Statutory Language of Offense)

In violation of Title _____ United States Code, Section(s) _____.

I further state that I am a(n) _____ and that this complaint is based on the following facts:
Official Title

Continued on the attached sheet and made a part hereof: ☐ Yes ☐ No

_____
Signature of Complainant

Sworn to before me and subscribed in my presence,

_____ at _____
Date City and State

_____ _____
Name & Title of Judicial Officer Signature of Judicial Officer

TAB

G

United States District Court

DISTRICT OF _____

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER:

I _____ being duly sworn depose and say:

I am a(n) _____ and have reason to believe
Official Title

that ☐ on the person of or ☐ on the property or premises known as (name, description and/or location)

in the _____ District of _____

there is now concealed a certain person or property, namely (describe the person or property to be seized)

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

concerning a violation of Title _____ United States code, Section(s)_____

The facts to support a finding of Probable Cause are as follows:

Continued on the attached sheet and made a part hereof. ☐ Yes ☐ No

_____
Signature of Affiant

Sworn to before me, and subscribed in my presence

_____ at _____
Date City and State

_____ _____
Name and Title of Judicial Officer Signature of Judicial Officer

RETURN

DATE WARRANT RECEIVED	DATE AND TIME WARRANT EXECUTED	COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH

INVENTORY MADE IN THE PRESENCE OF

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

Subscribed, sworn to, and returned before me this date.

U.S. Judge or Magistrate

Date

United States District Court

EASTERN DISTRICT OF NORTH CAROLINA

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)
Business records located on the premises of 1032 Wilmington Rd, a/k/a: A&S Council Oil Company, Fayetteville, NC

SEARCH WARRANT

CASE NUMBER: 90-255M-3

TO: Special Agent Victor A. Johnson and any Authorized Officer of the United States

Affidavit(s) having been made before me by Special Agent Victor A. Johnson (Affiant) who has reason to believe that ☐ on the person of or ☒ on the premises known as (name, description and/or location)
A&S Council Oil Company, 1032 Wilmington Rd, Fayetteville, NC

in the Eastern District of North Carolina there is now concealed a certain person or property, namely (describe the person or property)
See Attachment A-Documents Desired

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before Monday, April 2, 1990 (Date)
(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to any U.S. Judge or Magistrate as required by law.

I certify the foregoing to be a true and correct copy of the original.
J. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina
By _____ Deputy Clerk

March 29, 1990 at 12:05 pm (Date and Time Issued) at Fayetteville, North Carolina (City and State)

Wallace W. Dixon, United States Magistrate
Name and Title of Judicial Officer

Signature of Judicial Officer
United States Magistrate

United States District Court

EASTERN DISTRICT OF NORTH CAROLINA

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)
Business and Financial Records
located at the premises 1032 Wilmington Rd,
Fayetteville, NC

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER: 4:90-25501-3

I Special Agent Victor A. Johnson being duly sworn depose and say:

I am a(n) Special Agent, US Army, Criminal Investigation Command and have reason to believe
Official Title

that ☐ on the person of or ☒ on the premises known as (name, description and/or location)
A&S Council Oil Company, located at 1032 Wilmington Rd, Fayetteville, NC

in the Eastern District of North Carolina
there is now concealed a certain person or property, namely (describe the person or property)

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure) possible evidence in the below identified offenses

in violation of Title 18 United States Code, Section(s) 286, 287 and 661
The facts to support the issuance of a Search Warrant are as follows:
See attached affidavit made a part of an incorporated into this application.

I certify the foregoing to be a true and correct copy of the original.
J. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina
By _____ Deputy Clerk

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

Victor A. Johnson
Signature of Affiant

Sworn to before me, and subscribed in my presence

March 29, 1990 at Fayetteville, North Carolina
City and State

Wallace W. Dixon, United States Magistrate
Name and Title of Judicial Officer

Wallace W. Dixon
Signature of Judicial Officer
United States Magistrate

A F F I D A V I T

I, Victor A. Johnson, being a duly sworn Special Agent of the United States Army Criminal Investigation Command, assigned to Fort Bragg in the Eastern District of North Carolina, do hereby declare the following to be true to the best of my knowledge:

I am actively involved in a criminal investigation pertaining to the diversion of large quantities of burner oil #2 from the Fort Bragg military reservation. During my investigation, Mr. Eugene Jackson had provided a sworn statement to me in which he admitted acting in a conspiracy with several subordinate drivers to divert burner oil #2 from Fort Bragg. Mr. Jackson further stated that he sold and delivered the oil to Mr. Artice L. Council of A&S Council Oil Company, 1032 Wilmington Road, Fayetteville, North Carolina, in exchange for which he received cash payments of between $0.18 and $0.30 per gallon. Estimates of the volume of oil diverted range upward from 250,000 gallons and attempts are ongoing to determine the exact amount. Interviews with Mr. Walter Ford, one of Jackson's drivers, indicated that A&S Council Oil Company delivery trucks were used by Jackson to divert oil from Fort Bragg. On March 13, 1990, Artice L. Council and A&S Council Oil Company were indicted by Federal Grand Jury in the Eastern District of North Carolina for violations of 18 United States Code 286 and 287.

Mr. Council was interviewed by me on March 9, 1990, and denied that he participated in a conspiracy or that he received any of the burner oil

diverted by Jackson. Mr. Council was requested to provide business records for the period March 1986 through June 1987, as specified hereafter, and declined to do so. While he said he had some of the requested business records in his office, and that he normally kept his business records there, Mr. Council claimed that his business was vandalized by unknown persons in 1989 and those persons made away with or otherwise destroyed many of his business records. He admitted that his accountant had accurate copies of these records; however, he declined to name the accountant.

Under Title 31 United States Code, A&S Council Oil Company is required to maintain business documents depicting purchase, receipt, inventory, sales, employment, and invoicing records pertaining to its business for a period of six years for Federal tax purposes. Based on the legal requirements for Artice L. Council and Council Oil Company to maintain the records listed in attachment A, and his statement to me that he keeps these records in his office, there is probable cause to believe that the records are now located at his office. These records are expected to show that A&S Council Oil Company dispensed more burner oil than he legally received during the period. The requested records are further expected to show that the company made numerous cash expenditures and that the company's receipts reflect the sales of more oil than was legally possessed by the company during the period.

Request authority to search A&S Council Oil Company and seize all such records evidencing the purchase, receipt, sales and disposition of the stolen oil.

ATTACHMENT A:

Documents Desired

1). Employment Records, including employee applications, tax withholding records, and payroll records for the period March 1986 through June 1987.

2) Copies of any and all contracts and agreements with Sellers Oil Company Inc.

3). Copies of any and all contracts with the US Government for the above period, governing delivery, transport or removal of oil from Fort Bragg, North Carolina.

4). Any and all monthly inventory records pertaining to No. 2 fuel oil, where ever situate.

5). Records of all receipts and deliveries of No. 2 fuel oil or diesel oil to A&S Council Oil Company from whatever source during the above period.

6). Records of all corrections and/or adjustments to inventories during the above period.

7). Records of all sales and deliveries of No. 2 fuel oil or diesel oil from A&S Council stocks.

8). For the above period, all records pertaining to payments, disbursements or cash outlays made by A&S Council Oil Company, including certified copies of the general ledger, subsidiary ledgers or registers entitled "Cash", "Miscellaneous", or reflecting payments to subcontractors. Records of cash outlays, from petty cash funds or otherwise.

9). The chart of accounts of the A&S Council Oil Company.

10). The name, address and phone number of the accountant servicing A&S Council Oil Company.

Carlos A. Johnson

William W. Black

3/29/90

Directions to A&S Council Oil Company, 1032 Wilmington Road, Fayetteville, NC:

From the Fort Bragg CID Office, travel west on Randolph Street to the intersection of Knox Street. Turn left and travel south to the intersection of Honeycutt Road. Turn right and travel to the intersection of All American Freeway. Turn left to enter the freeway, travelling south. Remain on the All American Freeway/Owens Drive to the intersection of Eastern Boulevard/301 Bypass. Turn left on the Eastern Boulevard and travel to the intersection of NC Route 87. Turn right on Route 87 and travel to the intersection of Old Wilmington Road. Turn left on Old Wilmington Road. A&S Council Oil Company occupies the left side of the road after the intersection.

A&S Council Oil Company is recognizable as a one-story structure with barred windows. Several oil storage tanks occupy the land to the left of the structure, and an oil dispensing structure stands between the oil tanks and the structure.

Clyde A. Johnson
Special Agent
3/29/94

TAB

H

United States District Court

DISTRICT OF _____

UNITED STATES OF AMERICA
V.

WARRANT FOR ARREST

CASE NUMBER:

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest _____
Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

☐ Indictment ☐ Information ☐ Complaint ☐ Order of court ☐ Violation Notice ☐ Probation Violation Petition

charging him or her with (brief description of offense)

in violation of Title _____ United States Code, Section(s) _____

_____ _____
Name of Issuing Officer Title of Issuing Officer

_____ _____
Signature of Issuing Officer Date and Location

Bail fixed at $ _____ by _____
Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant at _____

_____

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: _____

ALIAS: _____

LAST KNOWN RESIDENCE: _____

LAST KNOWN EMPLOYMENT: _____

PLACE OF BIRTH: _____

DATE OF BIRTH: _____

SOCIAL SECURITY NUMBER: _____

HEIGHT: _____ WEIGHT: _____

SEX: _____ RACE: _____

HAIR: _____ EYES: _____

SCARS, TATTOOS, OTHER DISTINGUISHING MARKS: _____

_____

_____

FBI NUMBER: _____

COMPLETE DESCRIPTION OF AUTO: _____

_____

INVESTIGATIVE AGENCY AND ADDRESS: _____

_____

_____

United States District Court

EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA
V.
RONALD FABIAN SENIOR

WARRANT FOR ARREST

CASE NUMBER: 90-254 M3

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest RONALD FABIAN SENIOR
Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

☐ Indictment ☐ Information ☒ Complaint ☐ Order of court ☐ Violation Notice ☐ Probation Violation Petition

charging him or her with (brief description of offense)

larceny of United States military property from the residential quarters located 218 Sands Street and 302 Irwin Drive, Fort Bragg, North Carolina, on or about January 5, 1990

in violation of Title 18 United States Code, Section(s) 641

WALLACE WADE DIXON
Name of Issuing Officer

UNITED STATES MAGISTRATE
Title of Issuing Officer

Signature of Issuing Officer

Date and Location

Bail fixed at $ _____ by _____
Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant at _____

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

O 91
ev. 11/82

CRIMINAL COMPLAINT

FILED

United States District Court

DISTRICT
EASTAERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA
V.
RONALD FABIAN SENIOR

DOCKET NO.

Mar 28 '90
J. RICH LE[illegible] D, CLERK
U.S. DIST[illegible]
E. DIS[illegible]

MAGISTRATE'S CASE NO.
90-254M-3

Complaint for violation of Title 18 United States Code § 641

NAME OF JUDGE OR MAGISTRATE	OFFICIAL TITLE	LOCATION

DATE OF OFFENSE	PLACE OF OFFENSE	ADDRESS OF ACCUSED (If known)
Jan. 5, 1990	FT BRAGG,NC 28307	215 Andy & Hodges St. Fayetteville, NC 28303

COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:

SEE ATTACHED PAGE

BASIS OF COMPLAINANTS CHARGE AGAINST THE ACCUSED:

SEE ATTACHED AFFIDAVIT

I certify the foregoing to be a true and correct copy of the original.
J. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina
By [signature] Deputy Clerk

MATERIAL WITNESSES IN RELATION TO THIS CHARGE:
Investigator Owen Robertson, Military Police Investigations, FBNC 28307

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.

SIGNATURE OF COMPLAINANT (OTHER THAN OFFICIAL TITLE)

OFFICIAL TITLE
MILITARY POLICE INVESTIGATOR

Sworn to before me and subscribed in my presence.

SIGNATURE OF MAGISTRATE(1)
[illegible]

DATE
3-28-90

See Federal Rules of Criminal Procedure rules 3 and 54.

A F F I D A V I T

I am Investigator Owen Robertson. I am assigned to Military Police Investigation at the Provost Marshall's Office, Fort Bragg, North Carolina. I have been an Investigator for three years and I am assigned to investigate general crimes occurring on Fort Bragg, North Carolina.

On or about January 5, 1990 storage sheds located at 218 Sands Street and 303 Irwin Drive, Fort Bragg, North Carolina, were broken into. Two large ACE packs from Irwin Drive were taken and a duffle bag and smaller ruck sacks were taken from Sands Street. The ACE packs and duffle bags contained numerous items of military equipment all belonging to the United States Government. This United States property had been assigned to the occupants of 218 Sands Street and 303 Irwin Drive for their official use in their capacity as soldiers.

On January 10, 1990 at 4:00 P.M. I interviewed Ronald Fabian Senior who resides at 215 Andy and Hodges Street, Fayetteville, NC 28303. I interviewed him at the Provost Marshall's Office, Fort Bragg, North Carolina. After advising Senior of his rights, he waived his rights and told me that he had stolen the military equipment from 218 Sands Street and 303 Irwin Drive. He had broken into the storage facilities and had taken the military equipment to the Military Surplus Outlet located at 6474 Yadkin Road where he pawned it receiving a total of $120.00. Senior also stated that he has a crack/cocaine/heroin addiction and that the stolen military equipment had been pawned to support his habit.

Based on this evidence there is reason to believe that Ronald Fabian Senior stole United States property in violation of Title 18, USC 641. Request you issue a complaint and warrant for arrest.

OWEN ROBERTSON
MILITARY POLICE INVESTIGATOR

TAB

I

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA	)	MOTION FOR ORDER
	)	COMPELLING BLOOD AND HAIR
v.	)	SAMPLES AND FINGERPRINTS
	)	
DONALD MAURICE ONAR	)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves this Court for an Order requiring the above-captioned defendant to (1) the taking of blood samples, (2) the taking of head hair samples, and the taking of comprehensive "major case" set of fingerprints, and, in support of said Motion, shows the Court the following:

1. The defendant has been indicted for first degree murder on an exclusive federal reservation (Title 18, United States Code, Section 1111). This charge arose from the strangulation death of Andrea Alisa Onar at Fort Bragg, North Carolina, on August 22, 1988.

2. Investigative Agents are continuing to process physical evidence gathered in the investigation. It is necessary to have for comparison an accurate blood sample, head hair samples, and a complete set of finger and palm prints from the defendant. Medical personnel are available to take the blood and hair samples and Agents of the Federal Bureau of Investigation are prepared to take necessary fingerprints. The defendant is in custody pursuant to an Order of Detention.

3. The defendant has no Fourth or Fifth Amendment privilege with regard to the testing of physical characteristics, such as blood samples or of external physical features that are constantly exposed to the public. Schmerber v. California, 384, US. 77 (1968). See Also In Re Grand Jury Proceedings, 686 F. 2d 135, 139-40 (3d Cir), cert. denied, 459 U. S. 1020 (1982) (search warrant not required when hair samples snipped).

4. The Government requests that the hair and blood samples and fingerprints be taken as soon as practicable so that the Laboratory can make the comparisons prior to trial.

Respectfully submitted this _____ day of September, 1988.

MARGARET CURRIN
United States Attorney

By:

_____

Frederic L. Borch, III
Special Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

NO. 88-317M-3

UNITED STATES OF AMERICA	)	MOTION FOR ORDER
	)	COMPELLING BLOOD AND HAIR
v.	)	SAMPLES AND FINGERPRINTS
	)	
DONALD MAURICE ONAR	)	

Upon good cause having been shown by the Government's Motion, it is hereby

ORDERED that the defendant, DONALD MAURICE ONAR, submit to the taking of blood samples and fingerprints, and that the defendant provide hair samples from his head in sufficient quantity and quality to allow for testing by the Federal Bureau of Investigation Laboratory. The fingerprints and samples are to be taken as soon as practicable at a place deemed appropriate by Agents of the Federal Bureau of Investigation.

This _____ day of September, 1988.

_____
Wallace Wade Dixon
United States Magistrate

TAB

J

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISON

NO. 86-46-03-CR-3

UNITED STATES OF AMERICA	)	
	)	RESPONSE TO PRE-TRIAL
v.	)	MOTIONS
	)	
CRAIG ALAN KOBLITZ	)	
	)	

Now comes the United States of America, by and through the United States Attorney for the Eastern District of North Carolina and responds to defendant Craig Alan Koblitz's pre-trial motions as follows:

MOTION FOR DISCOVERY AND INSPECTION

The Government resists the defendant's motion, and shows unto the Court the following:

1. The Government, pursuant to its "open file" policy and Local Rule 43.01, has previously met with the local defense counsel for the defendant, William O. Richardson, and informed Mr. Richardson of the names of the Government's primary witnesses, a summary of their expected testimony, and the nature and scope of the investigation as a whole. In addition, Special Agent John Walker of the Internal Revenue Service/Criminal Investigation Division, and Special Agent Marty Flippin, United States Customs, and Special Agent Harry Clements, Drug Enforcement Administration, were made available to answer any questions for Mr. Richardson regarding the investigation. Furthermore, the United States, in

recognition of its continuing discovery obligations, will make known to the defendant any further discoverable materials which come into its possession prior to trial.

2. As regards the defendant's request for written and oral statements by the defendant, the Government is not aware of any written or recorded statements of the defendant in its possession, nor is the Government in possession of any oral statements made by the defendant to a known agent, other than those already revealed to counsel for the defendant; See Fed. R. Crim. Proc. 16(a)(1)(A); United States v. Johnson, 562 F.2d 515 (8th Cir. 1977). The defendant is not entitled to oral statements made to a third party under Rule 16; see United States v. Zarattini, 552 F.2d 753 (7th Cir.), cert. denied 431 U.S. 942 (1977).

3. Regarding the defendant's request for statements of co- defendants and co-conspirators, these are not discoverable under Rule 16; United States v. Fearn, 587 F.2d 1316 (7th Cir. 1978); United States v. Cook, 530 F.2d 145 (7th Cir. 1976), cert. denied, 426 U.S. 909 (1977); United States v. Percevault, 490 F.2d 126 (2nd Cir. 1974). In addition, Section 3500 of Title 18, United States Code, and Rule 16(b), Fed. R. Crim. P., clearly prohibit a district judge from ordering production of statements of Government witnesses . . . before they have testified. United State v. McMillen, 489 F.2d 229 (7th Cir. 1972), cert. denied, 410 U.S. 955 (1973). Although the courts may "encourage" pre-trial disclosure practice in order to expedite the trial, the Government

cannot be compelled to disclose witness statements before direct examination is concluded. United States v. Campagnuolo, 592 F.2d 852, 858 (5th Cir. 1979); United States v. Murphy, 569 F.2d 771, 774 (3d Cir.) cert. denied, 435 U.S. 955 (1978).

4. In United States v. Jackson, 757 F.2d 1486 (4th Cir. 1985), No. 84-5156, March 21, 1985), the Fourth Circuit stated, in dictum, that F. R. Crim. P. 16(a)(1)(A) was to be interpreted to require disclosure to the defendant of all statements of co-conspirators to be introduced at trial against the defendant, if the co-conspirator was not a prospective Government witness, and disclosure did not unnecessarily reveal sensitive information. The Government has contested the appliction of this dictum, and pursued the issue in an interlocutory appeal to the Fourth Circuit in United States v. Roberts, E.D.N.C., No. 85-5122, decided June 16, 1986 (published). In this recent decision, the Court of Appeals substantially narrowed the scope of the earlier Jackson language, ruling that the Government is only obligated to reveal written or recorded statements within its control at the time of the defendant's motion United States v. Roberts, supra (pg. 16-17).

5. The Government has agreed to furnish to the defendant in advance of trial the substance of any statement of a co- conspirator, if the co-conspirator/declarant is not to be a Government witness at the trial, which the Government reasonably anticipates introducing at trial. The Government would note, however, that it is impossible for the Government to anticipate

these statements until it has completed its witness preparation interviews. The Government will comply with this discovery obligation, as it does all others, as soon as possible. To the extent that the defendant's request goes beyond the narrow language of the Jackson and Roberts opinions (i.e., written or recorded co-conspirator statement; declarant not a Government witness; statement does not reveal sensitive information), the defendant's Motion is overbroad and should be denied.

6. Regarding the defendant's request for a list of all the Government's witnesses, the Government has already informed the defendant of the names of all its primary witnesses and their expected testimony. The Government has already exceeded its obligation in this regard, and should not be compelled to list every potential witness it could possibly call; see United States v. Dark 597 F.2d 1097 (6th Cir.), cert. denied 444 U.S. 927 (1979); United States v. Dreitvler, 577 F.2d 539 (9th Cir. 1978), cert. denied 440 U.S. 921 (1979); United States v. Carmone 528 F.2d 296, 302 (2d Cir. 1975). Rule 16 does not require the disclosure of the names of Government witnesses, and Congress has specifically rejected attempts to compel such disclosure; see H. R. Conf. Rep. No. 414, 94th Cong., 1st Sess. 12 (1975).

7. The Government has already agreed to voluntaily supply the defendant with all plea agreements, letters of immunity, and criminal histories in its possession for all potential Government witnesses no later than three (3) days prior to trial.

8. There are no confidential informants that the Government knows of in this investigation, other than those who will be called as Government witnesses, and whose names have already been revealed to the defendant. Should there be some other confidential informant who in some minor way assisted this investigation, the burden is on the defendant to show why it is essential to know the name of that individual; see Roviaro v. United States, 353 U.S. 53 (1957); United States v. Hernandez-Berceda, 572 F.2d 680 (9th Cir. 1978). A mere request, such as that made by the defendant, is not sufficient; United States v. Trejo-Zambrano, 582 F.2d 460 (9th Cir. 1978), cert. denied, 439 U.S. 1005 (1978); In re United States, 565 F.2d 19 (2d Cir. 1977).

9. The Government is in the process of voluntarily providing the defendant with all documentary evidence in its possession which the Government intends to offer against the defendant at trial. The Government is not in possession of any documents or tangible objects obtained from, or belonging to, the defendant other than those already revealed to the defendant. Copies of any reports involving examinations and tests, as well as any search warrants, etc., that the Government intends to use at trial against the defendant, if any, will be provided to the defendant prior to trial; see United States v. Thompson 493 F.2d 305 (9th Cir.), cert. denied, 419 U.S. 834 (1974).

10. In summary, the Government believes that all discoverable evidence has been made available to and or presented

to counsel for the defendant, even in excess of the Rule 16(a) requirements. The Government thus considers discovery in this case full and complete. In fact, the Government has gone so far as to discuss its theory of the case with the defendant's counsel. Furthermore, the Government acknowledges its affirmative duty to make (immediately) available to defendant's counsel any new or additional discoverable evidence and fully intends to do so. Conversely, the Government will resist any motion to enlarge the scope of discovery as required under Rule 16. The Government, therefore, submits that this motion for discovery should thus be denied.

REQUEST FOR NOTICE OF GOVERNMENT'S INTENTION TO USE EVIDENCE (ARGUABLY SUBJECT TO SUPPRESSION)

Now comes the United States, by and through the undersigned Assistant United States Attorney, and in opposition to the defendant's Motion for Notice by the Government of Intention to use Evidence Arguably Subject to Suppression, shows unto the Court the following:

1. The United States has already supplied full and complete "open-file" discovery in this matter, far in excess of the requirements of Rule 16.

2. The Government is fully aware of its obligations under Brady, and fully intends to reveal all impeaching and exculpatory information regarding the defendant, if any, prior to trial.

3. The United States is not aware of any information outside that already revealed to the defendant that is even "arguably" subject to suppression.

Wherefore, in light of the foregoing, the Government respectfully requests that the Defendant's Motion to Suppress be denied.

MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE

Now comes the United States of America, by and through the undersigned Assistant United States Attorney for the Eastern District of North Carolina, and responds to the defendant's Motion for Production of Favorable Evidence as follows:

The Government has provided "open file" discovery in this case. In addition, the Government is keenly aware of its obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny. The Government will abide by the dictates of these cases and will turn over any Brady material which comes to its attention during trial preparation.

Wherefore, in light of the foregoing, the Government respectfully requests that the defendant's Motion for Production of all Favorable Evidence be denied.

MOTION FOR PRESERVATION OF NOTES AND TAPES

The Government resists this Motion to the extent that it requires federal, state, and local law enforcement agents to retain rough notes even after the contents of those notes have been fully incorporated into official reports.

Otherwise, the Government does not resist the defendant's Motion.

MOTION FOR EARLY DISCLOSURE OF JENCKS ACT MATERIAL

The Government resists this motion, and shows unto the Court the following:

1. The protection of the Jencks Act, particularly in the prosecution of major organized crime and drug conspiracies, is essential to the ability of the Government to protect its witnesses, and to prevent the "tailoring" of defenses to the witnesses testimony. These are very real concerns, as evidenced by the resolute language of Title 18, United States Code, Section 3500(a), and the legislative history behind it. The primary "harm" raised by defendant's in cases such as these are predictions of long pre-trial delays. For what it is worth, the Government does not foresee the need for lengthy delays in this trial due to voluntary pre-trial discovery.

