

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 08-00026-03, 04-CR-W-FJG
)
TROY R. SOLOMON,)
and)
CHRISTOPHER L. ELDER,)
)
Defendants.)

GOVERNMENT'S AMENDED JURY INSTRUCTIONS

The United States of America, by Beth Phillips, United States Attorney for the Western District of Missouri, and Rudolph R. Rhodes IV and James Curt Bohling, Assistant United States Attorneys, respectfully submit these amended proposed jury instructions. The government reserves the right to request further instructions should an issue arise during the trial that may necessitate such additional instructions.

I. PRELIMINARY INSTRUCTIONS BEFORE OPENING STATEMENTS

1. 1.01 General; Nature of Case; Nature of Indictment; Burden of Proof; Presumption of Innocence; Duty of Jury; Cautionary
2. 1.03 Evidence; Limitations
3. 1.05 Credibility of Witnesses
4. 1.06 No Transcript Available; Note-Taking
5. 1.07 Bench Conferences and Recesses
6. 1.08 Conduct of the Jury
7. 1.09 Outline of Trial

II. INSTRUCTIONS FOR USE DURING TRIAL

8. 2.01 Duties of Jury: Recesses
9. 2.02 Stipulated Testimony
10. 2.03 Stipulated Facts
11. 2.04 Judicial Notice

12. 2.07 Statement by Defendants
13. 2.15 Statement of One Defendant in Multi-Defendant Trial
14. 2.08 Defendant's Prior Similar Acts
15. 2.19 Witness Who Has Pleaded Guilty

III. FINAL INSTRUCTIONS

16. 3.01 Introduction
17. 3.02 Duty of Jury
18. 3.03 Evidence; Limitations
19. 3.04 Credibility of Witnesses
20. 3.08 Description of Charges; Indictment Not Evidence; Presumption of Innocence; Burden of Proof (Multiple Defendants, Multiple Counts)
21. 4.04 Testimony Under Grant of Immunity or Plea Bargain
22. 4.10 Expert Testimony
23. 4.12 Rule 1006 Summaries
24. 3.11 Reasonable Doubt
25. 6.21.846A.1 Count One - Elements of the Offense - Conspiracy to Distribute Controlled Substances
26. 5.06A Count Two - Elements of the Offense - Conspiracy to Commit Money Laundering
27. 5.06B Conspiracy - Agreement Defined
28. 5.06C Conspiracy - Substantive Offense: Elements
29. 5.06E Conspiracy - Success Immaterial
30. 5.06D Conspiracy - Conspiracy: "Overt Act"—Explained
31. 5.06I Conspiracy - Co-Defendant Statements
32. 5.06F Conspiracy - Multiple Offenses
33. 6.18.1956A Money Laundering - Financial Transaction to Promote SUA
34. 6.18.1956B Money Laundering - Financial Transaction to Conceal Proceeds
35. 6.21.841B Count Three - Elements of the Offense - Distribution of Controlled Substances
36. 6.21.841B Count Four - Elements of the Offense - Distribution of Controlled Substances
37. 6.21.841B Count Five - Elements of the Offense - Distribution of Controlled Substances
38. 6.21.841B Count Six - Elements of the Offense - Distribution of Controlled Substances
39. 6.21.841B Count Seven - Elements of the Offense - Distribution of Controlled Substances
40. 6.21.841B Count Eight - Elements of the Offense - Distribution of Controlled Substances
41. 6.21.841B Count Nine - Elements of the Offense - Distribution of Controlled Substances
42. 6.21.841B Count Ten - Elements of the Offense - Distribution of Controlled Substances

43. 6.21.841B Count Eleven - Elements of the Offense - Distribution of Controlled Substances
44. 6.21.841B Count Twelve - Elements of the Offense - Distribution of Controlled Substances
45. 21 U.S.C. § 802(8), (10) (11), and (21), Definition of “Distribute,” “constructive transfer” “dispense,” and “practitioner.”
46. Explanation of the phrases “outside the scope of professional practice” and “not for a legitimate purpose.”
47. “on or About / “In or About” Explained
48. 7.04 Deliberate Ignorance
49. 8.02 Possession, Actual, Constructive, Sole, Joint
50. 7.05 Knowledge and Intent Defined
51. 21 C.F.R. § 1308.13 (1) - (2), Hydrocodone, Lortab, and Lorcet Schedule III
52. 21 C.F.R. § 1308.14, Alprazolam and Xanax, Schedule IV
53. 21 C.F.R. § 1308.13 (1) - (2), Promethazine with Codeine, Schedule V
54. 2.16 Defendant previously convicted of a crime
55. 3.12 Election of Foreperson; Duty to Deliberate; Punishment Not a Factor; Communications with Court; Cautionary; Verdict Forms
56. Verdict Forms - All Defendants

