

M. G. G.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

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JUDGE JOAN H. LEFKOW
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA)
)
 vs.)
)
 JON BURGE)

No. 08 CR 846
Judge Joan H. Lefkow

JURY INSTRUCTIONS

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say to you now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eye witness. Circumstantial evidence is the proof of a series of facts which tend to prove a matter that is at issue.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

Certain demonstrative exhibits have been shown to you. Those are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes anything from the newspaper, television, radio, the Internet, or any other source. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.

It is proper for an attorney or investigator to interview any witness in preparation for trial.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

You have heard testimony of an identification of a person. Identification testimony is an expression of belief or impression by the witness. You should consider whether, or to what extent, the witness had the ability and opportunity to observe the person and make a reliable identification later. You should also consider the circumstances under which the witness later made the identification.

The government has the burden of proving beyond a reasonable doubt that the particular defendant you are considering was the person who committed the crime charged.

You have heard evidence that before the trial, witnesses made statements that may be consistent with the witnesses's testimony here in court. If you find these earlier statements were made and were consistent with the witnesses's testimony in this trial, you may consider the earlier statement for the truth of the matters contained in the earlier statement and in deciding the truthfulness and accuracy of the witnesses's testimony in this trial.

You have heard evidence that before the trial witnesses made statements that may be inconsistent with the witnesses' testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

You have heard evidence that Anthony Holmes, Melvin Jones, Andrew Wilson, Gregory Banks, Shadeed Mu'min, and Ricky Shaw have been convicted of crimes. You may consider this evidence only in deciding whether their respective testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

To the extent Andrew Wilson asserted his privilege against self-incrimination in response to questions posed to him on cross-examination during prior testimony, you may, but are not required to, assume that Andrew Wilson's testimony would have been unfavorable to him.

You have heard testimony from Michael McDermott, who received immunity; that is, a promise from the government that any testimony or other information he provided would not be used against him in a criminal case.

You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The defendant is presumed to be innocent of each of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

You should not speculate why any other person whose name you may have heard during the trial is not currently on trial before you.

The indictment in this case is the formal method of accusing the defendant of offenses and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

Count One and Count Three of the indictment charge the defendant with the crime of corruptly obstructing, influencing, and impeding an official proceeding, or attempting to do so. Count Two of the indictment charges the defendant with the crime of perjury. The defendant has pleaded not guilty to the charges.

The indictment charges that the offenses were committed “on or about” certain dates. The government must prove that the offenses happened reasonably close to those dates but is not required to prove that the alleged offenses happened on those exact dates.

To sustain the charge of obstruction as alleged in Counts One and Three, the government must prove the following propositions:

First, the defendant obstructed, influenced, or impeded an official proceeding, or attempted to do so; and

Second, that the defendant's acts were done corruptly, that is, with the purpose of wrongfully impeding the due administration of justice.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt as to a particular Count, then you should find the defendant guilty of that Count.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt as to a particular Count, then you should find the defendant not guilty of that Count.

A person attempts to commit an offense if he knowingly takes a substantial step toward committing the offense, intending to commit the offense. A substantial step is an act beyond mere planning or preparation to commit the crime, but less than the last act necessary to commit the crime..

I instruct you that *Hobley v. Jon Burge, et. al.*, case number 03 C 3678, a civil lawsuit in federal court, is an “official proceeding” for purposes of Count One and Count Three.

Count One alleges that defendant Jon Burge submitted Answers to the Plaintiff's First Set of Interrogatories, which included answers to Questions 13 and 14. The government need not prove that the defendant corruptly obstructed, influenced, and impeded an official proceeding, or attempted to do so, by signing an Answer that contained false statement in response to both questions. However, the government must prove that defendant willfully made at least one false statement in response to Question 13 or 14. In order to find that the government has proved that the defendant did so, the jury must unanimously agree on which specific answer the defendant willfully answered falsely.

For example, if some of you find the defendant willfully answered Question 13 falsely and the rest of you find the defendant willfully answered Question 14 falsely, then there is no unanimous agreement. On the other hand, if all jurors find the government has proved that the defendant willfully answered either Question 13 or 14 falsely, then there is unanimous agreement.