2. Regardless of pre-trial delays, and despite the fact that a defendant may present a Jencks Act motion before trial, the over-whelming case authority holds that a court may not compel the government to disclose statements of a witness before the conclusion of his direct testimony; 18 United States Code, Section 3500(a), United States v. Algie, 667 F.2d 569, 571 (6th Cir. 1982); United States v. Campagnulo, 592 F.2d 852, 858 (5th Cir. 1979); United States v. Murphy, 569 F.2d at 774; United States v. McMillen, 489 F.2d 229, 230 (7th Cir. 1972), cert. denied 410 U.S. 955 (1973). This is true even when such statements relate to

conversations with the defendant; United States v. Harris, 542 F.2d 1283, 1291 (7th Cir. 1976) cert. denied 430 U.S. 934 (1977). The appellate courts may encourage pre-trial disclosure of Jencks Act materials, which is a practice the Government intends to follow in this trial, but it should not compel the Government to do so; United States v. Algie, supra; United States v. Campagnulo, supra.

3. A recent case on point is United States v. Luizzo, 739 F.2d 541 (11th Cir. 1984). In this decision the court held that it was reversible error for the trial court to compel the Government to provide pre-trial discovery of witness statements to the defense. The Court looked to the clear language of the statute, which reads that "no statement . . . shall be the subject of discovery until said witness has testified on direct examination in the trial of the case" (emphasis added); Title 18, United States Code, Section 3500(a). The Court in Luizzo also pointed to the fact that ". . . with a single exception, no other circuit has decided this issue differently . . ." (i.e., denying early release of Jencks Act materials); United States v. Luizzo, supra, page 544.

4. The Government is not attempting to "hide the ball" from the defendant. The Government is trying to preserve an essential asset in its ability to prosecute major organized criminal activity in North Carolina; that being, the right not to be compelled to reveal the substance of a witnesses' testimony prior to trial. The Government has already told the defendant the

names and anticipated testimony of all of its primary witnesses, and the indictment in this matter is very specific. The defendant has not shown a "particularized need" for this information other than threats of pre-trial delays; see United States v. Luizzo, supra. In light of the foregoing, the Government respectfully requests that the defendant's Motion be denied.

MOTION FOR INDEPENDENT LABORATORY ANALYSIS

The Government resists the defendant's Motion and, in support thereof, shows unto the Court the following:

1. As the defendant is already aware through pre-trial discovery, the evidence of the Government against the defendant does not involve the analysis of any controlled substances.

2. This Motions appears to be a "boilerplate" motion of the defendant which has been filed despite its inappropriateness in this fact situation.

In light of the foregoing, the Government respectfully requests that this Motion be denied.

MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION

1. The Government recognizes its obligation to disclose to the defendant any evidence which may be used to substantially impeach the credibility of a Government witness; Giles v. Maryland 386 U.S. 66 (1967). The Government is further aware that this includes promises of leniency or immunity to its witnesses; Giglio v. United States, 405 U.S. 150 (1972). The Government has already agreed to voluntarily supply the defendant with this latter material no later than three (3) days prior to trial.

2. The Government recognizes its continuing duty to advise the defendant of impeachment material of which it becomes aware.

Wherefore, the Government respectfully requests that the defendant's Motion be denied.

MOTION FOR DISCLOSURE OF GOVERNMENT CONFIDENTIAL INFORMANT

The Government resists the defendant's Motion and, in support thereof, shows unto the Court as follows:

1. In what appears to be another "boilerplate" pre-trial motion of the defendant, a request is made for the identity and address of any confidential informants used by the Government in this investigation.

2. Disclosure of the identity of a government informant is required only where it would be helpful to the defense or essential to a fair determination of the cause. Roviaro v. United States, 353 U.S. 53 (1957); United States v. Hernandez-Berceda, 572 F.2d 680 (9th Cir. 1978). There must be more than a mere request and more than mere speculation that disclosure will be helpful. United States v. Trejo-Zambrano, 582 F.2d 460 (9th Cir. 1978), cert. denied, 439 U.S. 1005 (1978); In re United States, 565 F.2d 19 (2nd Cir. 1977).

3. The Government does not concede that any confidential informants played a role in the investigation as it regards the defendant. Assuming, arguendo, that confidential informants did assist in the investigation against the defendant, the defendant's Motion contains no justification beyond a "mere

request" for requesting that information. Where a defendant cannot show with "reasonable probability" that the informant (if any) was an active participant in the criminal matter under review, but only a "mere tipster", the Government is not required to disclose the identity of the informant. United States v. Lewis, 671 F.2d 1025, 1027 (7th Cir. 1982); United States v. Suarez, 582 F.2d 1007, 1011 (5th Cir. 1978); United States v. Sherman, 576 F.2d 292 (10th Cir.), cert. denied, 439 U.S. 913 (1978); United States v. Alonzo, 571 F.2d 1384 (5th Cir.), cert. denied, 439 U.S. 847 (1978).

Wherefore, in light of the foregoing, the Government respectfully requests that the defendant's Motion be denied.

MOTION FOR PRODUCTION OF GOVERNMENT WITNESSES SO THAT DEFENSE COUNSEL MAY INTERVIEW

The Government resists the defendant's Motion and, in support thereof, shows unto the Court the following:

1. The Government does not have the authority to compel witnesses in any criminal investigation to submit to interviews by defense counsel, should the witnesses choose to do otherwise.

2. The Government takes issue with the accusation of the defendant that his counsel may in some way be "hindered" by the United States in approaching potential Government witnesses. Such "form" allegations by the defendant and his counsel against the use of law enforcement authority in the Eastern District of North Carolina, with which they have had little, if any, prior contact, is inappropriate and unmerited.

Wherefore, in light of the foregoing, the Government respectfully requests that the defendant's Motion be denied.

MOTION FOR PRE-TRIAL DISCLOSURE OF GOVERNMENT'S INTENTION TO RELY ON "SIMILAR ACT" EVIDENCE

The Government resists the defendant's Motion and, in support thereof, shows unto the Court the following:

1. This appears to be another "boilerplate" pre-trial motion of the defendant, in that the first paragraph of the Motion fails to "fill in the blanks" of the particular charges facing the defendant in the Eastern District of North Carolina.

2. The defendant is already aware, through voluntary pre-trial discovery, of the potential Rule 404(b) acts of misconduct which the Government is aware of regarding his activities with the Cable drug organization and co-defendant Ronald Scott Donley. The Government reserves the right to offer for introduction into evidence any evidence which it has which is admissible under Fed. R. Evid. 404(b) or as impeachment under Fed. R. Evid. 609.

3. The Government will turn over to the defense any additional evidence which comes to its attention which might arguably be admissible under these rules.

4. There is no provision in the rules requiring the Government to give the defendant advance notice of its intention to introduce any such evidence. The United States had already far exceeded its obligations in this regard, and should not be required to go further by the Court.

Wherefore, in light of the foregoing, the Government respectfully requests that the defendant's Motion be denied.

MOTION FOR PRE-TRIAL EVIDENTIARY HEARING ON THE EXISTENCE OF A CONSPIRACY

The Government resists the defendant's Motion, and shows unto the Court the following:

1. Defendant's Motion is in substance a request for a "James" hearing. United States v. James, 590 F.2d 575 (5th Cir. 1979). The Fourth Circuit has refused to adopt the requirement of a "James hearing" embraced in the aforementioned Fifth Circuit decision, and the Eastern District of North Caroline has repeatedly denied motions requesting such hearings in criminal matters in the past.

2. The trial court has wide discretion on when and how to determine whether there is sufficient evidence of the existence of a conspiracy to admit statements under Rule 801(d)(2)(e): "A trial judge must have considerable discretion in controlling the mode and order of proof at trial . . ." United States v. Denson, 606 F.2d 149, 152 (6th Cir. 1979).

3. The Court of Appeals for the Fourth Circuit has recognized that the District Court has such a discretion and may permit the introduction of co-conspirator declaration prior to proof of the existence of the conspiracy and subject to the Government's showing at the conclusion of its evidence that a conspiracy existed, that the co-conspirator and the defendant were members of the conspiracy, and that the statement was made during

the course and in furtherance of the conspiracy. See, United States v. McCormick, 565 F.2d 286 (4th Cir. 1977), cert. denied, sub. nom., United States v. Carter, 434 U.S. 1021 (1978). See also, United States v. Jones, 542 F.2d 186 (4th Cir. 1976), note 47.

4. It is anticipated that the existence of a conspiracy between the co-defendants will be manifest to the court at trial. Having the trial judge determine admissibility at that time serves judicial economy while affording the defendant all the protection of the federal rules. In addition, the defense counsel for the defendant has already been supplied with a summary of the expected testimony of all the government's primary witnesses regarding the defendant.

Wherefore, in light of the foregoing, the Government respectfully requests that the defendant's Motion be denied.

MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF PROMISES OF IMMUNITY, LENIENCY OR PREFERENTIAL TREATMENT

The Government does not resist the defendant's Motion, and has already supplied the defendant with most (if not all) pre-trial agreements, letters of immunity, etc., regarding all potential Government witnesses against the defendant through voluntary pre-trial discovery.

MOTION TO INTERVIEW GOVERNMENT INFORMANTS PRIOR TO TRIAL

The Government resists the defendant's Motion and, in response thereto, incorporates herein its previous response to

defendant's Motion for Production of Witnesses, and respectfully requests that defendant's Motion be denied.

MOTION FOR DISCLOSURE OF ELECTRONIC SURVEILLANCE

The Government is not aware of any electronic surveillance evidence in this case as it pertains to the defendant. Should this situation change, the Government will voluntarily disclose such electronic surveillance to the defendant in advance of trial.

MOTION FOR PRODUCTION OF LAW ENFORCEMENT INTERVIEW REPORTS OR NOTES WITH INDIVIDUALS WHO WILL NOT BE WITNESSES AT TRIAL

The Government resists the defendant's Motion and, in support thereof, shows unto the Court the following:

1. The Government incorporates herein its response to the defendant's Motion for Early Disclosure of Jencks Act Material.

2. The Government incorporates herein its previous response to defendant's Motion for Disclosure of Impeaching Information.

3. The Government incorporates herein its response to defendant's Motion for Disclosure of Government Confidential Informant.

Wherefore, in light of the foregoing, the Government respectfully requests that the defendant's Motion be denied.

MOTION FOR PRODUCTION OF STATEMENTS MADE BY CO-DEFENDANTS AND CO-CONSPIRATORS

The Government resists the defendant's Motion and, in support thereof, shows unto the Court the following:

1. Statements of co-defendants and co-conspirators, are not discoverable under Rule 16; United States v. Fearn, 587 F.2d 1316 (7th Cir. 1978); United States v. Cook, 530 F.2d 145 (7th Cir. 1976), cert. denied, 426 U.S. 909 (1977); United States v. Percevault, 490 F.2d 126 (2nd Cir. 1974). In addition, Section 3500 of Title 18, United States Code, and Rule 16(b), Fed. R. Crim. P., clearly prohibit a district judge from ordering production of statements of Government witnesses . . . before they have testified. United State v. McMillen, 489 F.2d 229 (7th Cir. 1972), cert. denied, 410 U.S. 955 (1973). Although the courts may "encourage" pre-trial disclosure practice in order to expedite the trial, the Government cannot be compelled to disclose witness statements before direct examination is concluded. United States v. Campagnuolo, 592 F.2d 852, 858 (5th Cir. 1979); United States v. Murphy, 569 F.2d 771, 774 (3d Cir.) cert. denied, 435 U.S. 955 (1978).

2. In United States v. Jackson, 757 F.2d 1486 (4th Cir. 1985), No. 84-5156, March 21, 1985), the Fourth Circuit stated, in dictum, that F. R. Crim. P. 16(a)(1)(A) was to be interpreted to require disclosure to the defendant of all statements of co-conspirators to be introduced at trial against the defendant, if the co-conspirator was not a prospective Government witness, and disclosure did not unnecessarily reveal sensitive information. The Government has contested the appliction of this dictum, and

pursued the issue in an interlocutory appeal to the Fourth Circuit in United States v. Roberts, E.D.N.C., No. 85-5122, decided June 16, 1986 (published). In this recent decision, the Court of Appeals substantially narrowed the scope of the earlier Jackson language, ruling that the Government is only obligated to reveal written or recorded statements within its control at the time of the defendant's motion; United States v. Roberts, supra (pg. 16-17).

3. The Government has agreed to furnish to the defendant in advance of trial the substance of any statement of a co- conspirator, if the co-conspirator/declarant is not to be a Government witness at the trial, which the Government reasonably anticipates introducing at trial. The Government would note, however, that it is impossible for the Government to anticipate these statements until it has completed its witness preparation interviews. The Government will comply with this discovery obligation, as it does all others, as soon as possible. To the extent that the defendant's request goes beyond the narrow language of the Jackson and Roberts opinions (i.e., written or recorded co-conspirator statement; declarant not a Government witness; statement does not reveal sensitive information), the defendant's Motion is overbroad and should be denied.

Wherefore, in light of the foregoing, the Government respectfully requests that the defendant's Motion be denied.

MOTION FOR PRODUCTION OF DEFENDANT'S STATEMENTS

The Government does not resist the defendant's Motion.

MOTION FOR BILL OF PARTICULARS

The Government resists the defendant's Motion and, in support thereof, shows unto the Court the following:

1. A bill of particulars should be granted only when the indictment is either vague or indefinite and it becomes necessary to inform the accused of the charges against him with sufficient precision to enable him to prepare his defense, to avoid or minimize the danger of surprise at trial, or to enable the defendant to protect himself against second prosecution for an inadequately described offense. Wong Tai v. United States, 273 U.S. 77 (1927); United States v. Giese, 597 F.2d 1170 (9th Cir.), cert. denied, 444 U.S. 979 (1979); United States v. Haas, 583 F.2d 216 (5th Cir. 1978), cert. denied, 440 U.S. 981 (1979); United States v. Schembari, 484 F.2d 931 (4th Cir. 1973); United States v. Anderson, 481 F.2d 685 (4th Cir. 1973); and United States v. Dulin, 410 F.2d 363 (4th Cir. 1969).

2. The Government submits that the Indictment in this case is neither vague nor indefinite, but sets out with clarity and specificity all the particulars and material facts necessary to enable the defendant to understand the charges against him and to protect himself from double jeopardy. The defendant's motion improperly requests detailed disclosure of the Government's evidence prior to trial and the Government is not required to give

such disclosure. See, United States v. Kilrain, 566 F.2d 979, 985 (5th Cir.), cert. denied, 439 U.S. 819 (1978).

3. The defendant is not entitled to a bill of particulars where much of the information sought is within the defendant's own knowledge or is readily ascertainable. Wong Tai v. United States, 273 U.S. 77 (1927); United States v. A. P. Woodson Company, 198 F.Supp. 586, 587 (D.D.C. 1961). The Government submits there has been full discovery in this case; full discovery obviates the need for a bill of particulars. United States v. Deise, supra, at 1180, quoting United States v. Clay, 476 F.2d at [illegible].

4. The Government submits that the defendant is improperly attempting to use the Motion for Bill of Particulars as a discovery vehicle to obtain detailed disclosure of the Government's evidence. The Defendant makes a request to require the Government to particularize associations, acts, or conducts constituting the violations contained in the Indictment. Such requests are overly broad and impermissibly seek disclosure of the Government's legal theories. See, e.g., United States v. Heldon, 479 F.Supp. 316, 323 (E.D. Pa. 1979).

5. The United States is not required to fully inform the defendant of all the evidence the Government will present at trial. The function of a bill of particulars is not to "shield defendants from the possibility of confrontation with unanticipated evidence." United States v. Manetti, 323 F.Supp. 683, 695 (D. Del. 1971). The bill of particulars is also not intended to

give the defendant the benefit of the Government's investigative efforts. The defendant is only entitled to know those central facts which will enable him to conduct his own investigation of the transactions that resulted in the charges against him. Id. at 695-96.

6. The court in Manetti further stated that the defendant is ordinarily entitled to know the names of participants in a conversation or transaction central to the charge against him as well as the time and places of the transactions, but that the defendant was "not entitled to compel the Government to describe in detail the manner in which the crime was committed, thereby forcing the prosecution to fix irrevocably the perimeters of its case in advance of trial." Id. at 696. See also, United States v. Johnson, 524 F.Supp. 199 (D. Del. 1981).

7. The defendant's requests as stated in his motion are not properly within the scope of a demand for a bill of particulars. Where an Indictment, standing alone, fairly apprises the defendant of the charges against him with the requisite specificity, he is entitled to no more, and the request for a Bill of Particulars should be denied. United States v. Pena, 524 F.2d 292 (5th Cir. 1976); United States v. Treatman, 399 F.Supp. 264 (W.D. La. 1975).

8. Inasmuch as the Government has provided defense counsel with pretrial access to discoverable evidence with sufficient particularity and clarity so as to bar any risk of prejudice or surprise to the defendant at trial, denial of a bill

of particulars is proper. United States v. Williams, 679 F.2d 504, 510 (5th Cir. 1982). The Government, therefore, contends that this Motion for a Bill of Particulars should be denied.

Respectfully submitted, this 30th day of June, 1986.

SAMUEL T. CURRIN
United States Attorney

BY: Linda Knuckles
for THOMAS P. SWAIM
Assistant United States Attorney
Criminal Section

CERTIFICATE OF SERVICE

This is to certify that I have this 30th day of June, 1986, served a copy of the foregoing Response upon the defendant in this action by depositing a copy of the same in the United States mail in a postpaid envelope addressed as follows:

Mr. S. Skip Taylor
Attorney at Law
239 N.E. 20th Street
Miami, FL 33137

Linda Knuckles
for THOMAS P. SWAIM
Assistant United States Attorney
Criminal Section

TAB

K

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

NO. 87-15-01-CR-7
NO. 87-15-02-CR-7

UNITED STATES OF AMERICA
Plaintiff
vs.

JOHN CARLOS MASSUET
CARLOS EFRAIN TRUJILLO

GOVERNMENT'S PROPOSED QUESTIONS OF VOIR DIRE (Fed. R. Crim. P. 24(a), Local Rules 6.02, 49.00, E.D.N.C.)

Pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure and Local Rules 6.02 and 49.00, E.D.N.C., the United States of America, by and through the undersigned Assistant United States Attorney, respectfully requests that this Honorable Court include in its examination of perspective jurors the questions listed below. The United States of America asks that the questions be given in addition to the Court's customary questions.

1. What does your spouse do? How many children do you have? What do your children do?

2. Does anyone on the panel have a hearing or vision problem?

3. Has anyone or member of your family been in an adversarial position against the Government, either in an administrative action or in a court case, criminal or civil? Anyone dealt with or been subject to a search by U.S. Customs, U.S. Coast Guard, DEA, SBI or local law enforcement officers?

What happened?

How does that affect your feelings about the Government's presentation?

4. Do you own your own home? If not, are you renting an apartment or home? How long have you lived there?

5. How do you get your news? What newspapers and magazines do you read? What do you recall hearing or reading about this case?

6. To what organizations do you belong? Have you ever held office in or done fund raising for these organizations? Anyone do volunteer or other work with community or other programs for drug prevention and treatment?

7. Anyone or member of your family been in law enforcement? What agency? In what capacity?

How do you feel about women in law enforcement?

8. Anyone ever been a pilot? Certified by Federal Aviation Administration?

Anyone ever been an airplane mechanic? Certified by Federal Aviation Administration?

Anyone ever been an air traffic controller?

9. Anyone or member of your family ever been a member of the Armed Forces? Which Branch? What job classification (MOS)?

10. Have you ever previously served on a jury? What kind of case? Did you reach a verdict? Would that affect your service on this case?

11. Do you know the Defendant(s) or any of his (their) witnesses?

12. Anyone from Columbia, South America, or have relatives or friends from Columbia? Anyone ever lived in Columbia? The Defendant Trujillo is Columbian. Will your experience in Columbia or with Colombians in any way keep you from being impartial in this case?

13. The Government must prove its case beyond reasonable doubt. The Government will use circumstantial evidence to prove part of its case. Do you feel the Government must prove its case to an absolute certainty?

14. Jurors will be the judges of the facts in this case. Do you feel that it is improper for you personally to sit and judge this case for any reason, whether religious or otherwise?

Respectfully submitted this 18th day of August, 1987.

SAMUEL T. CURRIN
United States Attorney

BY: Christine Witcover Dean
CHRISTINE WITCOVER DEAN
Assistant United States Attorney
Criminal Section

CERTIFICATE OF SERVICE

This is to certify that I have this 18th day of August, 1987, served a copy of the foregoing Government's Proposed Questions of Voir Dire upon the defendant in this action by depositing a copy of the same in the United States mail in a postpaid envelope addressed as follows:

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Christine Witcover Dean

CHRISTINE WITCOVER DEAN
Assistant United States Attorney
Criminal Section

TAB

L

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION

NO. 89-40-01-CR-4
~~89-40-02-CR-4~~
89-40-03-CR-4
~~89-40-04-CR-4~~

UNITED STATES OF AMERICA

v.

ALLEN'S MOVING & STORAGE, INC.;
CAROLINA VAN & STORAGE COMPANY
OF JACKSONVILLE, INC.;
JERRY W. MCCAULEY; and
STANLEY L. MCCAULEY,

Defendants.

INDICTMENT

The Grand Jury charges:

I.

DESCRIPTION OF THE OFFENSE

1. The following companies and individuals are hereby indicted and made defendants on the charge stated below:

(a) Allen's Moving & Storage, Inc.;

(b) Carolina Van & Storage Company of Jacksonville, Inc.;

(c) Jerry W. McCauley; and

(d) Stanley L. McCauley.

2. Beginning at least as early as August 1984, and continuing at least until March 29, 1985, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators engaged in a combination and conspiracy to restrain competition by fixing prices charged to the Department of Defense for

interstate shipments of household goods from the Camp Lejeune area (hereinafter "interstate shipments"). The charged combination and conspiracy unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 United States Code Section 1.

3. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators to eliminate discount rates for interstate shipments on and after November 1, 1984.

4. For the purpose of forming and effectuating the charged combination and conspiracy, the defendants and co-conspirators did the following things, among others:

(a) participated in meetings and conversations concerning rates for interstate shipments for the six months beginning November 1, 1984;

(b) told or otherwise influenced carriers to charge nondiscount rates for interstate shipments;

(c) dropped carriers that offered discount rates for interstate shipments, thereby making those carriers ineligible to move interstate shipments, in the expectation that the United States would award contracts for interstate shipments at nondiscount rates during the six-month cycle beginning November 1, 1984;

(d) swapped carriers, by arranging to transfer nondiscount carriers from one conspirator to another to replace discount carriers that were dropped;

(e) booked interstate shipments at nondiscount rates during the six-month cycle beginning November 1, 1984, and accepted payments for those shipments from the United States and from the carriers they represented; and

(f) caused the United States to be overcharged by substantial amounts, in excess of about $300,000, for interstate shipments.

II.

DEFENDANTS AND CO-CONSPIRATORS

5. All of the defendant corporations are organized and exist under the laws of the State of North Carolina and all have their principal place of business in Jacksonville, North Carolina. During the time covered by this Indictment, each of the defendants was engaged in the household goods moving and storage business, and each corporate defendant was a local agent for interstate moving companies (called "carriers") that served the Department of Defense at Camp Lejeune Marine Corps Base ("Camp Lejeune"). As local agents, each corporate defendant participated in the business of moving household goods belonging to Department of Defense personnel and their families from the area surrounding Camp Lejeune to destinations throughout the United States.

6. During the time covered by this Indictment, each of the individual defendants was an officer, owner, and agent of the company indicated:

INDIVIDUAL DEFENDANT	COMPANY
Jerry W. McCauley	Carolina Van & Storage Company of Jacksonville, Inc.
Stanley L. McCauley	Allen's Moving & Storage, Inc.

7. Various firms and individuals, not made defendants in this Indictment, participated as co-conspirators in the charged combination and conspiracy and performed acts and made statements in furtherance thereof.

8. Whenever this Indictment refers to any act, deed, or transaction of any company, it means that the company engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

III.

TRADE AND COMMERCE

9. The United States, through the Military Traffic Management Command ("MTMC") of the Department of the Army, solicits bids from carriers to move the household goods of Department of Defense personnel and their families from the Camp Lejeune area to destinations throughout the United States. The carriers bid to provide a range of services in connection with such shipments of household goods, including packing, storage, unpacking and interstate transportation in a motor van. The United States awards contracts to carriers for interstate shipments through Camp Lejeune.

10. During the time covered by this Indictment, MTMC required that, in order to carry interstate shipments, a carrier have a local agent in the vicinity of Camp Lejeune. The local agents, acting on behalf of the carriers they represented, booked interstate shipments offered by Camp Lejeune, packed the shipments and arranged for out-of-state delivery by the carrier. The local agents were paid for their services by the carriers they represented, and generally received a percentage of the fees paid by the United States to the carriers. Usually, the larger the fee that the carrier obtained, the greater the compensation the agent received.