Respectfully submitted,

Beth Phillips
United States Attorney

By */s/ Rudolph R. Rhodes, IV*

Rudolph R. Rhodes, IV
Assistant United States Attorney

By */s/ James C. Bohling*

James C. Bohling
Assistant United States Attorney

Charles Evans Whittaker Courthouse
400 East 9th Street, Room 5510
Kansas City, Missouri 64106
Telephone: (816) 426-2605

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 25, 2010, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

Chip Lewis
Mary Grace Ruden
2120 Welch Street
Houston, TX 77019
Attorney for Defendant Solomon (3)

John Osgood
Commercial Fed Bank, Suite 305
740 NW Blue Parkway
Lee's Summit, MO 64086
Attorney for Defendant Elder (4)

/s/ Rudolph R. Rhodes, IV

Rudolph R. Rhodes IV
Assistant United States Attorney

INSTRUCTION NO. _____

Ladies and gentlemen: I shall take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I shall give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

This is a criminal case, brought against the defendants by the United States Government. Defendants Troy Solomon, and Christopher Elder are charged with conspiring to distribute and dispense Schedule III, IV, and V controlled substances, namely hydrocodone, a Schedule III controlled substance, both in its generic name and brand name forms, such as Lortab and Lorcet; alprazolam, a Schedule IV controlled substance, in its generic form and brand name forms, such as Xanax; and promethazine with codeine, a Schedule V controlled substance, in its generic form and brand name form, such as Phernagan with codeine; other than for a legitimate medical purpose and not in the usual course of professional practice. Defendant Troy Solomon is charged with conspiracy to commit money laundering. Defendants Troy Solomon and Christopher Elder are charged with four counts of aiding and abetting distribution of Schedule III and IV controlled substances. Defendants Troy Solomon and Christopher Elder are charged with four counts of unlawful distribution of Schedule III, IV, and V controlled substances. Defendant Troy Solomon is charged with two counts of unlawful distribution of Schedule V controlled substances. Those charges are set forth in what is called an indictment. You should understand that an indictment is simply an accusation. It is not evidence of anything. The defendants have pleaded not guilty, and are presumed to be innocent unless and until proved guilty beyond a reasonable doubt.

It will be your duty to decide from the evidence whether each defendant is guilty or not guilty of the crimes charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

Finally, please remember that only this defendant, not anyone else, is on trial here, and that this defendant is on trial only for the crime charged, not for anything else.

Plaintiff's Instruction No. 1
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 1.01

INSTRUCTION NO. _____

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated -- that is, formally agreed to by the parties, and any facts that have been judicially noticed -- that is, facts which I say you may, but are not required to, accept as true, even without evidence.

Certain things are not evidence. I shall list those things for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

Plaintiff's Instruction No. 2
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 1.03

INSTRUCTION NO. _____

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony of any witness to believe, consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe.

Plaintiff's Instruction No. 3

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 1.05

INSTRUCTION NO. _____

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to read back lengthy testimony. You must pay close attention to the testimony as it is given.

[If you wish, however, you may take notes to help you remember what the witness said. If you do take notes, please keep them to yourself until you and your fellow jury members go to the jury room to decide the case and do not let note-taking distract you so that you do not hear the answers of the witnesses.]

[When you leave at night, your notes will be secured and not read by anyone.]