To sustain the charge of perjury as charged in Count Two, the government must prove the following propositions:

First, the defendant took an oath before a notary public that his written answers to Plaintiff's Second Set of Interrogatories in *Hobley v. Jon Burge, et. al.*, case number 03 C 3678, were true;

Second, at the time he submitted his answer to Question 3 of Defendant Jon Burge's Answers to Plaintiff's Second Set of Interrogatories, the defendant knew the answer was false;

Third, the defendant gave the answer willfully and contrary to the oath; and

Fourth, the false answer related to a material matter.

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.

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 the defendant not guilty.

Under the rules governing procedures in civil lawsuits, interrogatories must be answered by the party to whom they are directed. An attorney for the party may make objections to interrogatories. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. The person who makes the answers must sign them.

Interrogatory answers may be received as evidence in a jury trial in the civil case. If in evidence, the interrogatory answers are given the same consideration as if the witness had testified to those answers from the witness stand during the trial.

I instruct you that, for purposes of the perjury charge in Count Two, a notary public is a competent officer before whom the law of the United States authorizes an oath to be administered.

No particular formalities are required for there to be a valid oath. An oath may be undertaken by any unequivocal act in the presence of a notary public by which the declarant knowingly assumes the obligation of an oath.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

An act is done “willfully” if it is done voluntarily and intentionally, and with the intent to do something the law forbids; that is to say with a purpose either to disobey or disregard the law.

An answer to an interrogatory is material if a truthful answer might reasonably be calculated to lead to the discovery of evidence admissible at trial of the underlying lawsuit or otherwise affect its outcome. It is not necessary that the answer actually have that effect, so long as it had the potential or capability of doing so.

In determining whether the defendant believed the answer to a question was false, you should consider the statement in the context of the sequence of questions asked and answers given, and the words used should be given their common and ordinary meaning unless the context clearly shows that a different meaning was mutually understood by the parties.

If you should find that a particular question was ambiguous and that the defendant truthfully answered one reasonable interpretation of the question under the circumstances presented, then such answer would not be false. Similarly, if you should find that the question was clear, but the answer was ambiguous, and one reasonable interpretation of such answer is that the answer was truthful, then the answer would not be false.

When the word “knowingly” or the phrase “the defendant knew” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake, or accident. Knowledge may be proved by a defendant’s conduct, and by all the facts and circumstances surrounding the case.

Good faith on the part of the defendant is inconsistent with acting willfully or corruptly, elements of these charges. The burden is not on the defendant to prove his good faith; rather, the government must prove beyond a reasonable doubt that the defendant acted corruptly during the acts charged in Counts One and Three, and willfully during the act charged in Count Two.

Once you are all in the jury room the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard.

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may discuss the case only when all jurors are present.

I do not anticipate that you will need to communicate with me while you are deliberating. If you do, send a note through the court security officer. The note should be signed by the presiding juror or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You should continue your deliberations while you wait for my answer.

If you send me a message, do not include the breakdown of your votes. In other words, do not tell me that you are split 6-6, or 8-4, or whatever your vote happens to be.

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

Each count of the indictment charges the defendant with having committed a separate offense.

Each count and the evidence relating to it should be considered separately, and a separate verdict should be returned as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of the evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

A verdict form has been prepared for you.

[Form of verdict read.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the form, and each of you will sign it.

UNITED STATES DISTRICT COURT
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EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No. 08 CR 846
vs.)	Judge Joan H. Lefkow
)	
JON BURGE)	

VERDICT FORM

COUNT ONE - OBSTRUCTION OF JUSTICE

With respect to COUNT ONE of the indictment, we, the jury, find as follows:

GUILTY _____ NOT GUILTY _____

COUNT TWO - PERJURY

With respect to COUNT TWO of the indictment, we, the jury, find as follows:

GUILTY _____ NOT GUILTY _____

COUNT THREE - OBSTRUCTION OF JUSTICE

With respect to COUNT THREE of the indictment, we, the jury, find as follows:

GUILTY _____ NOT GUILTY _____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PRESIDING JUROR

DATE

If you find the defendant guilty, it will then be my job to decide what punishment should be imposed. The issue of punishment should not enter into your consideration or discussions at any time.