11. During the time covered by this Indictment, carriers submitted bids for interstate shipments to MTMC twice a year, once in the summer to be effective for the six-month rate cycle beginning November 1, and once in the winter to be effective for the six-month rate cycle beginning May 1. Carriers serving Camp Lejeune submitted bids separately for each state to which they were offering to move interstate shipments. MTMC published a "Rate Solicitation" which was used as a baseline for submitting those bids. Bids were expressed as a percentage of that baseline. The bids submitted could be equal to the baseline, higher than the baseline or lower than the baseline. Bids that were equal to the baseline rate were commonly referred to in the industry as "100% rates." Bids that were lower than the baseline were commonly referred to as "discount rates."

12. During the time covered by this Indictment, carriers submitted bids in two steps. First, the carriers filed bids during a period called the "Increase/Decrease" period. Once all the Increase/Decrease bids were accepted by MTMC, MTMC made the rates public and there was a second period, called the "me-too" period, during which carriers were permitted to match exactly, or "me-too," any bid that had been filed by any other carrier. Local agents often told their carriers what rates to me-too. After the close of the "me-too" period, which ended the bidding process, MTMC published the final rates for each carrier and provided the final rates to Camp Lejeune, which was to offer interstate shipments from time to time throughout the six-month rate cycle to the eligible carriers with the lowest rates.

13. For the rate cycle beginning November 1, 1984, very few carriers me-tooed discount rates that were filed. Between November 1, 1984, and March 29, 1985, no agent booked or handled interstate shipments at discount rates. In rate cycles both before and after the time covered by the charged conspiracy, when discount rates were filed, a large number of carriers serving Camp Lejeune me-tooed those discount rates, and agents booked and handled interstate shipments at discount rates.

14. The business activities of the defendants and co-conspirators that are the subject of this Indictment were within the flow of and substantially affected interstate trade and commerce.

IV.

JURISDICTION AND VENUE

15. The combination and conspiracy charged in this Indictment was carr[illegible]out, in part, within the Eastern District of North [illegible]ina and within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

DATED:

A TRUE BILL

Foreman

JAMES F. RILL
Assistant Attorney General

JOSEPH H. WIDMAR

MARK C. SCHECHTER

CONSTANCE K. ROBINSON

Attorneys, Antitrust Division
U.S. Department of Justice

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MARGARET PERSON CURRIN
United States Attorney
Eastern District of North Carolina

BY
PETER W. KELLEN
Assistant United States Attorney
Chief, Criminal Section

[illegible]ginal.
[illegible]District Court
Eastern District of North Carolina

Deputy Clerk

TAB

M

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION
Case No. 89 - _____

UNITED STATES OF AMERICA

vs.

REGINALD LEE DRUMMOND
Defendant

S U P E R C E D I N G
I N D I C T M E N T

The Grand Jury charges:

COUNT ONE

That on or about October 8, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and within the Eastern District of North Carolina, REGINALD LEE DRUMMOND, without just cause or excuse, assaulted James D. Wilhelm with a dangerous weapon, that is, a metal pipe, with intent to do bodily harm to James D. Wilhelm, in violation of Title 18, United States Code, Section 113(c).

COUNT TWO

That on or about October 8, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and within the Eastern District of North Carolina, REGINALD LEE DRUMMOND, with intent to steal and purloin, did take and carry away United States currency, property of Pepsicola of Fayetteville Inc., of some value, in violation of Title 18, United States Code, Section 661.

COUNT THREE

That on or about October 8, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and within the Eastern District of North Carolina, REGINALD LEE

DRUMMOND, did willfully and wantonly injure the personal property of another, to-wit: a Pepsicola soft drink machine, the amount of damage to said personal property being more than $200.00, in violation of North Carolina General Statute 14-160, as assimilated by Title 18 United States Code, Section 13.

COUNT FOUR

That on or about November 8, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and within the Eastern District of North Carolina, REGINALD LEE DRUMMOND, with intent to steal and purloin, did take and carry away United States currency, property of CocaCola Bottling Company, Fayetteville, North Carolina, of a value in excess of $100.00, in violation of Title 18 United States Code, Section 661.

COUNT FIVE

That on or about November 8, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and within the Eastern District of North Carolina, REGINALD LEE DRUMMOND, did willfully and wantonly injure the personal property of another, to-wit: a Cocacola soft drink machine, the amount of damage to said personal property being more than $200.00, in violation of North Carolina General Statute 14-160, as assimilated by Title 18 United States Code, Section 13.

COUNT SIX

That on or about November 8, 1989, at Fort Bragg, North Carolina, a military reservation in the special maritime and territorial

jurisdiction of the United States and in the Eastern District of North Carolina, REGINALD LEE DRUMMOND, did unlawfully and knowingly go upon Fort Bragg, North Carolina for a purpose prohibited by law, to-wit: to commit larceny, in violation of Title 18, United States Code, 1382.

COUNT SEVEN

That on or about November 8, 1989,m at Fort Bragg, North Carolina, in the Eastern District of North Carolina, REGINALD LEE DRUMMOND did intentionally and willfully disobey the lawful writ, process, order, rule, decree and command of the District Court for the Eastern District of North Carolina, to-wit: he entered upon the Fort Bragg military reservation after ordered not to go upon it by United States Magistrate Wallace W. Dixon, said order forbidding such entry being a condition of his release after an initial appearance on October 11, 1989 on an arrest warrant for the offenses contained in Count 1 of the Indictment, in violation of Title 18, United States Code, Section 402.

A TRUE BILL

_____
FOREMAN

_____
DATE

MARGARET PERSON CURRIN
United States Attorney

By:_____
Assistant U.S. Attorney
Criminal Division

By:_____
Special Assistant U.S. Attorney
Criminal Division

Fred

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: _____

UNITED STATES OF AMERICA	:	
	:	
vs.	:	
	:	I N D I C T M E N T
NORRIS HIGGS a/k/a NORRIS ECKLES	:	
	:	
Defendant	:	

The Grand Jury charges:

FIRST COUNT

On or about the 27th of May, 1989, at Pope Air Force Base, North Carolina, within the special maritime and territorial jurisdiction of the United States, and in the Eastern District of North Carolina, NORRIS HIGGS a/k/a NORRIS ECKLES, did knowingly, intentionally and unlawfully combine, conspire, confederate and agree together with diverse persons whose names are to the Grand Jury both known and unknown, to violate the provisions of Title 18, United States Code, Section 1111. The object of the conspiracy was that the defendant and his co-conspirators would enter Pope Air Force Base, locate GREG PARKER, and murder him.

OVERT ACTS

In furtherance of the conspiracy and to effect the object thereof, NORRIS HIGGS, defendant herein, performed overt acts in the Eastern District of North Carolina including, but not limited to, the following:

1. On or about May 12, 1989, NORRIS HIGGS purchased a Sportarms Sierra Model .38 Special Caliber Revolver and 30 .38 special caliber cartridges.

2. Sometime before May 27, 1989, a known co-conspirator telephoned Tusomia Thomas to learn if GREG PARKER was to be on Pope Air Force Base on May 28, 1989.

3. On or about May 27, 1989, NORRIS HIGGS entered Pope Air Force Base by climbing over an outer perimeter fence.

4. On or about May 27, 1989, NORRIS HIGGS went to the Pope Air Force Base Youth Activity Center.

All in violation of the provisions of Title 18, United States Code, Section 371.

SECOND COUNT

On or about the 13th day of May, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, NORRIS Higgs a/k/a NORRIS ECKLES, did assault GREG PARKER with the intent to commit murder, to-wit: he shot six times with a .38 caliber revolver at the motor vehicle containing the said GREG PARKER, in violation of Title 18, United States Code, Section 113(a).

THIRD COUNT

On or about the 27th of May, 1989, at Pope Air Force Base, in the Eastern District of North Carolina, NORRIS HIGGS a/k/a NORRIS ECKLES during and in relation to a crime of violence prosecutable in a court of the United States, specifically the offense of assault with intent to commit murder, in violation of Title 18, United States Code, Section 113(a), did knowingly and willfully use and carry a firearm, that is a handgun, in violation of Title 18, United States Code, Section 924(c).

FOURTH COUNT

On or about the 27th of May, 1989, at Pope Air Force Base, a military reservation in the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, NORRIS HIGGS a/k/a NORRIS ECKLES did unlawfully and knowingly go upon Pope Air Force Base for a purpose prohibited by law, to-wit: to murder GREG PARKER, in violation of Title 18, United States Code, Section 1382.

A TRUE BILL

_____
FOREMAN

_____
DATE

MARGARET PERSON CURRIN
United States Attorney

By: _____
Assistant U.S. Attorney
Criminal Division

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION
Case No. 88-32-01-CR-3

FILED
JUN 5 '90
J. RICH [illegible], CLERK
U.S. DISTRICT COURT
E. DIST. NO. CAR

UNITED STATES OF AMERICA

vs.

JACKIE L. MONROE
Defendant

S U P E R C E D I N G
I N D I C T M E N T

The Grand Jury charges that:

COUNT ONE

That on or about June 5, 1988 at Fort Bragg, North Carolina and in the Eastern District of North Carolina, JACKIE L. MONROE willfully and knowingly did steal and purloin money in the amount of $150.00, of the goods and property of the United States, and did aid, abet, counsel and command the commission of said offense, in violation of Title 18, United States Code, Sections 641 and 2.

COUNTS TWO THROUGH TEN

The allegations of Count One are incorporated herein by reference as if fully set forth verbatim, except for the date and the amount of the theft, which allegations are set forth with respect to each Count as follows:

COUNT	DATE	AMOUNT
2	June 8, 1988	$150.00
3	June 8, 1988	$150.00
4	June 10, 1988	$150.00
5	June 11, 1988	$135.00
6	June 14, 1988	$150.00
7	June 14, 1988	$150.00

8	June 14, 1988	$150.00
9	May 23, 1988	$150.00
10	May 25, 1988	$150.00

COUNT ELEVEN

That on or about July 27, 1989, in the Eastern District of North Carolina, JACKIE LEE MONROE did intentionally and willfully disobey the lawful writ, process, order, rule, decree and command of the District Court for the Eastern District of North Carolina, to-wit: he departed the Eastern District of North Carolina after being ordered not to travel outside said District by United States Magistrate Alexander B. Denson, said order forbidding the Defendant to depart the Eastern District of North Carolina being a condition of his release after an initial appearance on an arrest warrant on July 27, 1989, in violation of Title 18, United States Code, Section 401.

COUNT TWELVE

That on or about July 31, 1989, in the Eastern District of North Carolina, JACKIE LEE MONROE did intentionally and willfully disobey the lawful writ, process, order, rule, decree and command of the District Court for the Eastern District of North Carolina, by consuming a controlled substance, that is, cocaine, after being ordered by not to consume any controlled substance by United States Magistrate Alexander B. Denson, said order forbidding the consumption of any controlled substance being a condition of his release after an initial appearance on an arrest warrant on July 27, 1989, in violation of Title 18, United States Code 401.

COUNT THIRTEEN

That on or about April 22, 1990, in the Eastern District of North Carolina, JACKIE LEE MONROE did intentionally and willfully disobey the lawful writ, process, order, rule, decree and command of the District Court of the Eastern District of North Carolina, by doing an act and thing of such character as to constitute a criminal offense, to-wit: Title 18, United States Code, Sections 641 and 2, by committing larceny of U.S. property, and aiding and abetting said larceny, in violation of Title 18, United States Code, Section 402.

This the 5 day of May, 1990.

A TRUE BILL

Jo Ann Dorman
FOREMAN

June 5, 1990
DATE

MARGARET PERSON CURRIN
United States Attorney

By: _____
Assistant U.S. Attorney
Criminal Division

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

I certify the foregoing to be a true and correct copy of the original
A. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina

_____
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

CASE NO. 90-24-01-CR-3

UNITED STATES OF AMERICA	:	
	:	
VS.	:	
	:	
SALVIANO ALAMO WILLIAMS	:	S U P E R C E D I N G
a/k/a Sharon Lovett Cornelius	:	I N D I C T M E N T
a/k/a Major Sharon Sharita Lovett	:	
a/k/a Gloria J. Lockett	:	
a/k/a Salviano Davis	:	
a/k/a Sal Williams	:	
Defendant	:	

The Grand Jury charges:

COUNT ONE

That from on or about August 22, 1985 and continuing thereafter up to and including August 1989, in the Eastern District of North Carolina, SALVIANO ALAMO WILLIAMS, did willfully and unlawfully combine, conspire, confederate, and agree together, with another person known to the Grand Jury, to violate the provisions of Title 18, United States Code, Sections 641 and 1001. The object of said conspiracy was that the Defendant and his co-conspirator, a soldier in the United States Army, acting together, would defraud the United States Government by obtaining a license and certificate for marriage, which tne Defendant and his co-conspirator would submit to the United States Army Adjutant General's Military Identification Card Issue Facility for the purpose of receiving a United States Department of Defense Uniformed Services Identification and Privilege Card, to which the Defendant would not be entitled without said marriage. Using this Identification and Privilege Card, SALVIANO ALAMO WILLIAMS would willfully and knowingly steal and purloin benefits and other military privileges given to the holder of said ID card, to which he would not otherwise be entitled without said marriage. The

marriage was a sham and was illegal since both SALVIANO ALAMO WILLIAMS and his co-conspirator are males. In submitting this license and certificate for marriage to the United States Army, which SALVIANO ALAMO WILLIAMS and his known co-conspirator then knew was a false writing and document, the said SALVIANO ALAMO WILLIAMS and his co-conspirator did knowingly and willfully make a false, fictitious and fraudulent statement and representation that they were lawfully married under the laws of the State of South Carolina, and did knowingly and willfully make and use said false writing and document knowing it to contain a false, fictitious and fraudulent statement, that is, that they were lawfully married under the laws of the State of South Carolina, when in fact SALVIANO ALAMO WILLIAMS and his co-conspirator then well knew that the marriage was a sham and illegal, and the certificate and license for marriage was false, fictitious and fraudulent, said submission of the license and certificate for marriage to the United States Army being a matter within the jurisdiction of an agency and department of the United States.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, SALVIANO ALAMO WILLIAMS and his known co-conspirator, performed overt acts in the Eastern District of North Carolina and elsewhere including, but not limited to, the following:

1. On or about August 22, 1985, in Dillon South Carolina, SALVIANO ALAMO WILLIAMS a/k/a Sharon Sharita Lovett procured a license and certificate for marriage, purporting to show the marriage between the Defendant and his co-conspirator.

2. On or about September 9, 1985, in Dillon, South Carolina, SALVIANO ALAMO WILLIAMS a/k/a Major Sharon Sharita Lovett procured a license and certificate for marriage, purporting to show the marriage between the Defendant and his co-conspirator.

3. On or about February 14, 1986, SALVIANO ALAMO WILLIAMS a/k/a Sharon S. Cornelius, received an Uniformed Services Identification and Privilege Card.

4. On or about April 26, 1988, SALVIANO ALAMO WILLIAMS a/k/a Sharon Sharita Cornelius, received an Uniformed Services Identification Card at Fort Bragg, North Carolina.

5. Between February 1986 and August 1989 SALVIANO ALAMO WILLIAMS used an Uniformed Services Identification and Privilege Card to negotiate checks at the Army and Air Force Exchange Service, Fort Bragg, North Carolina.

6. Between February, 1986 and August 1989, SALVIANO ALAMO WILLIAMS used an Uniformed Services Identification and Privilege Card to willfully and knowingly steal and purloin medical services and treatment at Womack Army Hospital, Fort Bragg, North Carolina.

All in violation of the provisions of Title 18, United States Code, Section 371.

COUNT TWO

That between September 1, 1985 and June 30, 1989, at Fort Bragg, North Carolina, within the Eastern District of North Carolina, SALVIANO ALAMO WILLIAMS did willfully and knowingly steal and purloin U.S. currency, of the goods and property of the United States, of a value

greater than $100.00, and the said SALVIANO ALAMO WILLIAMS did aid, abet, counsel and command another to commit said offense against the United States, in violation of Title 18, United States Code, Sections 641 & 2.

COUNT THREE

That at a date certain, between September 1, 1985 and June 30, 1989, at Fort Bragg, North Carolina, in the special and maritime jurisdiction of the United States and within the Eastern District of North Carolina, SALVIANO ALAMO WILLIAMS did commit a crime against nature , to wit: he received a sexual organ of a male into his anus, and did commit other sexual acts with another male, in violation of North Carolina General Statute 14-177, assimilated by Title 18, United States Code, Section 13.

COUNT FOUR

That on or about June 23, 1988, at Fort Bragg, North Carolina, in the special and maritime jurisdiction of the United States and within the Eastern District of North Carolina, SALVIANO ALAMO WILLIAMS did write and deliver a check to another, said check drawn on a financial institution, to wit: check number 1270, drawn on The United National Bank, Fayetteville, North Carolina, account number 31115355046629, belonging to SALVIANO WILLIAMS in the amount of $150.00, without having sufficient funds or credit with said bank for the check to be paid, and then well knowing that there were insufficient funds or credit available for said payment, in violation of North Carolina General Statute 14-107, assimilated by Title 18, United States Code, Section 13.

COUNTS FIVE THROUGH TEN

The allegations of Count Four are incorporated herein by reference as if fully set forth verbatim, except for the date, check number, and

amount, which allegations are set forth with respect to each Count as follows:

COUNT	DATE	CHECKNUMBER	AMOUNT
5	June 23, 1988	1264	$50.00
6	June 23, 1988	1269	$150.00
7	July 8, 1988	1287	$150.00
8	July 13, 1988	1294	$150.00
9	July 16, 1988	1297	$150.00
10	July 30, 1988	1318	$150.00

COUNT ELEVEN

That on or about January 8, 1989, at Fort Bragg, North Carolina, in the special and maritime jurisdiction of the United States and within the Eastern District of North Carolina, SALVIANO ALAMO WILLIAMS did write and deliver a check to another, said check drawn on a financial institution, to wit: check number 262, drawn on the Mid-South Bank and Trust Company, Spring Lake, North Carolina, account number 53111344063011999, belonging to SALVIANO ALAMO WILLIAMS, in the amount of $150.00, without having sufficient funds or credit with said bank for the check to be paid, and then well knowing that there were insufficient funds or credit available for payment, in violation of North Carolina General Statute 14-107, assimilated by Title 18, United States Code, Section 13.

COUNTS TWELVE THROUGH FIFTEEN

The allegations of COUNT ELEVEN are incorporated herein by reference as if fully set forth verbatim, except for the date, check number, and amount, which allegations are set forth with respect to each Count as follows:

COUNT	DATE	CHECKNUMBER	AMOUNT
12	January 13, 1989	270	$140.00
13	January 21, 1989	272	$150.00
14	January 27, 1989	228	$150.00
15	January 24, 1989	226	$150.00

COUNT SIXTEEN

That at a date certain between January 8, 1989, and January 27, 1989, at Fort Bragg, North Carolina, within the Eastern District of North Carolina, SALVIANO ALAMO WILLIAMS, did willfully and knowingly steal and purloin U.S. currency of a value in excess of $100.00, the goods and property of the United States, in violation of Title 18, United States Code, Section 641.

A TRUE BILL

Jo Ann Dorman
Foreman

June 5, 1990
Date

MARGARET PERSON CURRIN
United States Attorney

By: Richard H. Edmundson
Assistant U.S. Attorney
Criminal Division

By: Frederic L. Borch III
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

I certify the foregoing to be a true and correct copy of the original.
A. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina
Rebecca Drew
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: 89-53-01-CR-3

J. RICH [illegible], CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

UNITED STATES OF AMERICA	:	
	:	
vs.	:	I N D I C T M E N T
	:	
TYRONE ANTHONY HOLT	:	
Defendant	:	

The Grand Jury charges:

COUNT ONE

That at a date certain between July 22, 1989 and August 2, 1989, at Fort Bragg, North Carolina, a military reservation within the special maritime and territorial jurisdiction of the United States, and in the Eastern District of North Carolina, TYRONE ANTHONY HOLT, Defendant herein and three juvenile males, unindicted co-conspirators, knowingly, willfully and unlawfully did combine, conspire, confederate, and agree together with each other to violate the provisions of Title 18 United States Code, Section 662. The object of said conspiracy was that the Defendant and his unindicted co-conspirators would receive and conceal stolen goods and property of a value in excess of $100.00 and then would pawn, sell or otherwise dispose of said property, then knowing it had been stolen from another person who resided on Fort Bragg, North Carolina.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, TYRONE ANTHONY HOLT, Defendant herein, and three juvenile males, unindicted co-conspirators, performed overt acts in the Eastern District of North Carolina including, but not limited to, the following:

1. At a date certain between July 22, 1989 and August 2, 1989, three juvenile males, unindicted co-conspirators entered the living

quarters of Kent Allen Irvin and stole a Kenwood-brand stereo tuner, Kenwood-brand stereo amplifier, Kenwood-brand record turntable, Kenwood-brand cassette deck, Panasonic-brand video cassette recorder (VCR) and Scott Compact Disc Player. Each stolen item has a value in excess of $100.00.

2. At a date certain between July 22, 1989 and August 2, 1989, one of the three juvenile males, unindicted co-conspirators, discussed the theft of these stereo items with TYRONE ANTHONY HOLT, who agreed to pawn them.

3. On or about August 7, 1989, TYRONE ANTHONY HOLT pawned the stolen Kenwood-brand cassette deck and the stolen Scott-brand Compact Disc Player and received a total of $100.00 for the two items. Holt further delivered $50.00 of this $100.00 to one of the three juvenile males.

4. On or about August 8, 1989, TYRONE ANTHONY HOLT pawned the Kenwood-brand turntable and stolen stereo amplifier and received a total of $56.00 for the two items.

5. At a date certain between July 22, 1989 up to and including August 22, 1989, TYRONE ANTHONY HOLT took to his home the stolen Kenwood-brand turntable and the stolen Pansonic VCR.

All of the above in violation of Title 18, United States Code, Section 371.

COUNT TWO

At a date certain between July 22, 1989 up to and including August 8, 1989, at Fort Bragg, North Carolina, a military reservation within the special maritime and territorial jurisdiction of the United States

and in the Eastern District of North Carolina, TYRONE ANTHONY HOLT did knowingly receive and conceal goods or other things of value, each having a value in excess of $100.00, which were the subject of a larceny, which had been feloniously taken, stolen or embezzled from another person, knowing the same to have been so taken, stolen, and embezzled, to-wit: a Kenwood-brand stereo amplifier, stereo tuner, record turntable, and cassette deck, a Scott-brand Compact Disc Player and a Panasonic-brand video cassette recorder, which the said TYRONE ANTHONY HOLT then well known to have been feloniously stolen from a residence of a soldier on Fort Bragg, North Carolina, in violation of Title 18, United States Code, Section 662.

COUNT THREE

On or about July 1, 1989, at Fort Bragg, North Carolina, a military reservation within the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, TYRONE ANTHONY HOLT, with intent to steal and purloin, did take and carry away a 1986 Pontiac 6000 Station Wagon automobile, personal property of Troy Lorenzo Wright, of a value in excess of $100.00, in violation of Title 18 United States Code, Section 661.

A TRUE BILL

FOREMAN

DATE

MARGARET PERSON CURRIN
United States Attorney

By: _____
Assistant U.S. Attorney
Criminal Division

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

I certify the foregoing to be a true and correct copy of the original
Jean Leonard, Clerk
United States District Court
Eastern District of North Carolina
By: _____
Deputy Clerk

11SA

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: 90-32-01-CR3

UNITED STATES OF AMERICA	:	
	:	
vs.	:	
	:	I N D I C T M E N T
MARTIN DOLAN HEYWARD	:	
Defendant	:	

The Grand Jury charges:

COUNT ONE

On or about the 16th day of March, 1990, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, MARTIN DOLAN HEYWARD did unlawfully kill another living human being, to wit: Manuel A. Gomez, Jr., by driving a 1986 Honda Accord DX motor vehicle with Manuel A. Gomez, Jr. as a passenger in said vehicle on a street and highway in excess of the posted speed limit of 55 miles per hour, that is, at speeds between 60 to 100 miles per hour, and by driving said vehicle carelessly and heedlessly, in a willful and wanton disregard for the rights and safety of others by swerving and weaving in and out of traffic, and then leaving the highway travelling at a speed of about 80 miles per hour and striking a tree at about 65 miles per hour, thereby proximately causing the death of Manuel A. Gomez, Jr. This conduct being without due caution and circumspection and with wanton and reckless disregard for human life, in that the said MARTIN DOLAN HEYWARD then had knowledge that his conduct

threat to the life of Manuel A. Gomez, Jr., and had such knowledge of such circumstances as could reasonably have enabled him to foresee that his conduct might result in the death of Manuel A. Gomez, Jr., in violation of Title 18 United States Code, Section 1112.

COUNT TWO

On or about the 16th day of March, 1990 at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, MARTIN DOLAN HEYWARD did willfully and unlawfully drive a 1986 Honda Accord DX motor vehicle on a street and highway, that is the All American Freeway in a speed competition with a 1990 Ford Mustang GT, in violation of North Carolina General Statute 20-141.3(b), as assimilated by Title 18, United States Code, Section 13.

COUNT THREE

On or about the 16th day of March, 1990 at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, MARTIN DOLAN HEYWARD did drive a 1986 Honda Accord DX motor vehicle upon a highway and public vehicular area carelessly and heedlessly, to wit: by driving on the All American Freeway in excess of the posted speed limit of 55 miles per hour at speeds between 60 to 100 miles per hour, swerving and weaving in and out of traffic at said excess speed and passing other vehicles on both the right and

left, such conduct being in willful and wanton disregard of the rights and safety of others, in violation of North Carolina General Statute 20-140, as assimilated by Title 18, United States Code, Section 13.

COUNT FOUR

On or about the 16th day of March, 1990 at Fort Bragg, North Carolina within the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, MARTIN DOLAN HEYWARD did drive a 1986 Honda Accord DX motor vehicle upon a highway and public vehicular area at a speed greater than reasonable and prudent under the conditions then existing, to wit: by driving said vehicle at speeds between 60 to 100 miles per hour, and in excess of the posted speed limit of 55 miles per hour, in violation of North Carolina General Statute 20-141, as assimilated by Title 18, United States Code, Section 13.

A TRUE BILL

FOREMAN

May 9, 1990
DATE

I certify the foregoing to be a true and correct copy of the original.
J. [illegible], Clerk
U.S. District Court
Eastern District of North Carolina
By: [illegible] Deputy Clerk

MARGARET PERSON CURRIN

BY:
Assistant U.S. Attorney
Criminal Division

BY:
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

BY:
MICHEAL D. WATSON
Special Assistant U.S. Attorney
Criminal Division

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION
Case No. 90-
Case No. 90-

UNITED STATES OF AMERICA

vs.

ROBBIE LEON MCCALL
JONATHAN EARL TAYLOR
Defendant

I N D I C T M E N T

The Grand Jury charges:

COUNT ONE

That on or about December 14, 1989, in the Eastern District of North Carolina, ROBBIE LEON MCCALL, having been convicted on March 30, 1989, in the Superior Court of Cumberland County, North Carolina, of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess in and affecting commerce, a firearm, that is a Ruger MK II, .22 caliber pistol, serial number 213-93417, which had been shipped and transported in interstate commerce; all in violation of Title 18, United States Code, Section 922(g)(1) and did aid, abet, counsel and command the commission of said offense, in violation of Title 18, United States Code, Section 2.

COUNT TWO

That on or about December 14, 1989, in the Eastern District of North Carolina, JONATHAN EARL TAYLOR, having been convicted on July 27, 1988, in the Superior Court of Cumberland County, North Carolina, of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess in and affecting commerce, a firearm, that is a Ruger MK II, .22 caliber pistol, serial number 213-93417, which had been shipped and

transported in interstate commerce; all in violation of Title 18 United States Code, Section 922(g)(1) and did aid, abet, counsel and command the commission of said offense, in violation of Title 18, United States Code, Section 2.

A TRUE BILL

_____
FOREMAN

_____
DATE

MARGARET PERSON CURRIN
United States Attorney

By: _____
Assistant U.S. Attorney
Criminal Division

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

NO. 88-35-01-CR-3

UNITED STATES OF AMERICA :
:
v. : INDICTMENT
:
RONALD (NMN) SMITHERMAN :

The Grand Jury charges that:

FIRST COUNT

That on or about the 27th day of March, 1988, on Fort Bragg, a United States military reservation within the special maritime and territorial jurisdiction of the United States and within the Eastern District of North Carolina, RONALD (NMN) SMITHERMAN did unlawfully seize, confine, inveigle, decoy, kidnap, carry away, and hold for reasons otherwise than ransom, Emily Annette Alston by use of force and against the will of the victim, in violation of Title 18, United States Code, Sections 7 and 1201.

SECOND COUNT

That on or about the 27th day of March, 1988, at Fort Bragg in the Eastern District of North Carolina, RONALD (NMN) SMITHERMAN, defendant herein, during and in relation to a crime of violence prosecutable in a court of the United States, specifically the offense of kidnapping, in violation of Title 18, United States Code, Section 1201, did knowingly and willfully use

and carry a firearm, that is a handgun, in violation of Title 18, United States Code, Section 924(c).

A TRUE BILL

FOREMAN

DATE: July 19, 1988

MARGARET PERSON CURRIN
United States Attorney

BY: _____
Assistant U. S. Attorney

BY: _____
Special Assisant U.S. Attorney

I certify the foregoing to be a true and correct copy of the original.
J. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina
By _____
Deputy Clerk

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

UNITED STATES OF AMERICA, Plaintiff VS. WILLIAM MIMS ALLEN, Defendant	CRIMINAL NO. _____ I N D I C T M E N T [Vio: Title 18, United States Code, Section 2113(a): Bank Robbery]

THE GRAND JURY CHARGES:

That on or about February 2, 1983, in the Western District of Texas, Defendant

WILLIAM MIMS ALLEN

knowingly entered a bank, namely, the Mercantile Bank and Trust, San Antonio, Texas, the deposits of which were then insured by the Federal Deposit Insurance Corporation, with the intent to commit in such bank a felony affecting such bank, that is, the taking by force and violence and by intimidation and presence of employees of such bank, money belonging to care, custody, control, management and possession of the in violation of Title 18, United States Code, Section 2113(a).

A TRUE BILL

FOREMAN

EDWARD C. PRADO
United States Attorney
By:

Assistant U. S. Attorney

GOVERNMENT EXHIBIT

intent to distribute heroin, in violation of Title 21, United States Code, Section 843(b).

APPROVED:

EDWARD C. PRADO
United States Attorney

Defendant

Assistant United States Attorney

Date

Date

Attorney for Defendant

Date

JOSEPH P. RUSSONIELLO
United States Attorney

Attorney for Plaintiff

FILED

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office
ATTEST
RICHARD W. WIEKING
Clerk, U.S. District Court
Northern District of California
By Corinne Henderson Deputy Clerk
Date NOV 08 1989

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff v. PAUL DANIEL MACINNIS Defendant.	No. CR 89-20126 RFP VIOLATION: Title 18 U.S.C. Sec. 641 Theft of Government Property

INDICTMENT

COUNT ONE: (18 U.S.C. Sec. 641)

The Grand Jury charges: THAT

On or about June 17, 1988, in the City of Monterey, Monterey County, State and Northern District of California,

PAUL DANIEL MACINNIS

defendant herein, did willfully and knowingly steal and purloin property belonging to the United States of a value of more than $100.00, to wit: one IBM computer, Model 5150, with the serial number 13848305150; one IBM computer monitor, Model 5153, with the serial number 0396165; one IBM computer keyboard, with the serial number 1503200.

COUNT TWO: (18 U.S.C. Sec. 641)

The Grand Jury further charges: THAT

From on or about April 12, 1989, through on or about June 17, 1989, in the City of Monterey, Monterey County , State and Northern District of California,

PAUL DANIEL MACINNIS

defendant herein, did willfully and knowingly without authority, sell, convey, or dispose of property belonging to the United States of a value of more than $100.00, to wit: one Apple MacIntosh Plus computer; one Apple computer keyboard; one Apple external floppy disk drive.

COUNT THREE: (18 U.S.C. Sec. 641)

The Grand Jury further charges: THAT

From on or about April 12, 1988, through on or about June 17, 1989, in the City of Monterey, Monterey County, State and Northern District of California,

PAUL DANIEL MACINNIS

defendant herein, did willfully and knowingly without authority, sell, convey, or dispose of property belonging to the United States of a value of more than $100.00, to wit: one Panasonic video cassette recorder.

COUNT FOUR: (18 U.S.C. Sec. 641)

The Grand Jury further charges: THAT

From on or about April 12, 1988, through on or about June 17, 1989, in the City of Monterey, Monterey County, State and Northern District of California,

PAUL DANIEL MACINNIS

defendant herein, did willfully and knowingly receive, conceal, or retain property belonging to the United States of a value of more than $100.00, with intent to convert it to his own use or gain, knowing it to have been embezzled, stolen, purloined, or converted, to wit: one Apple computer printer, Model A9M0303; one Apple computer keyboard; one Apple MacIntosh computer with monitor and 512K drive, Model M0001W.

DATED:

Nov. 8, 1989

A TRUE BILL

FOREPERSON

JOSEPH P. RUSSONIELLO
United States Attorney

(Approved as to form: _____)
AUSA:

TAB

N

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No. _____

UNITED STATES OF AMERICA	:	
	:	
v.	:	I N D I C T M E N T
	:	
RODNEY HENRY DUBAY	:	

The Grand Jury charges that:

COUNT ONE

On or about February 21, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly and intentionally distribute approximately five grams of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(c).

COUNT TWO

On or about February 21, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly, intentionally and unlawfully use a firearm, to wit, a shotgun, during and in relation to his commission of the offense of knowingly and intentionally distributing a controlled substance, a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1).

COUNT THREE

On or about February 21, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly, intentionally and unlawfully maintain a place for the purpose of manufacturing and distributing marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 856(a)(1).

COUNT FOUR

On or about February 23, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly and intentionally distribute approximately eight grams of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(c).

COUNT FIVE

On or about February 23, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly, intentionally and unlawfully use a firearm, to wit, a shotgun, during and in relation to his commission of the offense of knowingly and intentionally distributing a controlled substance, a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1).

COUNT SIX

On or about February 23, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly, intentionally and unlawfully maintain a place for the purpose of manufacturing and distributing marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 856(a)(1).

COUNT SEVEN

On or about February 26, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly and intentionally distribute approximately eight grams of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(c).

COUNT EIGHT

On or about February 26, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly, intentionally and unlawfully use a firearm, to wit, a shotgun, during and in relation to his commission of the offense of knowingly and intentionally distributing a controlled substance, a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1).

COUNT NINE

On or about February 26, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly, intentionally and unlawfully maintain a place for the purpose of manufacturing and distributing marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 856(a)(1).

COUNT TEN

On or about March 3, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly and intentionally distribute approximately fourteen grams of marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(c).

COUNT ELEVEN

On or about March 3, 1990, Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly, intentionally and unlawfully use a firearm, to wit, a shotgun, during and in relation to his commission of the offense of knowingly and intentionally distributing a controlled substance, a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1).

COUNT TWELVE

On or about March 3, 1990, in Spring Lake, North Carolina, in the Eastern District of North Carolina, RODNEY HENRY DUBAY, defendant herein, did knowingly, intentionally and unlawfully maintain a place for the purpose of manufacturing and distributing marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 856(a)(1).

A TRUE BILL

_____
FOREMAN

_____
DATE

MARGARET PERSON CURRIN
United States Attorney

By: _____
Assistant U.S. Attorney
Criminal Division

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

NO. _____
NO. _____
NO. _____
NO. _____
NO. _____
NO. _____
NO. _____
NO. _____
NO. _____
NO. _____
NO. _____

UNITED STATES OF AMERICA	:	
	:	
v.	:	I N D I C T M E N T (Superseding)
	:	
CLAUDIUS WINSTON KING	:	
a/k/a Roots, a/k/a King	:	
JOIADA ELIJAH McKENZIE	:	
a/k/a Rasta, a/k/a Dread,	:	
a/k/a Williams	:	
LEONARD JOSEPH	:	
a/k/a Gregg	:	
DEXTER JOHN BALDWIN MOORE	:	
a/k/a Julio	:	
JONATHAN DAVID KLEIN	:	
JOHN DOE, a/k/a Ski, a/k/a Skeet	:	
AMELIUS PALTON BASCOMBE	:	
a/k/a Ace	:	
JOHN DOE, a/k/a Kevin	:	
JOHN DOE, a/k/a Jeff	:	
JOHN DOE, a/k/a Fred	:	

The Grand Jury charges:

FIRST COUNT

1. That from about the month of September, 1987 and continuing thereafter up to and including the month of May, 1988, in the Eastern District of North Carolina and at other diverse locations both known and unknown to the Grand Jury, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, defendant herein, did knowingly, intentionally and unlawfully engage in a continuing

criminal enterprise, in that CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King:

2. Did knowingly, intentionally and unlawfully violate a provision of Subchapter I of the Drug Abuse Control Act of 1970 (Title 21, United States Code, Section 801 et seq.), which was part of a continuing series of violations of Subchapter I of the Drug Abuse Control Act of 1970 relating to:

A. Conspiracy to possess with the intent to distribute and distribution of cocaine, a Schedule II narcotic controlled substance, and marijuana, in violation of the provisions of Title 21, United States Code, Section 846.

B. Distribution of cocaine, a Schedule II narcotic controlled substance, in violation of the provisions of Title 21, United States Code, Section 841 (a)(1);

3. Did undertake such series of violations in concert with five or more other persons with respect to whom CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, defendant herein, did occupy a position of organizer, a supervisory position, and other position of management; and

4. Did obtain substantial income and resources from such series of violations.

5. Furthermore, from his engagement in the aforesaid continuing criminal enterprise, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, defendant herein, obtained profits and property which he shall forfeit to the United States pursuant to Title 21, United States Code, Section 848(a)(2), which properties have not previously been forfeited to the United States.

All in violation of the provisions of Title 21, United States Code, Section 848.

SECOND COUNT

That from about September 1987 and continuing thereafter up to and including the date of this indictment in the Eastern District of North Carolina and elsewhere, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King; JOIADA ELIJAH McKENZIE, a/k/a Rasta, a/k/a Dread, a/k/a Williams; LEONARD JOSEPH, a/k/a Gregg; DEXTER JOHN BALDWIN MOORE, a/k/a Julio; and JONATHAN DAVID KLEIN, JOHN DOE, a/k/a Ski, a/k/a Skeet; AMELIUS PALTON BASCOMBE, a/k/a Ace; JOHN DOE, a/k/a Kevin; JOHN DOE, a/k/a Jeff; JOHN DOE, a/k/a Fred, defendants herein, did knowingly, intentionally and unlawfully combine, conspire, confederate and agree together, with each other and with Ricardo Pedro Montano, a/k/a Indian, and John Kenneth Miller, unindicted co-conspirators, and with diverse other persons whose names are to the grand jury both known and unknown, to violate the provisions of Title 21, United States Code, Section 841(a)(1).

The object of said conspiracy was that the defendants and others would knowingly, intentionally, and unlawfully possess with intent to distribute and distribute in excess of five kilograms of cocaine, a Schedule II narcotic controlled substance, and marijuana, a Schedule I controlled substance.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, JOIADA ELIJAH McKENZIE, a/k/a Rasta, a/k/a Dread, a/k/a Williams, LEONARD JOSEPH, a/k/a Gregg, DEXTER JOHN BALDWIN MOORE, a/k/a

Julio, and JONATHAN DAVID KLEIN, and other co-conspirators performed overt acts in the Eastern District of North Carolina and elsewhere, including but not limited to the following:

1. Sometime during the fall of 1987, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, moved from New York to Raleigh, North Carolina, for the purpose of distributing cocaine and marijuana.

2. On April 21, 1988, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, and JOIADA ELIJAH McKENZIE, a/k/a Rasta, a/k/a Dread, a/k/a Williams, traveled from Raleigh, North Carolina, to New York to obtain cocaine.

3. On April 23, 1988, in the Eastern District of North Carolina, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, attempted to possess approximately 250 grams of cocaine.

4. On April 26, 1988, JOIADA ELIJAH McKENZIE, a/k/a Rasta, a/k/a Dread, a/k/a Williams, threatened to kill Laura Denise Ireland to prevent her from testifying against him and his fellow conspirators.

5. From about May 1987 through April 1988, JONATHAN DAVID KLEIN exchanged guns for cocaine with CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King.

All of the above in violation of the provisions of Title 21, United States Code, Section 846.

THIRD COUNT

On or about April 2, 1988, in the Eastern District of North Carolina, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, defendant herein, during and in relation to a drug trafficking crime, as alleged in Count One of this Indictment, did use or

carry a firearm, in violation of the provisions of Title 18, United States Code, Section 924(c)(1).

FOURTH COUNT

On or about April 23, 1988, in the Eastern District of North Carolina, JOIADA ELIJAH McKENZIE, a/k/a Rasta, a/k/a Dread, a/k/a Williams, defendant herein, during and in relation to a drug trafficking crime, as alleged in Count One of this Indictment, did use or carry a firearm, in violation of the provisions of Title 18, United States Code, Section 924(c)(1).

FIFTH COUNT

On or about April 21, 1988, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, and JOIADA ELIJAH McKENZIE, a/k/a Rasta, a/k/a Dread, a/k/a Williams, defendants herein, did travel in interstate commerce from Raleigh, North Carolina, to the state of New York, with the intent to promote, manage, establish, carry on, or facilitate the promotion, management, or carrying on of an unlawful activity, said unlawful activity being a business enterprise involving the sale and distribution of controlled substances, and did aid and abet others in so doing, in violation of the provisions of Title 18, United States Code, Sections 1952(a) and 2.

SIXTH COUNT

That on or about the 26th day of April, 1988, in Raleigh, North Carolina, in the Eastern District of North Carolina, JOIADA ELIJAH McKENZIE, a/k/a Rasta, a/k/a Dread, a/k/a Williams, did knowingly and willfully use intimidation and did threaten another person with intent to influence or prevent the testimony of such person in an official proceeding and with intent

to cause and induce such person to withhold testimony from an official proceeding, in that JOIADA ELIJAH McKENZIE, a/k/a Rasta, a/k/a Dread, a/k/a Williams, threatened Laura Denise Ireland to influence or prevent her testimony before a federal grand jury, in violation of the provisions of Title 18, United States Code, Section 1512(b).

SEVENTH COUNT

That on or about April 23, 1988, in the Eastern District of North Carolina, CLAUDIUS WINSTON KING, a/k/a Roots, a/k/a King, defendant herein, did knowingly, intentionally, and unlawfully attempt to possess with the intent to distribute approximately 250 grams of cocaine, a Schedule II narcotic controlled substance, in violation of the provisions of Title 21, United States Code, Section 846.

A TRUE BILL

_____
FOREMAN

DATE: _____

MARGARET PERSON CURRIN
United States Attorney

BY: _____
WILLIAM A. WEBB
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION

NO. _____
NO. _____

UNITED STATES OF AMERICA	:	
	:	
v.	:	I N D I C T M E N T
	:	
JEROME MARTIN WEXLER, a/k/a "Animal" MARK C. FRALEIGH a/k/a "Mark Patrick Comyn Fraleigh" a/k/a "Doc"	:	

The Grand Jury charges:

COUNT ONE

That from on or about the 1st day of October, 1985, the exact date being unknown to the Grand Jury, and continuously thereafter up to and including the 27th day of October, 1986, in the Eastern District of North Carolina and elsewhere, JEROME MARTIN WEXLER, a/k/a "Animal", and MARK C. FRALEIGH, a/k/a "Mark Patrick Comyn Fraleigh", a/k/a "Doc", defendants herein, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree together, with each other and with various persons, both known and unknown to the Grand Jury, including Lane Boudreau, Scott Willard Holland, James Allen Halperin, Maria Ximena Erlandsen, Derek Adrian Pedro, and Steven Preston King, co-conspirators, but not indicted herein, to knowingly, intentionally, and unlawfully import into the United States Schedule I non-narcotic controlled substances, namely marijuana, in violation of the provisions of Title 21, United States Code, Sections 952 and 960(a)(1).

PURPOSE

The purpose of the conspiracy was to import and possess large quantitites of marijuana for distribution and resale and generate large profits therefrom.

MANNER AND MEANS

The manner and means by which this conspiracy was carried out included the following:

1. As part of the conspiracy, the defendants and co-conspirators played different roles, took upon themselves different tasks, and participated in the affairs of the conspiracy through various criminal acts. The roles assumed by these defendants and co-conspirators were interchangeable at various times throughout the conspiracy. These defendants and co-conspirators made themselves and their services available at various times throughout the conspiracy and would participate on an "as needed" basis. Some of the roles which these defendants and co-conspirators assumed and carried out were as follows:

a. Financier or owner;

b. Organizer;

c. Manager or supervisor;

d. Captain of smuggling vessel;

e. Crewmember;

f. Off-loader;

g. Communications man;

h. Security guard or "look-out";

i. Provider of off-load site;

j. Distributor; and

k. Provider of smuggling vessel.

2. As a further part of the conspiracy, the defendants, along with certain unindicted co-conspirators, used various means to ensure the continued existence and success of the conspiracy, including the following:

a. Using aliases and false names;

b. Providing payment for legal fees for person or persons arrested;

c. Using or attempting to use false identification; and

d. Using false or fraudulent documentation to create an appearance of legitimacy for transactions designed to further the smuggling venture.

OVERT ACTS

1. In late 1985, exact date unknown, JEROME MARTIN WEXLER, a/k/a "Animal," received $15,000 from Steven Lane Boudreau as "up front" money for the purchase of in excess of 10,000 pounds of marijuana.

2. In March, 1986, JEROME MARTIN WEXLER, a/k/a "Animal," met with Derek Adrian Pedro and Stephen Preston King in St. Maarten to discuss preparations for the marijuana smuggle.

3. On March 28, 1986, JEROME MARTIN WEXLER, a/k/a "Animal," and MARK C. FRALEIGH, a/k/a "Mark Patrick Comyn Fraleigh", a/k/a "Doc," met with Derek Adrian Pedro, Steven Lane Boudreau, and

Gilbert Raymond Grimes, Jr., in Nevis to discuss preparations for the importation of in excess of 10,000 pounds of marijuana.

4. On or about the first week of April, 1986, JEROME MARTIN WEXLER, a/k/a "Animal," and MARK C. FRALEIGH, a/k/a "Mark Patrick Comyn Fraleigh," a/k/a "Doc," supervised the loading of in excess of 10,000 pounds of marijuana from a "mother ship" to sailboats captained by Derek Adrian Pedro and Gilbert Raymond Grimes, Jr., near Redondo Rock, between the Islands of Nevis and Montserrat.

5. On August 12, 1986, JEROME MARTIN WEXLER, a/k/a "Animal", was arrested by United States Customs Agents in San Juan, Puerto Rico, attempting to enter Puerto Rico with $24,000 in undeclared United States Currency.

6. On September 25, 1986, JEROME MARTIN WEYLER, a/k/a "Animal", and MARK C. FRALEIGH, a/k/a "Mark Patrick Comyn Fraleigh", a/k/a "Doc", flew from Miami, Florida, to Chicago, Illinois, at which time $143,000 United States Currency was seized by the Drug Enforcement Administration from MARK C. FRALEIGH, a/k/a "Mark Patrick Comyn Fraleigh", a/k/a "Doc".

7. On or about June 30, 1986, the "S.V. ASIA" was seized by federal agents in the Eastern District of North Carolina on the Intracoastal Waterway near the Carteret County-Craven County line, along with approximately 3,900 pounds of marijuana, this being a portion of the marijuana described earlier.

All in violation of the provisions of Title 21, United States Code, Section 952.

COUNT TWO

That from on or about the 1st day of October, 1985, the exact date being unknown to the Grand Jury, and continuously thereafter up to and including the 27th day of October, 1986, in the Eastern District of North Carolina and elsewhere, JEROME MARTIN WEXLER, a/k/a "Animal," and MARK C. FRALEIGH, a/k/a "Mark Patrick Comyn Fraleigh", a/k/a "Doc", defendants herein, did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree together, with each other and with various other persons both known and unknown to the Grand Jury, including Lane Boudreau, Scott Willard Holland, James Allen Halperin, Maria Ximena Erlandsen, Derek Adrian Pedro, and Steven Preston King, co-conspirators, but not indicted herein, to knowingly, intentionally, and unlawfully possess with intent to distribute and to distribute Schedule I non-narcotic controlled substances, namely marijuana, in violation of the provisions of Title 21, United States Code, Section 841(a)(1).

All in violation of the provisions of Title 21, United States Code, Section 846.

A TRUE BILL

_____
FOREMAN

DATE: _____

MARGARET PERSON CURRIN
United States Attorney

BY: _____
J. DOUGLAS McCULLOUGH
Assistant United States Attorney

TAB

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

No. _____

UNITED STATES OF AMERICA	:	
	:	
v.	:	INDICTMENT
	:	
JOHN MICHAEL VICK, SR.	:	

The Grand Jury charges:

FIRST COUNT

That between the 11th day of February, 1989 and the 13th day of February, 1989, in the Eastern District of North Carolina, JOHN MICHAEL VICK, SR., defendant herein, did knowingly possess a firearm which was not registered to him in the National Firearms Registration and Transfer Record; to wit, the defendant, JOHN MICHAEL VICK, SR., did possess a destructive device, that is, an explosive "pipebomb," the same being more particularly described as being constructed from a 7½" X 2" piece of PVC pipe, containing black powder, sealed on both ends, with a 7½ foot long piece of time fuse protruding from the black powder through the end of the device, in violation of the provisions of Title 26, United States Code, Section 5861(d).

SECOND COUNT

That between the 11th day of February, 1989 and the 13th day of February, 1989, in the Eastern District of North Carolina, JOHN MICHAEL VICK, SR., defendant herein, did knowingly make a firearm, in violation of the provisions of Chapter 53 of

Title 26 of the United States Code; to wit, the defendant, JOHN MICHAEL VICK, SR., did make a destructive device, that is, an explosive "pipebomb," the same being more particularly described as being constructed from a 7½" X 2" piece of PVC pipe, containing black powder, sealed on both ends, with a 7½ foot long piece of time fuse protruding from the black powder through the end of the device, in violation of the provisions of Title 26, United States Code, Section 5861(f).

A TRUE BILL

_____

FOREMAN

_____

DATE

Margaret Person Currin

MARGARET PERSON CURRIN
United States Attorney

TAB

P

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: 89-02-01-CR-3

UNITED STATES OF AMERICA	:	
	:	
vs.	:	INFORMATION
	:	(WAIVER OF INDICTMENT)
JERRY WAYNE HORNE	:	
Defendant	:	

The United States Attorney charges:

On or about September 2, 1986, in the Eastern District of North Carolina, JERRY WAYNE HORNE, knowingly did make a materially false statement in an application for a loan submitted by Carole Ann Horne on said date to the Bragg Mutual Federal Credit Union, a Federal Credit Union, for the purpose of influencing the action of said credit union to approve said loan, in that JERRY WAYNE HORNE stated and represented in said application that Carol Ann Horne was self-employed with an annual income of $20,208.00, in truth and fact, as JERRY WAYNE HORNE well knew, Carol Ann Horne was not self-employed and had no annual income, and the said JERRY WAYNE HORNE, Defendant herein, did aid, abet, counsel, and command the commission of said offense, in violation of Title 18, United States Code, Sections 1014 and 2.

This the _____ day of _____, 1989.

MARGARET PERSON CURRIN
United States Attorney

By: _____
Frederic L. Borch III
Special Assistant United States
Attorney
Criminal Division

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: 89-02-01-CR-3

UNITED STATES OF AMERICA	:	
	:	
vs.	:	WAIVER OF INDICTMENT
	:	(F.R. Crim. P. 7(b))
JERRY WAYNE HORNE	:	
Defendant	:	

JERRY WAYNE HORNE, the above-named Defendant, who is accused of knowingly making a materially false statement in an application for a loan to a Federal Creduit Union, for the purpose of influencing the action of said credit union, and aiding and abetting the commission of said offense, in violation of Title 18, United States Code, Sections 1014 and 2, hereby waives in open court prosecution by indictment and consents that the proceeding may be by Information instead of by Indictment.

_____
Defendant

_____
Witness

Date_____

_____
Counsel for Defendant

Approved this ____ day of _____, 1989.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: _____

UNITED STATES OF AMERICA	:	
	:	
vs.	:	I N F O R M A T I O N
	:	(Waiver of Indictment
DAVID LEE MACE	:	F.R.Crim.P. 7)
Defendant	:	

The United States Attorney charges:

That from on or about July 1, 1988 up to and including November 30, 1988, in the Eastern District of North Carolina, DAVID LEE MACE, Defendant herein, and a known co-conspirator did knowingly, intentionally, and unlawfully combine, conspire, confederate, and agree together, with each other, to defraud the United States, in violation of the provisions of Title 18, United States Code, Section 371, in the manner and means as follows:

OBJECT, MANNER AND MEANS OF CONSPIRACY

1. At all times material herein, DAVID LEE MACE, Defendant herein, was an employee of the United States Department of the Army, with duty as a Contracting Officer's Representative (COR) at Fort Bragg, North Carolina. It was a part of said DAVID LEE MACE's duty to act as COR for laundry services contracts at Fort Bragg, North Carolina.

2. At all times material herein, Jacquin Building Maintenance (JBM) was a business enterprise participating in competitive contract bidding on the Fort Bragg installation laundry contract, identified as DAKF40-88-R-0576.

3. At all times material herein, a known co-conspirator managed and directed the business activities of JBM.

4. The object of said conspiracy was that DAVID LEE MACE, Defendant herein, and the said known co-conspirator, would defraud the United States by preparing a bid proposal for JBM on contract DAKF40-88-R-0576 so that JBM would be the "low bidder" in the competitive contract process, and be awarded said contract.

5. DAVID LEE MACE, Defendant herein, further was to receive about $4,000.00 per month from JBM to assist JBM in the performance of said contract after its award to JBM, to include falsifying laundry documents to reflect that JBM was doing ten percent (10%) more laundry than it actually was cleaning. These false records would permit DAVID LEE MACE, Defendant herein, in his official capacity as COR, to modify JBM's contact to fraudulently award it additional monies.

OVERT ACTS

1. On a date certain between July 1, 1988 and November 30, 1988, DAVID LEE MACE, Defendant herein, prepared and caused to be prepared the bid proposal for JBM's bid on Fort Bragg laundry contract DAKF40-88-R-0576.

2. On a date certain between July 1, 1988 and November 30, 1988, a known co-conspirator delivered or caused to be delivered said bid proposal to the Directorate of Contracting, Fort Bragg, North Carolina.

3. On a date certain between July 1, 1988 and November 30, 1988, a known co-conspirator paid DAVID LEE MACE, Defendant herein, about $180.00 for preparing said JBM bid proposal.

All the above in violation of Title 18, United States Code, Section 371.

This _____ day of _____, 1989.

Respectfully submitted,

MARGARET PERSON CURRIN
United States Attorney

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Office of the Staff Judge Advocate
Federal Prosecutors' Office
XVIII Airborne Corps and Fort Bragg
Fort Bragg, North Carolina 28307-5000
(919) 396-1221

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: _____

UNITED STATES OF AMERICA	:	
	:	
vs.	:	
	:	WAVIER OF INDICTMENT
NAME	:	
Defendant	:	

Defendant's Name, the above-named Defendant, who is accused of (name offense) being advised of the nature of the charge and of his/her rights, hereby waives in open court prosecution by Indictment and consents that the proceeding may be by Information instead of by Indictment.

_____
Defendant

_____
Witness

DATE: _____

_____
Counsel for Defendant

Approved this _____ day of _____, 1989.

_____
UNITED STATES DISTRICT JUDGE

TAB

Q

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION
Case No. 89 - _____

UNITED STATES OF AMERICA

vs.

A JUVENILE, MALE
Defendant

JUVENILE DELINQUENCY
INFORMATION
(18 USC 5032)

The United States Attorney charges:

COUNT ONE

From on or about February 1, 1989 and continuing thereafter up to and including July 27, 1989, in the Eastern District of North Carolina, A JUVENILE, MALE, Defendant herein, and a known co-conspirator, knowingly, willfully and unlawfully did combine, conspire, confederate and agree together, with each other to violate the provisions of Title 18, United States Code, Section 661.

The object of the conspiracy was that the Defendant and his co-conspirator would enter the Military Communications Center, (MCC) Building on Fort Bragg, North Carolina, take the cash box keys to pay telephones, drive to various locations on Fort Bragg, North Carolina and unlock pay telephone cash boxes with the intent to steal and purloin monies in said boxes and then did take and carry away U.S. currency from said boxes, the property of the Military Communications Center, Incorporated. The Defendant and his known co-conspirator would then share the stolen monies.

OVERT ACTS

In furtherance of the conspiracy and to effect the object thereof, A JUVENILE, MALE, and his co-conspirator performed overt acts in the Eastern District of North Carolina, including but not limited to the following:

1. On 10 or 12 occasions between February 1, 1989 and July 27, 1989, A JUVENILE, MALE entered the MCC Building and took pay telephone cash box keys.

2. On 10 or 12 occasions between February 1, 1989 and July 27, 1989, A JUVENILE, MALE and his known co-conspirator, acting in concert, opened numerous pay telephone cash boxes on Fort Bragg, North Carolina and removed U.S. currency contained therein.

3. On or about July 22, 1989, A JUVENILE, MALE and a co-conspirator, acting in concert, opened pay telephone cash boxes located near the Army and Air Force Exchange Service main building and United States Post Office main building on Fort Bragg, North Carolina and removed U.S. currency contained therein.

4. On or about July 27, 1989, A JUVENILE, MALE and a known co-conspirator, acting in concert, opened about 10 pay telephone cash boxes located on Fort Bragg, North Carolina, and removed U.S. currency contained therein.

All of the above are in violation of the provisions of Title 18, United States Code, Section 371.

COUNT TWO

On or about July 22, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, A JUVENILE, MALE with the intent to steal and purloin, did take and carry away U.S. currency, the property of the Military Communications Center, Incorporated, of a value in excess of $100.00, and A JUVENILE, MALE, the Defendant herein, did aid, abet, counsel and command the commission of said offense, in violation of Title 18, United States Code, Sections 661 and 2.

COUNT THREE

On or about July 27, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina, A JUVENILE, MALE, with the intent to steal and purloin, did take and carry away U.S. currency, the property of the Military Communications Center, Incorporated, of a value in excess of $100.00, and JUVENILE, MALE, Defendant herein, did aid, abet, counsel and command the commission of said offense, in violation of Title 18, United States Code, Sections 661 and 2.

COUNT FOUR

On or about July 27, 1989, at Fort Bragg, North Carolina, within the special maritime and territorial jurisdiction of the United States, and in the Eastern District of North Carolina, A JUVENILE, MALE, did unlawfully break and enter the Military

Communications Center (MCC) Building located on Fort Bragg, North Carolina, without consent and with the intent to commit a felony therein, to-wit: the larceny of pay telephone cash box keys, in violation of North Carolina General Statute 14-54, as assimilated by Title 18 United States Code, Section 13.

This the ____ day of _____, 1989.

Respectfully submitted,

MARGARET PERSON CURRIN
United States Attorney

By: _____
Frederic L. Borch III
Assistant U.S. Attorney
Criminal Division

CERTIFICATION

TO: THE HONORABLE CHIEF JUDGE W. EARL BRITT, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

This is to certify that in the case of UNITED STATES OF AMERICA vs. A JUVENILE, MALE, no juvenile court or other appropriate court of any state, including the General Court of Justice of the State of North Carolina, has jurisdiction over said juvenile with respect to the acts of juvenile delinquency alleged in said case, said alleged acts having occurred on Fort Bragg, North Carolina, a military reservation acquired for the United States and under the exclusive jurisdiction thereof.

This certificate is made pursuant to the requirements of Title 18, United States Code, Section 5032, and is made by the United States Attorney for the Eastern District of North Carolina on the basis of authority delegated to him by the Attorney General of the United States. (Attorney General Order No. 579-74, 28 C.F.R. 0.57.).

This the _____ day of _____, 1989.

MARGARET PERSON CURRIN
UNITED STATES ATTORNEY

By: _____
Frederic L. Borch III
Special Assistant U.S. Attorney
Criminal Division

Fwd

IN THE GENERAL COURT OF JUSTICE
JUVENILE COURT

IN THE MATTER OF:

_____
JUVENILE MALE/FEMALE

JUVENILE RECORD CERTIFICATION

In accordance with the provisions of Title 18, United States Code, Section 5032, it is hereby certified that the juvenile male/female in the above-captioned case has no prior delinquency record on file in this office/has a prior delinquency juvenile record, copies of which are attached/ has a prior juvenile delinquency record which is unavailable because _____

_____.

CLERK OF JUVENILE COURT

DATE: _____ By: _____
Deputy Clerk

TAB

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Rev. 12/27/89

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
_____ DIVISION

NO. _____

UNITED STATES OF AMERICA	:	
	:	
v.	:	MEMORANDUM OF PLEA AGREEMENT
	:	
_____	:	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and the Defendant, with the concurrence of Defendant's attorney, _____, have agreed that the above-entitled criminal case should be concluded in accordance with the terms and conditions of this Memorandum of Plea Agreement as follows:

1. This Memorandum of Plea Agreement constitutes the full and complete record of the plea agreement in this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. The Defendant agrees as follows:

a. The Defendant shall enter a plea of guilty to Count _____ of the _____ herein.

b. The Defendant acknowledges and fully understands that Count _____ of the _____ charge____ the Defendant with _____ _____, in violation of the provisions of Title _____, United States Code, Section _____.

c. The Defendant understands that the maximum penalty which could be imposed upon a plea of guilty to:

Count____ of the _____ is a fine of $_____, or imprisonment for _____ years, or both such fine and imprisonment.

Count____ of the _____ is a fine of $_____, or imprisonment for _____ years, or both such fine and imprisonment.

Count____ of the _____ is a fine of $_____, or imprisonment for _____ years, or both such fine and imprisonment.

[for a maximum aggregate penalty of $_____ in fines, _____ years imprisonment, or both such fines and imprisonment.]

d. The Defendant also understands that sentencing by the Court will be in accordance with the guidelines promulgated by the United States Sentencing Commission pursuant to Title 18, United States Code, Sections 994(a) and 3551.

e. The Defendant further understands that the Court will impose a special assessment of $_____ [for each count], pursuant to the provisions of Title 18, United States Code, Section 3013(a), which is to be paid to the United States Department of Justice prior to or at the time of sentencing.

f. (1) The Defendant understands that the Court may order that the Defendant make restitution to any victim pursuant to the provisions of Title 18, United States Code, Section 3663.

or

(2) The Defendant agrees to make restitution to

_____

in the amount of $_____. [This amount can be offset by any amount paid by the co-defendant.] The Defendant further agrees to make restitution as the Court in its discretion orders.

g. The Defendant understands fully that the Court is not bound by any sentence recommendation or agreement as to Guideline application. The Defendant further understands that if the Court sentences the Defendant up to the legal maximum, the Defendant nevertheless may not withdraw the plea of guilty.

h. The Defendant agrees, if called upon to do so, to testify fully and truthfully in any proceeding regarding the Defendant's knowledge of and participation in the acts and transactions constituting the basis for the _____ and for any other crimes of which the Defendant has knowledge. Further, the Defendant will submit to interviews with investigative agents and will fully and truthfully disclose the Defendant's personal involvement and the involvement of others known to the Defendant to be involved in the acts and transactions constituting the basis for the _____ and for any other crimes of which the Defendant has knowledge. The Defendant further acknowledges that the obligation under this subsection is a continuing one. The Defendant understands that all of these statements can be used against the Defendant at trial if the Defendant is allowed to withdraw his plea.

i. It is a further condition of this plea agreement that the Defendant must fully assist the United States in the recovery and return to the United States of any drug-related assets, either domestic or foreign, which have been acquired either indirectly or directly through the unlawful activities of the Defendant, co-conspirators, or accomplices.

j. The Defendant further agrees, as part of this agreement, to voluntarily forfeit to the United States all drug-related assets in which the Defendant has any interest or control, either indirect or direct.

k. The Defendant also agrees to submit to a polygraph examination whenever requested by the Office of the United States Attorney. The results of these examinations will be admissible against the Defendant at sentencing, and the Government may rely on these results in determining whether the Defendant has fulfilled any obligation under this agreement.

3. The Government agrees as follows:

a. At the time of sentencing, it will dismiss Counts _____through _____ of the _____ [as applicable to this Defendant only].

b. a. It will reserve the right to make a sentence recommendation.

b. It will make no recommendation as to sentence. However, _____.

c. Other: _____.

_____

It reserves the right to present any evidence and information pursuant to Title 18, United States Code, Section 3661, to offer argument or rebuttal, and to respond to any motions filed by the Defendant.

c. It will make known to the Court at the time of sentencing the full nature and extent of the Defendant's cooperation, including whether the Government considers the Defendant to have substantially assisted authorities. The Government, however, is not promising to move for a departure pursuant to Title 18, United States Code, Section 3553(e) or U.S. Sentencing Commission Guidelines Manual, Section 5K1.1.

d. The United States Attorney for the Eastern District of North Carolina will not further prosecute the Defendant for acts or transactions constituting the basis for the _____; however, this obligation is limited solely to the United States Attorney for the Eastern District of North Carolina and does not bind in any respect other state or federal prosecuting entities.

e. The Government agrees that self-incriminating information provided by the Defendant will neither be used against the Defendant pursuant to the provisions of U.S. Sentencing Commission Guidelines Manual, Section 1B1.8, nor shall it be used in determining the applicable Guideline range, except as provided by Section 1B1.8 and except as stated in this agreement. The Defendant understands, however, that the Office of the United States Attorney for the Eastern District of North Carolina will disclose to the United States Probation Office any evidence known to the Government concerning relevant conduct.

f. The United States Attorney for the Eastern District of North Carolina further agrees not to use any information provided by the Defendant pursuant to this agreement to prosecute the Defendant for additional offenses, except crimes of violence, and not to share any such information with other state or federal prosecuting entities except upon their agreement not to prosecute the Defendant.

g. The Defendant understands, however, that should the Office of the United States Attorney for the Eastern District of North Carolina determine that the Defendant has given false, incomplete or misleading information or testimony, this Memorandum of Plea Agreement shall be considered null and void, and the Defendant shall be subject to prosecution for any federal criminal violation of which the Office of the United States Attorney for the Eastern District of North Carolina has knowledge. Any such prosecution may be premised upon information provided by the Defendant, and this information may be used against the Defendant.

4. The Government and the Defendant hereby agree to the following, with the understanding that the Court is not bound by the position of the parties as to these sentencing factors and that the Defendant's failure to abide by any condition of release will render the agreement with respect to such stipulations null and void:

a. None of the factors listed in U.S. Sentencing Commission Guidelines Manual, Sections 5K2.0 through 5K2.14 of the United States Sentencing Commission Guidelines and Commentary, are applicable to warrant either an upward or downward departure from the guideline range prescribed for the Defendant.

b. An upward adjustment to the Defendant's offense level [is] [is not] warranted under U.S. Sentencing Commission Guidelines Manual, Sections 3A1.1 through 3A1.3, Victim Related Adjustment.

c. The Defendant [did] [did not] have an aggravating role in the offense, and an upward adjustment [of _____ levels] [is] [is not] warranted under U.S. Sentencing Commission Guidelines Manual, Section 3B1.1.

d. The Defendant [did] [did not] use a special skill in the commission of the offense, and an upward adjustment of two (2) levels [is] [is not] warranted under U.S. Sentencing Commission Guidelines Manual, Section 3B1.3.

e. The Defendant [did] [did not] have a mitigating role in the offense and a downward adjustment [is] [is not] warranted under U.S. Sentencing Commission Guidelines Manual, Section 3B1.2.

f. An upward adjustment of two (2) levels [is] [is not] warranted for willfully obstructing or impeding the proceedings under U.S. Sentencing Commission Guidelines Manual, Section 3C1.1.

g. (1) The Defendant [has] [has not] demonstrated a recognition and affirmative acceptance of responsibility for the offense of conviction, and a downward adjustment of two (2) levels [is] [is not] warranted under U.S. Sentencing Commission Guidelines Manual, Section 3E1.1.

or

(2) The Government will evaluate the Defendant's statements in order to determine if the Defendant has accepted responsibility; and if the Government thinks that the Defendant has, it will agree to a downward adjustment of two (2) levels pursuant to U.S. Sentencing Commission Guidelines Manual, Section 3E1.1.

5. The elements of the offense to which the Defendant enters a plea of guilty are as follows:

First: _____

Second: _____

Third: _____

Fourth: _____

This the _____ day of _____ 1989.

MARGARET PERSON CURRIN
United States Attorney

_____
/s/
Defendant

BY: _____
/s/
Assistant United States Attorney
Criminal Section

_____
/s/
Attorney for Defendant

APPROVED, this _____ day of _____, 1989.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

CASE NO. 90-21-05-CR-3

UNITED STATES OF AMERICA	:
	:
vs.	:MEMORANDUM OF PLEA AGREEMENT
	:
ALTON NELSON GRAHAM	:
	:
Defendant.	:

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and the Defendant have agreed that the above-entitled criminal case should be concluded in accordance with the terms and conditions of this Memorandum of Plea Agreement as follows:

1. This Memorandum of Plea Agreement constitutes the full and complete record of the plea agreement in this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. The Defendant agrees as follows:

(a) The Defendant shall enter a plea of guilty to Count 1 of the Indictment herein.

(b) The Defendant acknowledges that he fully understands that Count 1 of the Indictment charges him with knowingly, willfully and unlawfully entering into an agreement, combination and conspiracy with others to defraud the United States by obtaining or causing to be obtained the payment and allowance of false, fictitious and fraudulent claims in violation of Title 18, United States Code, Section 286.

(c) The Defendant agrees to submit to interviews with investigative agents and will fully and truthfully disclose to said agents the involvement of others known to him to be involved in acts and

transactions constituting violations of the laws of the United States or North Carolina. The Defendant also agrees to submit to a polygraph examination whenever requested by the United States Attorney, and that the results of these examinations will be admissible against the Defendant in a court of law. The Defendant also agrees to testify truthfully about his own involvement and the involvement of others known to him to have engaged in violations of the laws of the United States of America and North Carolina.

(d) The Defendant understands that the maximum penalty which could be imposed upon his plea of guilty to Count 1 is a fine of $250,000.00, or imprisonment for 10 years, or both such fine and imprisonment. The Defendant further understands the Court may also impose an alternative fine pursuant to the provisions of Title 18, United States Code, Section 3571, and will impose a special assessment of $50.00.

(e) The Defendant further agrees to make restitution to any victim of his crime.

(f) The Defendant understands that there is no agreement in this Memorandum of Plea Agreement as to an appropriate fine or term of imprisonment and that the United States is not limited in any manner or means in a recommendation as to an appropriate sentence.

3. The Government agrees as follows:

(a) That it will dismiss Counts 2 and 3 of the Indictment.

(b) The Government will make known to the Court at the time of sentencing the full nature and extent of the Defendant's cooperation.

4. The elements of the offenses to which the Defendant enters a plea of guilty is as follows:

First: That from on or about May 1, 1986, up to and including April 1, 1987;

Second: In the Eastern District of North Carolina;

Third: ALTON NELSON GRAHAM and his known co-conspirators;

Fourth: Knowingly, willfully and unlawfully did agree, combine, and conspire with each other to defraud the United States by obtaining or causing to be obtained the payment and allowance of false, fictitious and fraudulent claims; and

Fifth: The object of the conspiracy was that ALTON NELSON GRAHAM and his known co-conspirator would defraud the United States by the use of false and fraudulent delivery tickets, truck route documents and invoices, in that these delivery tickets, route documents and invoices showed that Burner Oil No. 2 had been delivered under the terms of U.S. Defense Logistics Agency contract 600-86-D-4038, said contract between the United States and Sellers Oil Company requiring in part the delivery of Burner Oil No. 2 to tank storage facilities at Fort Bragg, when in fact ALTON NELSON GRAHAM and his known co-conspirators did not deliver this oil to Fort Bragg and the United States, but converted it to their own use by selling it to another party, and thereafter ALTON NELSON GRAHAM and his known co-conspirators would submit and aid in the submission of claims for money to the United States for the delivery of this oil, claiming that contract DLA 600-86-D-4038 had been fulfilled in accordance with its terms, when in fact it had not been so fulfilled;

Sixth: To effect the object of the conspiracy, and in furtherance thereof, ALTON NELSON GRAHAM committed the following overt act:

At a date certain between April 1, 1986 and March 31, 1987, ALTON NELSON GRAHAM falsified fuel oil delivery tickets and route documents.

All in violation of Title 18, United States Code, Section 286.

This the 9th day of May, 1990.

MARGARET PERSON CURRIN
United States Attorney

By: Frederic L. Borch III
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Section

Alton Nelson Graham
ALTON NELSON GRAHAM - Defendant

Richard Miller
RICHARD MILLER
Attorney for Defendant

APPROVED, this 21 day of May, 1990.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: 89-53-01-CR-3

UNITED STATES OF AMERICA	:	
	:	
vs.	:	MEMORANDUM OF PLEA AGREEMENT
	:	
TYRONE ANTHONY HOLT	:	
Defendant	:	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and the Defendant, with the concurrence of his attorney, Mr. Ed Walker, have agreed that the above-entitled criminal case should be concluded in accordance with the terms and conditions of this Memorandum of Plea Agreement as follows:

1. This Memorandum of Plea Agreement constitutes the full and complete record of the plea agreement in this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. The Defendant agrees as follows:

(a) The Defendant shall enter a plea of guilty to Count 2 of the Indictment herein.

(b) The Defendant acknowledges that he fully understands that Count 2 of the Indictment charges him with knowingly receiving stolen property, in violation of Title 18, United States Code, Section 662.

(c) The Defendant agrees to submit to interviews with investigative agents and will fully and truthfully disclose to said

agents his involvement and that of others known to him to be involved in acts and transactions constituting violations of the laws of the United States or North Carolina. The Defendant agrees to submit to a polygraph examination whenever requested by the United State Attorney, and that the results of these examinations will be admissible against the Defendant in a court of law. The Defendant agrees to enter into a written, factual stipulation, if requested by the United States Attorney, said stipulation to be used to determine the adequacy of the Defendant's plea of guilty under Federal Rule of Criminal Procedure 11 and to determine an appropriate sentence. The Defendant also agrees to testify truthfully against his three juvenile co-conspirators at any judicial or non-judicial proceeding.

(d) The Defendant understands that the maximum penalty which may be imposed upon his plea of guilty to Count 2 of the Indictment is imprisonment for five years, or a fine of up to $250,000.00, or both. The Court further understands that the Court will impose an assessment of $50.00 pursuant to the provisions of Title 18, United States Code Section 3013(a).

(e) The Defendant understands fully that the Court is not bound by the Government's recommendation as to sentence.

(f) The Defendant understands fully that if the Court does not accept the Government's recommendation as to sentence, the Defendant nevertheless may not withdraw his plea of guilty.

3. The Government agrees as follows:

(a) That it will not oppose Defendant's Motion to Dismiss Counts 1 and 3 of the Indictment.

(b) That it reserves the right to present full evidence of the offense charged and to offer evidence and argument in rebuttal.

(c) That it will acknowledge at sentencing that the Defendant accepts responsibility for his actions as defined by Federal Sentencing Guidelines, Section 3E1.1.

(d) That it will not bring further charges against the Defendant based upon information he provides, unless said information involves acts of violence; the Government reserves the right to prosecute the Defendant for perjury if such occurs. However, if for any reason Defendant should be allowed to withdraw his plea, all statements made by him will be admissible at trial.

(e) That it will not bring charges against the Defendant arising out of an alleged assault against an Albritten Jr. High School principal, which occurred on or about December 5, 1989.

(f) That it agrees that self-incriminating information provided by the defendant will neither be used against the defendant pursuant to the provisions of U.S. Sentencing Commission Guidelines Manual, Section 1B1.8, nor shall it be used in determining the applicable Guideline range, except as provided by Section 1B1.8 and except as stated in this agreement. The Defendant understands, however, that the Office of the United States Attorney for the Eastern District of North Carolina will disclose to the United States Probation Office any evidence known to the Government concerning relevant conduct.

4. The elements of the offense to which the Defendant enters a plea of guilty are as follows:

First: That at a date certain between July 22, 1989, up to and including August 8, 1989,

Second: At Fort Bragg, North Carolina, in the special maritime and territorial jurisdiction of the United States and in the Eastern District of North Carolina;

Third: TYRONE ANTHONY HOLT;

Fourth: Did knowingly receive and conceal goods or other things of value, each having a value in excess of $100.00, which were the subject of a larceny, which had been feloniously taken, stolen or embezzled from another person, knowing the same to have been so taken, stolen and embezzled, to-wit: a Kenwood-brand stereo amplifier, stereo tuner, record turntable, and cassette deck, a Scott-brand Compact Disc Player, and a Panasonic-brand video cassette recorder;

Fifth: TYRONE ANTHONY HOLT then well knowing that this property had been feloniously stolen from the residence of a soldier on Fort Bragg, North Carolina, in violation of Title 18, United States Code, Section 662.

This the _____ day of _____, 1990.

MARGARET PERSON CURRIN
United States Attorney

_____
TYRONE ANTHONY HOLT
Defendant

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Section

_____
ED WALKER
Attorney for Defendant

CONDITIONALLY APPROVED, this _____ day of _____, 1990.

_____
UNITED STATES DISTRICT JUDGE

APPROVED, this _____ day of _____, 1990.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No. 89-

UNITED STATES OF AMERICA	:	
	:	
vs.	:	
	:	Memorandum of Plea Agreement
TRANSPOWER CONSTRUCTORS	:	
INCORPORATED (f/k/a Harrison	:	
International Corp.)	:	
Defendant	:	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and the Defendant, Transpower Constructors Incorporated, debtor-in-possession under 11 U.S.C. Chapter 11, Case No. BK 87-2464 pending in the United States Bankruptcy Court for the District of Nebraska, with the concurrence of its attorney, Mr. Kerry Kester, Lincoln, Nebraska, have agreed that the above-entitled criminal case should be concluded in accordance with the terms and conditions of this Memorandum of Plea Agreement as follows:

1. This Memorandum of Plea Agreement constitutes the full and complete record of the plea agreement in this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. The Defendant agrees as follows:

(a) The Defendant shall enter a plea of guilty to the Count of the Information herein.

(b) The Defendant acknowledges that it fully understands that the Count of the Information charges it with

knowingly and willfully using a false writing containing a materially false, fictitious, and fraudulent statement, and aiding and abetting others in so doing, in violation of Title 18, United States Code, Sections 1001 and 2.

(c) The Defendant agrees to submit to interview with investigative agents and will fully and truthfully disclose to said agents the involvement of others known to it to be involved in acts and transactions constituting violations of the laws of the United States.

(d) The Defendant understands that the maximum penalty which could be imposed upon its plea of guilty to the Count of the Information is a fine of $500,000.00.

(e) The Defendant further understands that the Court will impose an assessment of $200.00 for the Count of the Information pursuant to the provisions of Title 18, United States Code, Section 3013(a).

(f) The Defendant understands fully that the Court is not bound by the Government's recommendation as to sentence.

(g) The Defendant understands fully that if the Court does not accept the Government's recommendation as to sentence, the Defendant nevertheless may not withdraw its plea of guilty.

3. The Government agrees, assuming that the Defendant complies fully with paragraphs 2.a. and 2.c., above, to do the following:

(a) That it will recommend a minimal criminal fine or penalty be imposed on the Defendant.

(b) That it will not present an Indictment against any present or former corporate officer of the Defendant for any offenses relating to the claims or statements made to the United States by the Defendant or its officers regarding its welding services provided as a subcontractor under Department of the Army contract DACA21-85-C-0030, said use immunity extending only to those facts or violations presently known to the Government, or subsequently disclosed by the Defendant or its officers pursuant to paragraph 2.c., above.

(c) That it will not file any Criminal Information or indictment against the Defendant for any offenses arising out of the claims or statements made to the United States by the Defendant or its officers regarding the contract identified as DACA21-85-C-0030; said use immunity being understood by the Defendant to extend to only those offenses known to the Government as of the date of the signing of this Plea Agreement, or which the Government may learn about from the Defendant or its officers pursuant to paragraph 2.c., above.

4. The elements of the offense to which the Defendant enters a plea of guilty are as follows:

First: That at a date certain between January 26, 1986 and March 31, 1986,

Second: At Fort Bragg, North Carolina, a military reservation within the Eastern District of North Carolina,

Third: TRANSPOWER CONSTRUCTORS INCORPORATED, formerly known as Harrison International Corporation,

Fourth: Did knowingly use a false writing or document containing a materially false, fictitious and fraudulent statement in a claim for money to the United States in connection with a Department of the Army contract,

Fifth: Then knowing said false writing or document to contain a false, fictitious and fraudulent statement,

Sixth: And the Defendant did aid and abet others in willfully and knowingly using said false writing or document, in violation of Title 18, United States Code, Sections 1001 and 2.

5. Kerry L. Kester, as special counsel for Transpower Constructors Incorporated, Debtor-In-Possession, will enter the Rule 11 guilty plea for and on behalf of the Defendant pursuant to the authority conferred under the terms of the resolution of the Defendant's Board of Directors, a certified copy of which is attached hereto as Attachment "A" to Memorandum of Plea Agreement.

This, the 26 day of June, 1989.

MARGARET PERSON CURRIN
United States Attorney

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

TRANSPOWER CONSTRUCTORS INCORPORATED, f/k/a Harrison International Corporation, Defendant

By: _____
Its President

By: _____
Kerry L. Kester
Attorney for Defendant

Approved, this ____ day of _____, 1989.

_____
United States District Judge

Attachment A to
Memorandum of Plea
Agreement

CERTIFICATE
OF
TRANSPOWER CONSTRUCTORS INCORPORATED

The undersigned, being the duly elected and qualified Secretary of Transpower Constructors Incorporated, a South Carolina corporation, does hereby certify that the Board of Directors of the corporation has duly adopted the following resolution:

RESOLUTION OF
BOARD OF DIRECTORS OF
TRANSPOWER CONSTRUCTORS INCORPORATED
AUTHORIZING EXECUTION OF PLEA AGREEMENT

WHEREAS, Transpower Constructors Incorporated (hereinafter the "Company") is to be charged as a defendant in a criminal proceeding known as United States of America v. Transpower Constructors Incorporated, pending in the United States District Court for the Eastern District of North Carolina, Fayetteville Division (hereinafter referred to as the "Criminal Proceeding") wherein the Company is charged with a one-count violation of 18 U.S.C. §§ 1001 and ~~1002~~ ("Count One");

WHEREAS, the Company is aware and has been fully advised of its rights, including but not limited to the following:

(a) Right to a speedy and public trial before a court or jury;

(b) Right to require the government to prove to a court or jury by credible evidence the guilt of the Company beyond a reasonable doubt;

(c) Right to require the government to bring its evidence and witnesses before the court subject to confrontation and cross examination by the Company;

(d) That it is not required to put on any evidence and that such silence cannot be held against the Company; and

(e) Right to compulsory process to require witnesses to appear at trial on behalf of the Company;

and that by entering into the attached Plea Agreement the Company is waiving such rights and will be subject to a maximum fine or penalty of $500,000;

WHEREAS, upon due consideration of all facts and circumstances surrounding the Criminal Proceeding and with due regard for the interests of the Company, its creditors, and its shareholder, the director believes that the interests of the Company would be served best by entering into a plea agreement with the United States substantially in the form of that attached hereto as Exhibit A (the "Plea Agreement");

BE IT RESOLVED, that the officers of the Company, and counsel for the Company, Kerry L. Kester, are hereby authorized to execute and enter into, on behalf of the Company, the Plea Agreement attached hereto as Exhibit A, and to take any and all further action necessary to effectuate and comply with the terms of the Plea Agreement;

BE IT FURTHER RESOLVED, that the Company and its officers and counsel, Kerry L. Kester, hereby are authorized to enter a plea of guilty to Count One in the Criminal Proceeding pursuant to the terms of the Plea Agreement;

BE IT FURTHER RESOLVED, that counsel for the Company, Kerry L. Kester, is hereby authorized to appear in court on behalf of the Company in connection with its guilty plea in the Criminal Proceeding; to execute any documents on behalf of the Company necessary to effect the guilty plea; to represent to the court in connection with the guilty plea and presentation of the Plea Agreement that the Company does not dispute that the United States could prove the facts alleged in the Information to be filed in the Criminal Proceeding; and to take any and all further action necessary to enter a plea of guilty on behalf of the Company to Count One pursuant to the terms of the Plea Agreement; and

BE IT FURTHER RESOLVED, that the officers of the Company, and its counsel, Kerry L. Kester, hereby are authorized and directed to:

(a) Waive the presentence investigation and report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure; and

(b) Request immediate sentencing by the court upon its acceptance of the Plea Agreement.

The undersigned further certifies that as Secretary she has full authority to certify to the adoption of the above resolution.

Dated this 23rd day of June, 1989.

Karolynn S. Mizell
Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 23rd day of June, 1989, by Karolynn S. Mizell, Secretary of Transpower Constructors Incorporated, a South Carolina corporation, on behalf of the corporation.

GENERAL NOTARY-State of Nebraska
KERRY L. KESTER
My Comm. Exp. 6-27-93

Kerry L. Kester
Notary Public

In the Matter of:
GENERAL CONSTRUCTION AND DEVELOPMENT CO., Inc., SOUTHERN ASPHALT INC., SOUTHERN ROOFING AND PET LEUM CO., INC.; TRI-STATE BUILDERS; UNITED MATERIALS, INC., and ROBERT L. DOUGLAS

AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY, GENERAL CONSTRUCTION AND DEVELOPMENT CO., INC., SOUTHERN ASPHALT INC., SOUTHERN ROOFING AND PETROLEUM CO., INC.; TRI-STATE BUILDERS; UNITED MATERIALS, INC., and ROBERT L. DOUGLAS

PREAMBLE

1. General Construction and Development Co., Inc. (GDC) has agreed to plead guilty to an information in the United States District Court for the Eastern District of North Carolina to submitting a false document to the Department of the Army, known by it to be false, in support of a claim for money in connection with the roofing of barracks buildings on Fort Bragg, North Carolina on or about October 1, 1986. This information states that GDC claimed it obtained roofing materials from Southern Asphalt, Inc., (Southern Asphalt) when, in fact, GDC obtained the materials from another business. This violation of Title 18, U.S.C., Section 1001, involved an overstatement of material costs of approximately $21,990.

2. GDC's President, Robert L. Douglas, has admitted that the invoice submitted on behalf of GDC's claim for materials from Southern Asphalt was done to benefit Southern Asphalt, a corporation which GDC's President and his spouse own.

3. GDC has agreed to withdraw with prejudice its appeal for a claim for $212,214.00 against the United States in case number 36138 pending before the Armed Services Board of Contract Appeals (ASBCA).

4. The Department of the Army (DA) has determined that there exists cause to debar GDC; Southern Asphalt; Southern Roofing and Petroleum Co., Inc.; Tri-State Builders; United Materials, Inc.; (hereafter referred to collectively as "the Corporations"); and Robert L. Douglas. The provisions of this Agreement have been tailored solely to the above-mentioned corporations based upon their few employees (three, at most), the recent inactivity of most of them, the value of the ASBCA claim to be withdrawn, and the nature of the underlying wrongdoing.

ARTICLES

1. The effective date of this Agreement will be the date that the Assistant Judge Advocate General for Military Law signs this Agreement on behalf of DA.

2. The Corporations and Robert L. Douglas understand that each of them, individually and severally, will be debarred from contracting or subcontracting with the United States Government or any of its agencies, based upon the above-mentioned actions, for a period of eighteen months. The Corporations and Robert L. Douglas agree that none of them will submit any bid, or offer, or proposal to obtain any contract or subcontract from the United States Government, or any of its agencies, during the debarment period.

3. The Corporations and Robert L. Douglas understand that the terms of this Agreement are based upon the assertions of business status, size and activity as reflected in the Affidavit attached as Exhibit 1, and incorporated herein by reference.

4. The term of this Agreement shall be three years from its effective date.

5. GDC agrees to plead guilty to one count of a violation of Title 18, U.S.C., Section 1001, in the United States District Court for the Eastern District of North Carolina prior to November 15, 1988, in accordance with a Memorandum of Plea Agreement dated October 12, 1988, signed by its President, Robert L. Douglas, incorporated herein by reference as Exhibit 2.

6. GDC agrees to withdraw the appeal of its claim against the Government in ASBCA No. 36138, with prejudice, within thirty days from the date of this Agreement.

7. For the period of this Agreement, the Corporations shall maintain a complete record, including original documents, of all vendor quotes, purchases, sales, receipts, transfers, or shipments of any material in any way related to work on a Government contract or subcontract. These records shall be sufficient to provide complete evidence of the source and cost of supply of any material furnished directly or indirectly by any of them to the Government under any Government procurement. Each will conduct an internal audit, on an annual basis, to insure compliance with the requirements this Agreement. A copy of the audit shall be furnished to DA.

8. The Corporations and Robert L. Douglas agree to release and hold harmless the United States, its instrumentalities, agents, and employees, in their official and personal capacities, of any and all liability or claims arising out of the negotiation of this Agreement.

9. During the term of this Agreement, any agency or office of the Department of Defense or Department of Justice shall have the right to examine each of the Corporation's books, records or other documents, and supporting materials, and to interview any employee, who elects in his or her unfettered discretion to be interviewed, for the purpose of evaluating (i) compliance with the requirements of all Government contracts and subcontracts; (ii) compliance with the terms of this Agreement; (iii) compliance with Federal procurement policies and accepted business and accounting practices; and (iv) maintenance of the high level of business integrity required of a Government contractor. The materials described above shall be made available at company offices at all reasonable times, for inspection, audit, or reproduction; provided, however, that the duly authorized representative shall not be entitled to copy technical data proprietary to the company. The personnel described above shall be available at their place of employment during business hours.

9. The Corporations agree that all costs, as defined in Federal Acquisition Regulation (FAR), subsection 31.205-47, incurred for or on behalf of any of the corporations in connection with the criminal or civil investigation, administrative proceedings, and defense and settlement thereof, shall be deemed unallowable costs, direct or indirect, for Government contracting purposes. Each agrees, further, to differentiate and account for such costs so that they are separately identifiable.

10. All submissions to DA required by this Agreement will be delivered to the following addresses or such other address as DA may direct in writing:

HQDA
ATTN: DAJA-PF
Washington, D.C. 20310-2217

and to:

Commander
XVIII Airborne Corps and Fort Bragg
ATTN: AFZA-JA-A
Fort Bragg, NC 28307-5000

11. The Corporations and Robert L. Douglas agree that any material violation of this Agreement that is not corrected within thirty days from the date of receipt of notice from DA, by certified mail, will constitut independent cause for its debarment, and the debarment of ar or individuals affiliated with it, in accordance with FAR, tion 9.406-2(c). DA may, in its sole discretion, initiate such debarment proceedings in accordance with the procedures set forth in FAR, subpart 9.4. It is understood, however, that none of the Corporations nor Robert L. Douglas does, by this Agreement or otherwise, waive its rights to oppose such action under FAR, subpart 9.4, or any other substantive, procedural or due process rights either may have under the Constitution or applicable laws or regulations.

12. The parties agree that this Agreement in no way restricts the authority, responsibility, or legal duty of DA to consider and institute suspension or debarment proceedings against any of the Corporations or Robert L. Douglas, in the event DA receives any information constituting independent cause for the suspension or debarment of any or all of them. DA may, in its sole discretion, initiate such proceedings in accordance with the FAR, subpart 9.4.

13. Any requirements imposed on the Corporations or Robert L. Douglas by this Agreement may be discontinued by DA at its sole discretion. Other modifications to this Agreement may only be made in writing upon mutual consent of the parties to this Agreement.

General Construction and Development Co., Inc.

DATE 10-26-88 By R.L. Douglas
President

Southern Asphalt, Inc.

DATE 10-26-88 By R.L. Douglas
President

Southern Roofing and Petroleum Co., Inc.

DATE 10-26-88 By R.L. Douglas
President

Tri-State Builders

DATE 10-26-88 By _____
President

United Materials, Inc.

DATE 10-26-88 By _____
President

DATE 10-26-88 _____
Robert L. Douglas in his individual capacity

FOR THE DEPARTMENT OF THE ARMY

DATE 10-28-88 By _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

CASE NO. 89-52-02-CR-3

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	MEMORANDUM OF PLEA AGREEMENT
DANIEL PAUL PUTCHACONIS	:	
Defendant	:	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and the Defendant, DANIEL PAUL PUTCHACONIS, with the concurrence of his attorney, Mr. Larry McGlothlin, have agreed that the above-entitled criminal case should be concluded in accordance with the terms and conditions of this Memorandum of Plea Agreement as follows:

1. This Memorandum of Plea Agreement constitutes the full and complete record of the plea agreement in this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. The Defendant agrees as follows:

(a) The Defendant shall enter a plea of guilty to Count 1 of the Indictment herein.

(b) The Defendant acknowledges that he fully understands that Count 1 of the Indictment charges him with the offense of knowingly and willfully conspiring to possess with the intent to distribute and to distribute marijuana throughout the Eastern District of North Carolina.

(c) The Defendant agrees to submit to interviews with investigative agents and will fully and truthfully disclose to said agents his involvement and that of others known to him to be involved in acts and transactions constituting violations of the laws of the United States or North Carolina. The Defendant also agrees to submit to

a polygraph examination whenever requested by the United States Attorney, and that the results of these examinations will be admissible against the Defendant in a court of law. The Defendant also agrees to enter into a written, factual stipulation, if requested by the United States Attorney, said stipulation to be used to determine the adequacy of the Defendant's plea of guilty under Federal Rule of Criminal Procedure 11 and to determine an appropriate sentence.

(d) It is further part of this plea agreement that the Defendant understands that he must fully assist the United States in the recovery and return to the United States of any drug-related assets, either domestic or foreign, which have been acquired either indirectly or directly through the unlawful activities of the Defendant's co-defendants, co-conspirators or other targets of the Grand Jury investigation. The Defendant further understands that it is a part of this agreement that he must voluntarily forfeit to the United States all drug-related assets in which he has any interest or control, either indirect or direct.

(e) The Defendant understands that the maximum penalty which may be imposed upon his plea of guilty to Count 1 of the Indictment is a fine of $2,000,000.00, imprisonment for thirty years, or both such fine and imprisonment. The Defendant understands that the Court must impose a term of supervised release of at least 6 years in addition to any imprisonment imposed. The Defendant further understands that the Court will impose an assessment of $50.00 pursuant to the provisions of Title 18, United States Code Section 3013(a).

(f) The Defendant understands fully that the Court is not bound by the Government's recommendation as to sentence.

(g) The Defendant understands fully that if the Court does not accept the Government's recommendation as to sentence, the Defendant nevertheless may not withdraw his plea of guilty.

3. The Government agrees as follows:

(a) That it will not oppose Defendant's Motion to Dismiss Counts 2, 3 and 4 of the Indictment.

(b) That it will not oppose a sentence at the lower end of the proper range as determined by the Sentencing Guidelines for the offense. The Government reserves the right to present full evidence of the offense charged and to offer evidence and argument in rebuttal.

(c) That it will acknowledge at sentencing that the Defendant accepts responsibility for his actions as defined by Federal Sentencing Guidelines, Section 3E1.1.

(d) The Government will make known to the Court at the time of sentencing the full nature and extent of the Defendant's cooperation.

(e) The Government will not bring further charges against the Defendant based upon information he provides, unless said information involves acts of violence; the Government reserves the right to prosecute the Defendant for perjury if such occurs. However, if for any reason Defendant should be allowed to withdraw his plea, all statements made by him will be admissible at trial.

4. The elements of the offense to which the Defendant enters a plea of guilty are as follows:

First: That on or about October 19, 1989 up to and including October 24, 1989;

Second: In the Eastern District of North Carolina;

Third: DANIEL PAUL PUTCHACONIS;

Fourth: Did knowingly and willfully conspire, confederate and agree together, with Charles Mack Atchley, Jr. and with diverse persons whose names are to the Grand Jury both known and unknown, to knowingly, intentionally and unlawfully possess with intent to distribute and distribute marijuana throughout the Eastern District of North Carolina,

Fifth: In furtherance of the conspiracy and to effect its object, DANIEL PAUL PUTCHACONIS, did perform an overt act in the Eastern District of North Carolina, to-wit: On or about October 24, 1989, he and his co-conspirator imported 27 lbs. more or less into the Eastern District of North Carolina.

All of the above in violation of Title 21, United States Code, Section 846.

This the _____ day of _____, 1989.

MARGARET PERSON CURRIN
United States Attorney

_____
Daniel Paul Putchaconis
Defendant

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Section

_____
Larry McGlothlin
Attorney for Defendant

CONDITIONALLY APPROVED, this _____ day of _____, 1989.

_____
UNITED STATES DISTRICT JUDGE

APPROVED, this _____ day of _____, 1989.

_____
UNITED STATES DISTRICT JUDGE

TAB

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

FILED
JAN 1990
J. RICH LEONARD, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

CASE NO. 89-46-01-CR-3

UNITED STATES OF AMERICA	:	
	:	
vs.	:	Memorandum of Plea Agreement
	:	
A JUVENILE, MALE	:	
Defendant	:	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and the Defendant, with the concurrence of his attorney, Mr. Ray Vallery, have agreed that the above-entitled criminal case should be concluded in accordance with the terms and conditions of this Memorandum of Plea Agreement as follows:

1. This Memorandum of Plea Agreement constitutes the full and complete record of the plea agreement in this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. The Defendant agrees as follows:

(a) The Defendant shall enter a plea of guilty to Count 1 of the Juvenile Information herein.

(b) The Defendant acknowledges that he fully understands that Count 1 of the Juvenile Information charges him with an act of juvenile delinquency, to-wit: conspiracy to commit larceny, in violation of Title 18, United States Code, Section 371.

(c) The Defendant agrees to submit to interviews with investigative agents and will fully and truthfully disclose to said agents the involvement of others known to him to be involved in acts and transactions constituting violations of the laws of the United States or

North Carolina. The Defendant also agrees to submit to a polygraph examination whenever requested by the United States Attorney, and that the results of these examinations will be admissible against the Defendant in a court of law. The Defendant also agrees to enter into a written, factual stipulation, if requested by the United States Attorney, said stipulation to be used to determine the adequacy of the Defendant's plea of guilty to the act of juvenile delinquency under Title 18, United States Code, Sections 5032 and 5037. Finally, the Defendant agrees to testify truthfully in any judicial or non-judicial proceedings involving his co-conspirator, Scott Lee Corren.

(d) The Defendant understands that the maximum penalty which could be imposed upon his plea of guilty to Count 1 of the Juvenile Information is a fine of $250,000.00 or official detention for three years, or both such fine and official detention. The Defendant further understands the Court may also impose an Order of Restitution pursuant to the provisions of Title 18, United States Code, Section 3556 and 3663.

(e) The Defendant understands fully that the Court is not bound by the Government's recommendation as to sentence.

(f) The Defendant understands fully that if the Court does not accept the Government's recommendation as to sentence, the Defendant nevertheless may not withdraw his plea of guilty.

(g) The Defendant further agrees to make restitution to the Military Communications Center, Incorporated in the amount of $5,000.00.

These monies will be paid in equal monthly installments within 24 months from the date of the Defendant's entry of a plea of guilty. The Defendant further agrees that such restitution is a condition of any probation which might be ordered by the Court.

3. The Government agrees as follows:

(a) That it will not oppose Defendant's Motion to Dismiss Counts 2, 3 and 4 of the Juvenile Information.

(b) That it will not oppose a probationary sentence.

(c) That it will make known to the Court at the time of sentencing the full nature and extent of the Defendant's cooperation.

4. The elements of the act of juvenile delinquency to which the Defendant enters a plea of guilty are as follows:

First: That on or about February 1, 1989, up to and including July 27, 1989,

Second: At Fort Bragg, North Carolina, a military reservation in the special maritime and territorial jurisdiction of the United States in the Eastern District of North Carolina,

Third: A Juvenile Male

Fourth: Did willfully, knowingly and unlawfully combine, agree, confederate and conspire with each other to commit larceny of U.S. currency, personal property of the Military Communications Center,

Fifth: Of a value in excess of $100.00,

Sixth: And to effect the object of the conspiracy said juvenile male did perform an overt act, to-wit:

On or about July 27, 1989 he entered the MCC Building and took pay telephone cash box keys, all in violation of Title 18, United States Code, Section 371.

This the 30th day of January, 1990.

MARGARET PERSON CURRIN
United States Attorney

Defendant

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Section

_____
RAY VALLERY
Attorney for Defendant

CONDITIONALLY APPROVED, this 30 day of January, 1990.

_____
UNITED STATES DISTRICT JUDGE

APPROVED, this 30 day of January, 1990.

_____
UNITED STATES DISTRICT JUDGE

TAB

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Case No: 89-32-01-CR-3

UNITED STATES OF AMERICA	:	
	:	
vs.	:	GOVERNMENT'S PROPOSED
	:	JURY INSTRUCTIONS
DAVID ANTHONY DAVIS	:	
Defendant	:	
	:	

NOW COMES the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and pursuant to Rule 30 of the Federal Rules of Criminal Procedure and Local Rule 49, respectfully requests that this Honorable Court include in its instruction of the jurors the following. The United States of America asks that the below-stated instructions be given in addition to the Court's customary instructions:

THE INDICTMENT

The Defendant is charged in Counts One, Two and Three, of the Indictment with Sexual Abuse of a Minor. The Indictment reads:

COUNT ONE OF THE INDICTMENT

That at a date unknown to the Grand Jury, between December 1, 1988 and January 9, 1989 at Fort Bragg, a United States military reservation within the special maritime and territorial jurisdiction of the United States, and within the Eastern District of North Carolina, DAVID ANTHONY DAVIS, did unlawfully and knowingly engage in a sexual act with a juvenile, a female over 12 years but not yet 16 years of age, the Defendant, said DAVID ANTHONY DAVIS then being 23 years of age, and at the time of the said sexual act, the said juvenile being at least four years younger than the Defendant, DAVID ANTHONY DAVIS, in violation of Title 18, United States Code, Section 2243.

COUNT TWO OF THE INDICTMENT

That at a date unknown to the Grand Jury, between December 1, 1988 and January 9, 1989 at Fort Bragg, a United States military reservation within the special maritime and territorial jurisdiction of the United States, and within the Eastern District of North Carolina, DAVID ANTHONY DAVIS, did unlawfully and knowingly engage in a sexual act with a juvenile, a female over 12 years but not yet 16 years of age, the Defendant, said DAVID ANTHONY DAVIS, then being 23 years of age, and at the time of the said sexual act, the said juvenile being at least four years younger than the Defendant, DAVID ANTHONY DAVIS, in violation of Title 18, United States Code, Section 2243.

COUNT THREE OF THE INDICTMENT

That at a date unknown to the Grand Jury between August 1 and September 30, 1988 at Fort Bragg, a United States military reservation within the special maritime and territorial jurisdiction of the United States, and within the Eastern District of North Carolina, DAVID ANTHONY DAVIS, did unlawfully and knowingly engaged in a sexual act with a juvenile, a female over 12 years but not yet 16 years of age, the Defendant, DAVID ANTHONY DAVIS, then being 23 years of age, and at the time of the said sexual act, the said juvenile being at least four years younger than the Defendant, DAVID ANTHONY DAVIS, in violation of Title 13, United States Code, Section 2243.

TITLE 18, UNITED STATES CODE, SECTION 2243(A)

Title 18, United States Code, Section 2243(a) provides in part: "Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who -

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging; or attempts to do so is [guilty of an offense under this title]".

You are advised that as a matter of law, the United States need not prove that the defendant knew the age of the females engaging in the sexual act or knew the age difference between the females and himself.

ELEMENTS OF THE OFFENSE

Five essential elements must be proved to establish the offense of sexual abuse of a minor:

First: That the Defendant engaged in a sexual act with another person;

Second: That this person was at least 12 years old but not yet 16 years of age;

Third: that this person was at least 4 years younger than the Defendant;

Fourth: That the Defendant acted knowingly; and

Fifth: That the sexual act occurred within the special maritime and territorial jurisdiction of the United States.

REASONABLE DOUBT

You will hear me say throughout my instructions on the specific charges made against the Defendant by the Government that you may not convict the Defendant of any crime unless you believe that he is guilty beyond a reasonable doubt. It is the Government that brings charges and it is the Government that must prove these charges. It must prove them beyond a reasonable doubt.

Few things in life are absolutely certain. to say that you believe something beyond a reasonable doubt is to say that you are confident in your judgment. It does not require you to be absolutely certain. You may have a reasonable doubt about something if you are hesitant to accept it as true after you evaluate the evidence.

You must carefully examine the evidence that has been presented to you and recall the arguments concerning the significance of that evidence. You must carefully weigh that evidence and analyze the arguments. You must pay careful attention to the law that I give you. And then you must ask yourselves whether on the basis of your reason and judgment you have a reasonable doubt about the matters I instruct you to decide. You must find the Defendant not guilty when you have a reasonable doubt. You may find him guilty when you have none.

"ON OR ABOUT"

You will note the Indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

(Basic Instruction 9.1, Pattern Jury Instructions (11th Cir.1985))

"SEXUAL ACT"

The term "sexual act" means -- (a) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph, contact involving the penis occurs upon penetration, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (c) the penetration, however, slight, of the anal or genital opening of another by a hand or finger or by any object, with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(Jury instruction given by US District Judge Dupree, supra.)

"KNOWINGLY"

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily, and intentionally and not because of mistake or accident.

(Basic instruction 9A, Pattern Jury Instructions (5th Cir. 1979)

"VULVA"

The "vulva" is the external parts of the female genital organs.

(Jury instructions given by Dupree, supra.)

ATTEMPT

To "attempt" an offense means "wilfully" to do some act, in an effort to bring about or accomplish something the law forbids to be done. An act is done wilfully if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

MARGARET PERSON CURRIN
United States Attorney

By: _____
FREDERIC L. BORCH III
Special Assistant U.S. Attorney
Criminal Division

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

CASE NO. 90-21-01-CR-3
CASE NO. 90-21-02-CR-3
CASE NO. 90-21-04-CR-3
CASE NO. 90-21-07-CR-3

UNITED STATES OF AMERICA	:	
	:	
vs.	:	
	:	
SELLERS OIL COMPANY	:	GOVERNMENT'S PROPOSED
A & S COUNCIL OIL COMPANY	:	JURY INSTRUCTIONS
ARTICE COUNCIL	:	
AL HOLMES	:	

In addition to the Court's usual instructions, the Government respectfully requests that the Court include the attached proposed instructions in its charge to the jury. The Government requests leave to offer such other additional instructions as may become appropriate during the course of the trial.

This the ____ day of _____, 1990.

MARGARET PERSON CURRIN
United States Attorney

By: _____
THOMAS W. DWORSCHAK
Special Assistant U.S. Attorney
Criminal Division

GOVERNMENT'S PROPOSED INSTRUCTION
OBJECTION AND RULINGS

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the court has sustained an objection to a question addressed to a witness the jury must disregard the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any question.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 272-73, Section 10.13 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION

BURDEN OF PROOF--REASONABLE DOUBT

The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a 'clean slate' -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

So if the jury, after careful and impartial consideration of all the evidence in the case, has a reasonable doubt that a defendant is guilty

of the charge, it must acquit. If the jury views the evidence in the case as reasonably permitting either of two conclusions -- one of innocence, the other of guilt -- the jury should of course adopt the conclusion of innocence.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 310-11, Section 11.14 (3d ed. 1977)

GOVERNMENT'S PROPOSED INSTRUCTION

ALL AVAILABLE EVIDENCE NEED NOT BE PRODUCED

The law does not require the prosecution to call all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that has been produced, the jury may consider the prosecution's failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and no adverse inferences may be drawn from his failure to do so.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 564, Section 17.18 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION

DIRECT EVIDENCE -- CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which you may find the truth as to the facts of a case -- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 441-42, Section 15.02 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION

INFERENCE DEFINED

During the trial you have heard the attorneys use the term "inference," and in their arguments they have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

There are times wher different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The governments asks you to draw one set of inferences, while the defense asks you to [redacted]aw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion which you, the jury, are permitted to draw -- but not required to draw -- from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience.

Here again, let me remind you that, whether based upon direct or circumstantial evidence, or upon the logical, reasonable inferences [redacted]rawn from such evidence, you must be satisfied of the guilt of the defendant beyond a reasonable doubt before you may convict.

Authority

United States Supreme Court: Turner v. United States, 396 U.S. 398, 90 S. Ct. 642, 24 L. Ed. 2d 610 (1970); Holland v. United States, 348 U.S. 121, 75 S. Ct. 127, 99 L. Ed. 150 (1954).

Second Circuit: United States v. Pfingst, 477 F.2d 177 (2d Cir.), cert. denied, 412 U.S. 941 (1973); United States v. Crespo, 422 F.2d 718 (2d Cir.), cert. denied, 398 U.S 914 (1970).

Fifth Circuit: United States v. Yeatts, 639 F.2d 1186 (5th Cir.), cert. denied, 452 U.S. 964 (1981); United States v. Fitzharris, 633 F.2d 416 (5th Cir. 1980), cert. denied, 451 U.S. 988 (1981).

GOVERNMENT'S PROPOSED INSTRUCTION

WITNESS CREDIBILITY

Bias by Association

You have had an opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

It must be clear to you by now that you are being called upon to resolve various factual issues under the counts of the indictment, in the face of the very different pictures painted by the government and the defense which cannot be reconciled. You will now have to decide where the truth lies, and an important part of that decision will involve making judgments about the testimony of the witnesses you have listened to and observed. In making those judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you to decide the truth and the importance of each witness' testimony.

Your decision whether or not to believe a witness may depend on how that witness impressed you. Was the witness candid, frank and forthright? Or, did the witness seem as if he or she was hiding something, being evasive or suspect in some way? How did the way the witness testified on direct examination compare with how the witness testified on cross-examination? Was the witness consistent in his testimony or did he contradict himself? Did the witness appear to know what he or she was talking about and did the witness strike you as someone who was trying to report his or her knowledge accurately?

How much you choose to believe a witness may be influenced by the witness' bias. Does the witness have a relationship with the government or the defendant which may affect how he or she testified? Does the witness have some incentive, loyalty or motive that might cause him or her to shade the truth; or, does the witness have some bias, prejudice or hostility that may have caused the witness -- consciously or not -- to give you something other than a completely accurate account of the facts he testified to?

Even if the witness was impartial, you should consider whether the witness had an opportunity to observe the facts he or she testified about and you should also consider the witness' ability to express himself or herself. Ask yourselves whether the witness' recollection of the facts stand up in light of all other evidence.

In other words, what you must try to do in deciding credibility is to size a person up in light of his or her demeanor, the explanations given, and in light of all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward and accurate in his or her recollection. In deciding the question of credibility, remember that you should use your common sense, your good judgment, and your experience.

In deciding whether to believe a witness, keep in mind that people sometimes forget things. You need to consider therefore whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or with only a small detail.

Modern Federal Jury Instruction, Sand Siffert, et. al. Vol. 1 (1987).

GOVERNMENT'S PROPOSED INSTRUCTION

IMPEACHMENT -- INCONSISTENT STATEMENTS OR CONDUCT

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you think it deserves.

An act of omission is 'knowingly' done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 540, Section 17.08 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION

IMPEACHMENT -- INCONSISTENT STATEMENTS OR CONDUCT

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you think it deserves.

An act of omission is 'knowingly' done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 540, Section 17.08 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION

EXPERT WITNESSES

The rules of evidence provide that if scientific, technical, or her specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state his opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

United States v. Johnson, 575 F.2d 1347, 1361 (5th Cir. 1978), approved this instruction.

GOVERNMENT'S PROPOSED INSTRUCTION

EFFECT OF REFUSAL OF WITNESS TO ANSWER PROPER QUESTION

The law requires every witness, including a defendant who chooses to become a witness in a criminal case, to answer all proper questions put to him, unless the court rules he is privileged to refuse to answer on Constitutional or other grounds.

The fact that a witness refuses to answer a question, after being instructed by the court to answer, may be considered by the jury in determining the credibility of the witness and the weight his testimony deserves.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 561, Section 17.15 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION

CREDIBILITY OF ACCUSED AS WITNESS

A defendant who wishes to testify is a competent witness; and the defendant's testimony is to be judged in the same way as that of any other witness.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 548, Section 17.12 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION

PROOF OF INTENT

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statement made and done or omitted by the defendant, and all other facts and circumstances in evidence which indicate his state of mind.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. As I have said, it is entirely up to you to decide what facts to find from the evidence.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 401, Section 14.13 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION

INTEREST IN OUTCOME

In evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness' interests has affected or colored his or her testimony.

Second Circuit: United States v. Bufalino, 683 F.2d 639 (2d Cir. 1982), cert. denied, 459 U.S. 1104 (1983); United States v. Frank, 494 F.2d 145 (2d Cir.), cert. denied, 419 U.S. 828 (1974).

Fifth Circuit: United States v. Iacovetti, 466 F.2d 1147 (5th Cir. 1972), cert. denied, 410 U.S. 908 (1973).

Seventh Circuit: United States v. Lea, 618 F.2d 426 (7th Cir.), cert. denied, 449 U.S. 823 (1980).

Eighth Circuit: United States v. Klein, 701 F.2d 66 (8th Cir. 1983).

Ninth Circuit: United States v. Partin, 601 F.2d 1000 (9th Cir. 1979).

GOVERNMENT'S PROPOSED INSTRUCTION

CORPORATE POLICY AGAINST THE CRIME OR VIOLATION

IS NOT A DEFENSE

You are advised that a corporate policy or assertion by any corporate officer that corporate policy forbids the specific acts in question or any act in violation of federal, state and local law is not a defense to corporate criminal liability.

Thus, any corporate anti-crime policy is not a defense to the alleged conspiracy to defraud the United States or the false claims charges in the Indictment.

Authority: United States v. Hilton Hotels Corp., 467 F.2d 1000, 1004 (9th Cir. 1972), cert. denied 409 U.S. 1125 (1973).

GOVERNMENT'S PROPOSED INSTRUCTION

CRIMINAL LIABILITY OF CORPORATION

You are advised that a corporation may be convicted for the criminal act of an employee or agent if this employee's or agent's act is done on the corporation's behalf and within the scope of the employee's or agent's authority.

Stated differently, a corporation is responsible for crimes committed by its employees if:

1. The employee commits the criminal act in question;
2. The employee was acting within the scope of his authority when he committed the criminal act in question;
3. The employee's criminal act was committed with the intent to benefit, at least in part, the corporation.

'Scope of Authority' means that an employee is expressly or implicity authorized to engage in an act as an employee. Any conduct which an outsider would normally assume the agent or employee to have, judging from his or her position in the corporation, is said to be within the scope of authority; this includes any conduct which, in fact, may be criminal.

'Intent to Benefit the Corporation' means that the employee intended the corporation to get some benefit from the act in question. The corporation need not actually benefit from the illegal activity. Furthermore, an employee or agent may act for his or her own benefit while also acting for the benefit of the corporation; an employee need only have some, and not an exclusive, intent to benefit the corporation.

Scope of Authority: United States v. Bi-Co Pavers, Inc. 741 F.2d 730, 737 (5th Cir. 1984); United States v. Hilton Hotels Corp., 467 F.2d at 1004.

Intent to Benefit Corporation: United States v. Beusch, 596 F.2d 871, 878 (9th Cir. 1979); Standard Oil Co. of Texas v. United States, 307 F.2d 120, 128 (5th Cir. 1962). Old Monastery Co. v. United States, 147 F.2d 905, 908 (4th Cir. 1945), cert. denied, 326 U.S. 734 (1945), United States v. Gibson Products, 426 F.Supp. 768 (S.D. Tex. 1976); greenville Publishing co. v. Daily Reflector, Inc., 496 F.2d 391 (4th Cir. 1974).

GOVERNMENT'S PROPOSED INSTRUCTION

STATUS OF EMPLOYEE NOT A DEFENSE

You are advised that the fact that an employee or agent of a corporation has a 'lower level status' is not a defense to criminal liability. Such status is only relevant in determining whether the employee intended to benefit the corporation.

'A corporation may be criminally bound by the acts of subordinates, even menial, employees.'

Authority: Standard Oil Co. of Texas v. United States, 307 F.2d 120, 127 (5th Cir. 1962).

GOVERNMENT'S PROPOSED INSTRUCTION

CONSPIRACY - A CORPORATION CAN CONSPIRE WITH

ITS AGENTS AND EMPLOYEES

You are advised that a corporation can conspire with its own agents and employees.

United States v. Hartley, 678 F.2d 961 (11th Cir. 1982), cert. denied 459 U.S. 1183 (1983). Dussony v. Gulf Coast Investment Corp., 660 F.2d 594 (5th Cir. 1981).

GOVERNMENT'S PROPOSED INSTRUCTION

CONSPIRACY - MEMBERS OF CONSPIRACY NEED NOT KNOW

THE IDENTITY OF OTHER MEMBERS

You are advised that the United States need not prove that any alleged member of the conspiracy to defraud the United States know the identity of all other members.

The United States need not prove that SELLERS OIL COMPANY, ARTICE COUNCIL, A & S COUNCIL OIL COMPANY, or AL HOLMES all know each other. The conspirators need not know each other nor be privy to the details of each enterprise comprising the conspiracy, as long as the evidence is sufficient to show that each Defendant possessed full knowledge of the conspiracy's general purpose and scope.

United States v. Becker, 569 F.2d 951 (1978); cert. den. 439 U.S. 865 (1978) United States v. Brasseaux, 509 F.2d 157 (5th Cir. 1975); United States v. Baldarrama, 566 F.2d 560 (5th Cir. 1978).

GOVERNMENT'S PROPOSED INSTRUCTION

COUNT 1 - CONSPIRACY TO DEFRAUD THE US WITH

RESPECT TO CLAIMS (18 U.S.C. Sec. 286)

Title 18, United States Code, Section 286 reads:

Whoever enters into any agreement, combination, or conspiracy to defraud the United States or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be [punished as the statute directs].

A "conspiracy" is a combination or agreement of two or more persons to join together to attempt to accomplish some unlawful purpose. It is a kind of "partnership in criminal purposes" in which each member becomes the agent of every other member. The gist or essence of the offense is a combination or mutual agreement by two or more persons to disobey, or disregard, the law.

The evidence in the case need not show that the alleged members of the conspiracy entered into any express or formal agreement; or that they directly stated between themselves the details of the scheme and its object or purpose, or the precise means by which the object or purpose was to be accomplished. Similarly, the evidence in the case need not establish that all of the means or methods set forth in the indictment were in fact agreed upon to carry out the alleged conspiracy, or that all of the means or methods which were agreed upon were actually used or put into operation. Neither must it be proved that all of the persons charged to have been members of the conspiracy were such, nor that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

This is true because, as stated earlier, 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 and statements of every other member made in pursuance of their unlawful scheme.

5th Cir. Pattern Jury Instructions, 3A Sec. 371, pp. 61-63.

A conspiracy to defraud the United States with respect to claims is charged in Count 1 of the Indictment.

You are advised that a 'claim' normally connotes a demand for money or for some transfer of public property.' It includes statements of factual information or data set forth in support of a particular claim.

United States v. Tieger, 234 F.2d 589 (3d Cir.), cert. denied, 352 . 941 (1956); United States v. Miller, 545 F.2d 1204 (9th Cir. 1976), cert. denied, 430 U.S. 930 (1977).

You are further advised that a 'false, fictitious or fraudulent' claim is one in which either 'false,' that is, unfounded or unjust, or 'fictitious', that is not real, or 'fraudulent', that is, wrong or deceitful, but these terms have no special legal signification in their use, but are to be taken in their ordinary and well-understood sense.

United States v. Bittinger, D.C. Mo. 1875, 21 Int. Rev. Rec. 342, 24 Fed. Cas. No. 14, 599.

GOVERNMENT'S PROPOSED INSTRUCTION

COUNTS 2 & 3

FALSE, FICTITIOUS OR FRAUDULENT CLAIMS

(18 U.S.C. 287)

Title 18, United States Code, Section 287 reads:

Whoever makes or presents to any person or officer in the civil, military or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious or fraudulent, shall be [punished as the statute diverts].

You are advised that my previous instructions to you on what a 'claim' constitutes, and the meaning of the words 'false, fictitious or fraudulent', also apply to Counts 2 and 3.

You are advised that a false claim must be made or presented 'upon or against the United States, or any department or agency thereof', under 18 U.S.C. Section 287. This requires:

1. That a claim must actually be made;

2. It must be made or presented against the Government, or a 'department' or 'agency'.

You are instructed that the Department of Defense Fuel Supply Agency and the Department of the Army are departments of the United States.

You are further advised that 18 U.S.C. Sec. 287 requires that the Defendant make a claim 'knowing' it to be false, fictitious or fraudulent. However, such a 'knowing' does not require a Defendant to also intend to deceive or defraud the United States.

What the evidence in the case must show beyond a reasonable doubt is:

1. That two or more persons in some way or manner, positively or tacitly, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment;
2. That the Defendant willfully became a member of such conspiracy;
3. That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the means or methods (or 'overt acts) described in the indictment; and
4. That such 'overt act' was knowingly committed at or about the time alleged in an effort to effect or accomplish some object or purpose of the conspiracy.

An 'overt act' is any transaction or event, even one which may be entirely innocent when considered alone, but which is knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy.

One may become a member of a conspiracy without full knowledge of all of the details of the unlawful scheme or the names and identities of all of the other alleged conspirators. So, if a Defendant, with an understanding of the unlawful character of a plan, knowingly and willfully joins in an unlawful scheme on one occasion that is sufficient to convict him for conspiracy even though he had not participated at earlier stages in the scheme and even though he played only a minor part in the conspiracy.

Of course, mere presence at the scene of an alleged transaction or event, or mere similarity of conduct among various persons and the fact

that they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Also, a person who has no knowlege of a conspiracy, but who happens to act in a way which advances some object or purpose of a conspiracy, does not thereby become a conspirator.

In your consideration of the conspiracy offense as alleged in the indictment you should first determine, from all of the testimony and evidence in the case, whether or not the conspiracy existed as charged. If you conclude that a conspiracy did exist as alleged, you should next determine whether or not the Defendant under consideration willfully became a member of such conspiracy.

In dedtermining whether a Defendant was a member of an alleged conspiracy, however, the jury should consider only that evidence, if any pertaining to his own acts and statements. He is not responsible for the acts or declarations of other alleged participants until it is established beyond a reasonable doubt. First, that a conspiracy existed and, Second, from evidence of his own acts and statements, that the Defendant was one of its members.

On the other hand, if and when it does appear beyond a reasonable doubt from the evidence in the case that a conspiracy did exist as charged, and that the Defendant under consideration was one of its members, then the statements and acts knowingly made and done during such conspiracy and in furtherance of its objects, by any other proven member of the conspiracy may be considered by the jury as evidence against the Defendant under consideration even though he was not present to hear the statement made or see the act done.

Rather, there must be proof that either the Defendant specifically intended to break the law, or that he acted with awareness that his act was morally wrong---whether or not he knew it was illegal.

United States v. Maher, 582 F.2d 842 (4th Cir. 1978), cert. denied 439 U.S. 1115 (1980) (intent to defraud not required under 18 USC 287).

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

NO. 89-55-01-CR-3
NO. 89-55-02-CR-3

UNITED STATES OF AMERICA	:	
	:	GOVERNMENT'S PROPOSED
V.	:	JURY INSTRUCTIONS
	:	
DELTON CUMMINGS	:	
ZEB CUMMINGS	:	

In addition to the Court's usual instructions, the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, respectfully requests that the Court include the attached proposed instructions in its charge to the jury and requests leave to offer such other additional instructions as may become appropriate during the course of the trial.

1 OBJECTIONS AND RULINGS

2 PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

3 EVIDENCE IN CASE

4 EVIDENCE - INFERENCES - DIRECT AND CIRCUMSTANTIAL

5 INFERENCE DEFINED (PRESUMPTION)

6 CREDIBILITY OF WITNESSES - DISCREPANCIES IN TESTIMONY

7 IMPEACHMENT - FELONY CONVICTION (GENERALLY) - DEFENDANT TESTIFIES (WITH FELONY CONVICTION)

8 CONFESSION - STATEMENT - VOLUNTARINESS (MULTIPLE DEFENDANTS)

9 INTEREST IN OUTCOME

10 COMMON SCHEME OR PLAN - EVIDENCE OF ACTS OR DECLARATIONS OF CONFEDERATE

11 EXPERT WITNESSES

12 ON OR ABOUT - KNOWINGLY - WILLFULLY

13 "INTENT" DEFINED

14 "GUILTY KNOWLEDGE"

15 ALL AVAILABLE EVIDENCE NEED NOT BE PRODUCED

16 CONTROLLED SUBSTANCES (CONSPIRACY) 21 U.S.C. § 846

17 CONTROLLED SUBSTANCES DISTRIBUTION 21 U.S.C. § 841(a)(1)

18 ACTUAL AMOUNT CHARGED NEED NOT BE PROVED (COCAINE)

19 USING AND CARRYING FIREARMS DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME (18 U.S.C. § 924(c)(1)

20 ELEMENTS OF USING OR CARRYING A FIREARM DURING A DRUG TRAFFICKING CRIME

21 DEFINITION OF "USE" OF FIREARMS

22 CARRYING A FIREARM

23 DEFINITION OF "FIREARMS"

24 DEFINITION OF "DURING" A FEDERAL DRUG TRAFFICKING CRIME

25 GUILT OF SUBSTANTIVE OFFENSE

26 USE OR CARRY FIREARM DURING DRUG TRAFFICKING CRIME (CONSPIRACY UNDERLYING OFFENSE--PINKERTON THEORY)

27 POSSESSION OF FIREARM BY FELON - STATUTE INVOLVED

28 POSSESSION OF FIREARM BY FELON - OFFENSE CHARGED [18 U.S.C. § 922(g)]

Respectfully submitted this 22nd day of March, 1990.

MARGARET PERSON CURRIN
United States Attorney

BY: 
RICHARD H. MOORE
Assistant United States Attorney
Criminal Division

GOVERNMENT'S PROPOSED INSTRUCTION: [1]

OBJECTIONS AND RULINGS

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness the jury must disregard the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any question.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 272-73, § 10.13 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION NO. 2

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require a defendant to prove his innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The Government has the burden of proving him guilty beyond a reasonable doubt, and if it fails to do so you must acquit him.

Thus, while the Government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt, nor must the Government rebut every theory of innocence raised by the defendant. United States v. Chappell, 353 F.2d 83, 84 (4th Cir. 1965). It is only required that the Government's proof exclude any "reasonable doubt" concerning the defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the accused has been proved guilty beyond reasonable doubt, say so. If you are not convinced, say so.

5th Cir. Pattern Jury Instructions, 3A p. 6.

GOVERNMENT'S PROPOSED INSTRUCTION: 3

EVIDENCE IN CASE

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, however, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 304, § 11.11 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION NO. 4

EVIDENCE - INFERENCES - DIRECT AND CIRCUMSTANTIAL

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

You may also consider either direct or circumstantial evidence. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is a proof of a chain of facts and circumstances indicating either the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It requires only that you weigh all of the evidence and be convinced of the defendant's guilt beyond a reasonable doubt before he can be convicted.

5th Cir. Pattern Jury Instructions, 5 p. 10.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 5

INFERENCE DEFINED (PRESUMPTIONS)

During the trial you have heard the attorneys use the term "inference," and in their arguments they have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The Government asks you to draw one set of inferences, while the defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guess-work or speculation. An inference is a deduction or conclusion which you, the jury, are permitted to draw--but not required to draw--from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience.

Here again, let me remind you that, whether based upon direct or circumstantial evidence, or upon the logical, reasonable

inferences drawn from such evidence, you must be satisfied of the guilt of the defendant beyond a reasonable doubt before you may convict.

Authority

Adopted from the charge of the Honorable Edward Weinfield in United States v. Corr, 543 F.2d 1042 (2d Cir. 1976).

United States Supreme Court: Turner v. United States, 396 U.S. 398, 90 S. Ct. 642, 24 L.Ed.2d 610 (1970); Holland v. United States, 348 U.S. 121, 75 S. Ct. 127, 99 L.Ed. 150 (1954).

Second Circuit: United States v. Pfingst, 477 F.2d 177 (2d Cir.), cert. denied, 412 U.S. 941 (1973); United States v. Crespo, 422 F.2d 718 (2d Cir.), cert. denied, 398 U.S. 914 (1970).

Fifth Circuit: United States v. Yeatts, 639 F.2d 1186 (5th Cir.), cert. denied, 452 U.S. 964 (1981); United States v. Fitzharris, 633 F.2d 416 (5th Cir. 1980), cert. denied, 451 U.S. 988 (1981).

GOVERNMENT'S PROPOSED INSTRUCTION: 6

CREDIBILITY OF WITNESSES

DISCREPANCIES IN TESTIMONY

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an

unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 519-20, § 17.01 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION: 7

IMPEACHMENT - FELONY CONVICTION (GENERALLY) - DEFENDANT TESTIFIES (WITH FELONY CONVICTION)

The fact that a witness has previously been convicted of a felony, or a crime involving dishonesty or false statement, is also a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but is one of the circumstances you may take into account in determining the weight to be given to his testimony.

As stated before, a Defendant has a right not to testify. If a Defendant does testify, however, his testimony should be weighed and considered, and his credibility determined, in the same way as that of any other witness. Evidence of a Defendant's previous conviction of a crime is to be considered by you only insofar as it may affect the credibility of the Defendant as a witness, and must never be considered as evidence of guilt of the crime for which the Defendant is on trial, unless the conviction itself is an element of the offense.

5th Cir. Pattern Jury Instructions, 7F p. 17.

GOVERNMENT'S PROPOSED INSTRUCTION: 8

CONFESSION - STATEMENT - VOLUNTARINESS
(MULTIPLE DEFENDANTS)

In determining whether any statement, claimed to have been made by a Defendant outside of court and after an alleged crime has been committed, was knowingly and voluntarily made, the jury should consider the evidence concerning such a statement with caution and great care, and should give such weight to the statement as the jury feels it deserves under all the circumstances.

The jury may consider in that regard such factors as the age, sex, training, education, occupation, and physical and mental condition of the Defendant, his treatment while under interrogation, and all the other circumstances in evidence surrounding the making of the statement.

Of course, any such statement should not be considered in any way whatever as evidence with respect to any other Defendant on trial.

5th Cir. Pattern Jury Instructions, 4B p. 40.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 9

INTEREST IN OUTCOME

In evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness' interest has affected or colored his or her testimony.

Authority

Second Circuit: United States v. Bufalino, 683 F.2d 639 (2d Cir. 1982), cert. denied, 459 U.S. 1104 (1983); United States v. Frank, 494 F.2d 145 (2d Cir.), cert. denied, 419 U.S. 828 (1974).

Fifth Circuit: United States v. Ivacovetti, 466 F.2d 1147 (5th Cir. 1972), cert. denied, 410 U.S. 908 (1973).

Seventh Circuit: United States v. Lea, 618 F.2d 426 (7th Cir.), cert. denied, 449 U.S. 823 (1980).

Eighth Circuit: United States v. Klein, 701 F.2d 66 (8th Cir. 1983).

Ninth Circuit: United States v. Partin, 601 F.2d 1000 (9th Cir. 1979).

GOVERNMENT'S PROPOSED INSTRUCTION: 10

COMMON SCHEME OR PLAN

EVIDENCE OF ACTS OR DECLARATIONS OF CONFEDERATE

When two or more persons knowingly associate themselves together to carry out a common plan or arrangement, with the intent either to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means, there arises from the very act of knowingly associating themselves together with such intent, a kind of partnership in which each member becomes the agent of every other member.

So, where the evidence in the case shows such a common plan or arrangement, evidence as to an act knowingly done or a statement knowingly made by one such person, while the common plan or arrangement is continuing, and in furtherance of some object or purpose thereof, is admissible against all.

In order to establish proof that such a common plan or arrangement existed, the evidence must show that the parties to the plan or arrangement in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish some intended object or purpose of the plan or arrangement.

In order to establish proof that a defendant, or any other person, was a party to or member of such a common plan or arrangement existed, the evidence must show that the plan was knowingly formed, and that the defendant, or other person who is claimed to

have been a member, knowingly participated in the plan or arrangement, with the intent to advance or further some intended object or purpose of the plan or arrangement.

If and when it appears from the evidence in the case that such a common plan or arrangement did exist, and that a defendant was one of the members of the plan or arrangement, then the acts and statements by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the acts and statements may have occurred in the absence and without the knowledge of the defendant, provided such acts and statements were knowingly done and made during the continuance of the common plan or arrangement, and in furtherance of some intended object or purpose of the plan or arrangement.

Otherwise any admission or incriminatory statement made or act done by one person, outside of court, may not be considered as evidence against any person who was not present and saw the act done, or heard the statement made.

A statement or an act is "knowingly" made or done, if made or done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 336-38, § 12.10 (3d ed. Supp. 1981).

GOVERNMENT'S PROPOSED INSTRUCTION NO. 11

EXPERT WITNESSES

The rules of evidence provide that if scientific, technical, or specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state his opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

5th Cir. Pattern Jury Instructions, 8 p. 20.

Annotation

United States v. Johnson, 575 F.2d 1347, 1361 (5th Cir. 1978), approved this instruction.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 12

ON OR ABOUT - KNOWINGLY - WILLFULLY

You will note that the indictment charges that the offense was committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

The word "willfully," as that term has been used from time to time in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

5th Cir. Pattern Jury Instructions, 9A p. 21.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 13

"INTENT" DEFINED

Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the Government must prove that the defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances in the case, and it may be proved by circumstantial evidence. It rarely can be established by any other means. The reason for this is that there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer the defendant's intent from the surrounding circumstances. You may consider any statement made and done or omitted by the defendant, and all other facts and circumstances in evidence which indicate his state of mind.

GOVERNMENT'S PROPOSED INSTRUCTION: 14

"GUILTY KNOWLEDGE"

The element of knowledge may be satisfied by inferences drawn from proof that a defendant deliberately closed his eyes to what would otherwise have been obvious to him. A finding beyond reasonable doubt of a conscious purpose to avoid enlightenment would permit an inference of knowledge. Stated another way, a defendant's knowledge of a fact may be inferred from willful blindness to the existence of the fact.

It is entirely up to you as to whether you find any deliberate closing of the eyes, and the inferences to be drawn from any such evidence. A showing of negligence or mistake is not sufficient to support a finding a willfulness or knowledge.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 390, § 14.09 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION: 15

ALL AVAILABLE EVIDENCE NEED NOT BE PRODUCED

The law does not require the prosecution to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that has been produced, the jury may consider the prosecution's failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and no adverse inferences may be drawn from his failure to do so.

1 Devitt & Blackmar, Federal Jury Practice and Instructions 564, § 17.18 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION NO. 16

CONTROLLED SUBSTANCES
(CONSPIRACY)
21 U.S.C. § 846

Title 21, United States Code, Section 846 makes it a separate federal crime or offense for anyone to conspire or agree with someone else to do something which, if actually carried out, would be a violation of Section 841(a)(1). Section 841(a)(1) makes it a crime for anyone to knowingly possess cocaine with intent to distribute it and to distribute cocaine.

Under the law, a "conspiracy" is an agreement or a kind of "partnership in criminal purposes" in which each member becomes the agent or partner of every other member.

In order to establish a conspiracy offense it is not necessary for the Government to prove that all of the people named in the indictment were members of the scheme, or that those who were members had entered into any express formal type of agreement; or that they directly stated among themselves the details of the scheme and its object or purpose, or the precise means by which the object or purpose was to be accomplished. Also, because the essence of a conspiracy offense is the making of the scheme itself, it is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

What evidence in the case must show beyond a reasonable doubt is:

First: That two or more persons in some way or manner, came to a mutual understanding to try to

accomplish a common and unlawful plan, as charged in the indictment; and

Second: That the defendant knowingly and willfully became a member of such conspiracy.

A person may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names and identities of all of the other alleged conspirators. It is enough that a defendant knew or should have recognized that the conspiracy is of such a scope that its success had to involve others beyond himself or herself. So, if a defendant has an understanding of the unlawful nature of a plan and knowingly and willfully joins in that plan on one occasion, that is sufficient to convict him for conspiracy even though he had not participated before and even though he played only a minor part.

Of course, mere presence at the scene of a transaction or event, or the mere fact that certain persons may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of a conspiracy. Also, a person who has no knowledge of a conspiracy, but happens to act in a way which advances some purpose of one, does not thereby become a conspirator.

Annotations and Comments

Unlike 18 U.S.C. § 371, the general conspiracy statute, no overt act need be alleged or proved under this statute (Section 846). E.g., United States v. Palacios, 556 F.2d 1359 (5th Cir. 1977); United States v. Lee, 622 F.2d 787 (5th Cir. 1980); United States v. Ricardo, 619 F.2d 1124 (5th Cir. 1980).

It appears, therefore, that a withdrawal instruction is never appropriate in a prosecution under these statutes since the concept of withdrawal as a theory of defense contemplates abandonment of the scheme after the making of the agreement but before the commission of an overt act. See United States v. Nicoll, 664 F.2d 1308 (5th Cir. Unit B, 1982).

As to the nature of the conspiracy, see United States v. Agueci, 310 F.2d 817, 827 (2d Cir. 1962), cert. denied, 372 U.S. 959, 83 S. Ct. 1013, 10 L.Ed.2d 111 (1963).

11th Circuit Patter Jury Instruction, Offense Instructions, No. 62, p. 213.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 17

CONTROLLED SUBSTANCES (DISTRIBUTION)
21 U.S.C. § 841(a)(1)

Title 21, United States Code, Section 841(a)(1), cited in the indictment, provides in pertinent part as follows:

> [I]t shall be unlawful for any person knowingly or intentionally--(1) to . . . distribute . . . a controlled substance . . . .

Cocaine is a controlled substances within the meaning of the law.

The Government is not required to show that the defendants knew that the substance was cocaine. It is sufficient if the evidence establishes beyond a reasonable doubt that the defendant distributed some controlled substance. (United States v. Berick, 710 F.2d 1035 (5th Cir.), cert. denied, 464 U.S. 899, 910, 104 S. Ct. 255, 286, 78 L.Ed.2d 241, 163 (1983).

In order to establish the offense prohibited by that statute, the Government must prove each of the following elements beyond a reasonable doubt:

First: That the Defendant knowingly and intentionally

Second: Distributed the substance.

To "distribute" simply means to deliver or transfer a controlled substance to another person, with or without any financial interest in the transaction.

You may take into consideration on the issue of intent to distribute the amount, quantity, or value of the controlled substances involved.

United States v. Casta, 691 F.2d 1358 (11th Cir. 1982).

United States v. Palmere, 578 F.2d 105 (5th Cir. 1978).

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. 18

ACTUAL AMOUNT CHARGED NEED NOT BE PROVED
(Cocaine)

In the Indictment, it is alleged that a particular amount or quantity of cocaine was involved. The evidence in the case need not establish that the amount or quantity of cocaine was as alleged in the Indictment, but only that a measurable amount of cocaine was in fact the subject of the acts charged in the Indictment.

1 Devitt & Blackmar, Federal Jury Practice and Instruction 456, § 58.05 (3d ed. 1977)

GOVERNMENT'S PROPOSED INSTRUCTION: 19

USING AND CARRYING FIREARMS DURING AND
IN RELATION TO A DRUG TRAFFICKING CRIME
(18 U.S.C. § 924(c)(1))

The Third Count of the Indictment charges that on or about June 16, 1989, the Defendants did use and carry a firearm during and in relation to a drug trafficking crime, that crime being the alleged offense charged in the First Count of the Indictment -- conspiracy to possess with intent to distribute and to distribute cocaine, in violation of Title 18, United States Code, Section 924(c)(1).

Title 18, United States Code, Section 924(c)(1), provides in pertinent part as follows:

> Whoever, during and in relation to any . . . drug trafficking crime for which he may be prosecuted in a court of the United States, uses or carries a firearm [shall] be guilty of an offense against the United States.]

The offense charged in the Third Count of the Indictment is a distinct offense from the charge contained in the First Count. If, however, you find a Defendant not guilty of the First Count, you will also find him not guilty of the Third Count. If you find the Defendant whose case you are considering guilty of the First Count, then you will proceed to consider the Defendant's guilt or innocence of Count Three.

There are two essential elements which must be proven beyond a reasonable doubt in order to establish the offense of using a firearm during and in relation to a drug trafficking crime:

First: That the Defendant committed a drug trafficking crime punishable in a court of the United States; and

Second: That on or about the date charged in the Indictment, the Defendant used or carried a firearm during and in relation to a drug trafficking felony.

2 Devitt and Blackmar, Federal Jury Practice and Instructions, pp. 498-500, §§ 59.29, 59.30, 59.31 (3d ed. 1977 and 1988 supp.) (modified).

GOVERNMENT'S PROPOSED INSTRUCTION 20

ELEMENTS OF USING OR CARRYING A
FIREARM DURING A DRUG TRAFFICKING CRIME

The first element which the Government must prove beyond a reasonable doubt is that the Defendants committed a drug trafficking crime punishable in a court of the United States. Ladies and gentlemen of the jury, I instruct you that the crime of conspiracy to possess with intent to distribute and to distribute cocaine, in violation of Title 21, United States Code, Section 846, as charged in Count One of the Indictment, is a drug trafficking crime for which the Defendants may be prosecuted in a court of the United States.

Members of the jury, the second element which the Government must prove beyond a reasonable doubt is that the Defendant, Delton Cummings, was using or carrying a firearm. In order for the Government to sustain its burden of proof that the Defendant, Delton Cummings, used a firearm, it is not necessary for it to establish that the weapon was fired. It is sufficient if the proof establishes that the firearm furthered the commission of the drug trafficking crime or was an integral part of the underlying crime being committed. It is not necessary for the firearm to be operable.

2 Devitt and Blackmar, Federal Jury Practice and Instructions, p. 500, § 59.32 (3d ed. 1977 and 1988 supp.) (modified);

Sand, et al., Modern Federal Jury Instructions, Criminal Instructions 30 § 35-70 (modified);

U.S. v. Harris, 792 F.2d 866 (9th Cir. 1986);

U.S. v. York, 830 F.2d 885 (8th Cir. 1987);

U.S. v. Coburn, 876 F.2d 372 (5th Cir. 1989).

GOVERNMENT'S PROPOSED INSTRUCTION NO. 21

DEFINITION OF "USE" OF FIREARMS

Members of the jury, examples of such "use" of a firearm includes possessing firearms for security or protection of controlled substances or large sums of money, or for emboldening one to intimidate others.

Authority

Sand, et al., Modern Federal Jury Instructions, Criminal Instruction 35-70 and commentary thereto;

United States v. Matra, 841 F.2d 837 (8th Cir. 1988);

United States v. LaGuardia, 774 F 2d 317 (8th Cir. 1985);

United States v. Stewart, 779 F.2d 538 (9th Cir. 1985);

United States v. Grant, 545 F.2d 1309 (2d Cir. 1976), cert. denied, 97 S. Ct. 1130 (1977).

GOVERNMENT'S PROPOSED INSTRUCTION NO. ~~18~~ 22

CARRYING A FIREARM

The Defendant is considered to have carried a firearm if the Defendant carried it unlawfully. In order to satisfy this element, the Government need not show that the Defendant actually carried the firearm on his person. It is sufficient if you find that he transported or conveyed the weapon, or had possession of it in the sense that at a given time he had both the power and intention to exercise dominion or control over it.

Authority

Sand, et al., Modern Federal Jury Instructions, Criminal Instruction 35-70 and commentary thereto;

GOVERNMENT'S PROPOSED INSTRUCTION: 23

DEFINITION OF "FIREARMS"

Members of the jury, I instruct you that a "firearm." as that term is used in the statute, means "any weapon . . . which will and is designed to or may readily be converted to expel a projectile by the action of an explosive." A Smith & Wesson .357 magnum revolver, Model 19, is a "firearm" within the meaning of the law.

GOVERNMENT'S PROPOSED INSTRUCTION NO. 24

DEFINITION OF "DURING" A
FEDERAL DRUG TRAFFICKING CRIME

Members of the jury, as I mentioned to you, the Government is required to prove that a defendant used or carried a firearm "during and in relation to" a federal drug trafficking crime. In order to find that a defendant used a firearm during a federal drug trafficking crime, you need not find that the firearm was possessed or carried constantly throughout the offense. Instead, the firearm is used during a federal drug trafficking crime if it is possessed or used at any time during the course of the crime itself.

Moreover, circumstantial evidence can be used to prove a violator carried a firearm during an offense. One need not actually see a firearm being carried or used during the offense, if there exists sufficient circumstantial evidence of it.

Authority

United States v. Johnson, 658 F.2d 1176 (7th Cir. 1981);

United States v. Barber, 594 F.2d 1242 (9th Cir. 1979).

GOVERNMENT'S PROPOSED INSTRUCTION: 25

GUILT OF SUBSTANTIVE OFFENSE

If you find that a particular defendant is guilty of conspiracy, you may also find that defendant guilty of a substantive offense as charged in any other counts of the indictment, provided that you find that the essential elements of each count as defined in these instructions have been established beyond doubt, and provided that you also find beyond reasonable doubt:

First: that the offenses defined in the substantive count was committed pursuant to the conspiracy, and

Second: that the particular defendant was a member of the conspiracy at the time the substantive offense was committed.

Under the conditions just defined a defendant may be found guilty of a substantive count even though he did not participate in the acts constituting the offense as defined in the substantive count. The reason for this is that a conspirator is held to be the agent of the other conspirators.

Devitt and Blackmar, Federal Jury Practices and Instructions, Section 27.17

GOVERNMENT'S PROPOSED INSTRUCTION NO. 26

USE OR CARRY FIREARM DURING DRUG TRAFFICKING CRIME
(CONSPIRACY UNDERLYING OFFENSE--PINKERTON THEORY)

To sustain the charge in Count Three as to Defendant Zeb Cummings, of using and carrying a firearm during and in relation to a drug trafficking crime, the Government must prove the following propositions:

First, defendant Zeb Cummings is guilty of the offense charged in Count One of the Indictment;

Second, defendant Delton Cummings committed the offense charged in Count Three in furtherance of or as a natural and foreseeable consequence of the conspiracy charged in Count One of the Indictment; and

Third, defendant Zeb Cummings was a member of the conspiracy at the time defendant committed the offense charged in Count One.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count Three of the Indictment.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find defendant not guilty of Count Three.

United States v. Reynaldo Diaz, 864 F.2d 544 (7th Cir. 1988)

GOVERNMENT'S PROPOSED INSTRUCTION: 27

POSSESSION OF FIREARM BY FELON
STATUTE INVOLVED

Title 18, United States Code, Section 922(g) provides in pertinent part that:

It shall be unlawful for any person--

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . .

to possess in or affecting commerce, any firearm . . ..

The offense charged in the Indictment has three essential elements, as follows:

First: That the defendant was convicted of an offense under the laws of the State of North Carolina which is punishable for a term exceeding one year;

Second: That thereafter he knowingly possessed a firearm; and

Third: That his possession of the firearm was in or affecting commerce.

The burden is always on the prosecution to establish each of these elements by proof beyond a reasonable doubt. The law never imposes on the defendant in a criminal case the burden of introducing any evidence or calling any witnesses.

2 Devitt & Blackmar, Federal Jury Practice and Instructions 501-2, § 59.36 (3d ed. 1977).

GOVERNMENT'S PROPOSED INSTRUCTION: 28

POSSESSION OF FIREARM BY FELON
OFFENSE CHARGED [18 U.S.C. § 922(g)]

It is charged in the Indictment that the Defendant was convicted on October 23, 1979, in the Superior Court of Guilford County, North Carolina, of a felony, which offense was and is punishable for a term exceeding one year under the laws of the State of North Carolina, and that he thereafter and on or about June 16, 1989, did possess, in and affecting interstate commerce, a firearm, to wit: a loaded Smith & Wesson .357 magnum revolver, Model 19, and a loaded Jennings .22 caliber pistol, Model J22, in violation of Title 18, U.S.C. § 922(g)(1).

2 Devitt & Blackmar, Federal Jury Practice and Instructions 500-1, §59.35 (3d ed. 1977).

CERTIFICATE OF SERVICE

This is to certify that I have this 22nd day of Marc , 1990, served a copy of the foregoing GOVERNMENT'S PROPOSED JURY INSTRUCTIONS upon the Defendant in this action by depositing a copy of the same in the United States mail in a postpaid envelope addressed as follows:

For Delton Cummings:

Ms. Elizabeth Manton
Assistant Federal Public Defender
P. O. Box 25967
Raleigh, NC 27611.

For Zeb Cummings:

Mr. William R. Davis, III
Attorney at Law
P. O. Box 1363
Lumberton, NC 28359

Richard H. Moore

RICHARD H. MOORE
Assistant United States Attorney
Criminal Division

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CERTIFICATE OF SERVICE

This is to certify that I have this 25th day of July, 1990, served a copy of the foregoing Government's Motion to Change Name upon the defendant in this action by depositing copy of the same in the United States mail in a postpaid envelope addressed as follows:

Mr. William L. Davis III
P.O. Box 1363
Lumberton, NC 28359

733-7776
654-5951

JOHN S. BOWLER
Assistant United States Attorney
Criminal Division

RDB:rmb