Plaintiff's Instruction No. 4
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 1.06

INSTRUCTION NO. _____

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

Plaintiff's Instruction No. 5

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 1.07

INSTRUCTION NO. _____

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case -- you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side -- even if it is simply to pass the time of day -- an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are you might inadvertently find yourself reading or

listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research or make any investigation about the case on your own about any matter involved in this case. By way of examples, that means you must not read from a dictionary or a text book or an encyclopedia or talk with a person you consider knowledgeable or go to the Internet for information about some issue in this case. In fairness, learn about this case from the evidence you receive here at the trial and apply it to the law as I give it to you.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Plaintiff's Instruction No. 6
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 1.08

INSTRUCTION NO. _____

The trial will proceed in the following manner:

First, the Government attorney will make an opening statement. Next the defendants may, but does not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The government will then present its evidence and counsel for the defendants may cross-examine. Following the Government's case, the defendants may, but do not have to, present evidence, testify or call other witnesses. If the defendants call witnesses, the Government counsel may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

Plaintiff's Instruction No. 7

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 1.09

INSTRUCTION NO. _____

We are about to take a recess and I remind you of the instruction I gave you earlier. During this recess or any other recess, you must not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. If anyone tries to talk to you about the case, please let me know immediately. Do not read, watch or listen to any news reports of the trial. Finally, keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

I may not repeat these things to you before every recess, but keep them in mind throughout the trial.

Plaintiff's Instruction No. 8
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 2.01

INSTRUCTION NO. ____

The government and the defendants have stipulated - that is, they have agreed - that if (name of witness) were called as a witness [he][she] would testify in the way counsel have just stated. You should accept that as being (name of witness)'s testimony, just as if it had been given here in Court from the witness stand.

Plaintiff's Instruction No. 9

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 2.02

INSTRUCTION NO. _____

The government and the defendant have stipulated - that is, they have agreed - that certain facts are as counsel have stated. You must therefore treat those facts as having been proved.

Plaintiff's Instruction No. 10

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 2.03

INSTRUCTION NO. ____

Even though no evidence has been introduced about it, I have decided to accept as proved the fact that (insert fact noticed). I believe this fact [is of such common knowledge] [can be so accurately and readily determined from (name accurate source)] that it cannot reasonably be disputed. You may therefore treat this fact as proved, even though no evidence was brought out on the point. As with any fact, however, the final decision whether or not to accept it is for you to make and you are not required to agree with me.

Plaintiff's Instruction No. 11

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 2.04

INSTRUCTION NO. ____

You have heard testimony that each defendant made a statement to the Drug Enforcement Administration. It is for you to decide:

First, whether [the defendant] [defendant (name)] made the statement and

Second, if so, how much weight you should give to it.

Plaintiff's Instruction No. 12

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 2.07 (modified)

INSTRUCTION NO. _____

You may consider the statement of each defendant only in the case against him and not against the other defendants. You may not consider or discuss that statement in any way when you are deciding if the government has proved, beyond a reasonable doubt, its case against the other defendants.

Plaintiff's Instruction No. 13

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 2.15 (modified)

INSTRUCTION NO. _____

You have heard evidence that the defendant (describe evidence the jury has heard). You may consider this evidence only if you (unanimously) find it more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is more likely true than not true, you may consider it to help you decide (describe purpose under 404(b) for which evidence has been admitted.) You should give it the weight and value you believe it is entitled to receive. If you find that it is not more likely true than not true, then you shall disregard it.

[Remember, even if you find that the defendant may have committed similar acts in the past, this not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issue of (state proper purpose under 404(b), e.g., intent, knowledge, motive.)]

Plaintiff's Instruction No. 14
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 2.08 (modified)

INSTRUCTION NO. _____

You have heard evidence that witnesses Mary Lynn Rostie and Cynthia S. Martin have pleaded guilty to a crime which arose out of the same events for which the defendants are on trial here. You must not consider those guilty pleas as any evidence of these defendant's guilty. You may consider that witness's guilty plea only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

Plaintiff's Instruction No. 15

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 2.19

INSTRUCTION NO. _____

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning and during trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Plaintiff's Instruction No. 16

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)

No. 3.01

INSTRUCTION NO. _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

Plaintiff's Instruction No. 17

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 3.02

INSTRUCTION NO. _____

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, [and the facts that have been stipulated -- this is, formally agreed to by the parties, the facts that have been judicially noticed - that is facts which I say you may, but are not required to, accept as true, even without evidence.]

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

Plaintiff's Instruction No. 18

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 3.03

INSTRUCTION NO. _____

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

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

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

Plaintiff's Instruction No. 19

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)

No. 3.04

INSTRUCTION NO. _____

The charges in this case are as follows:

Under Count One, the indictment charges that defendants, Troy Solomon and Christopher Elder, committed the crime of conspiracy to distribute and dispense controlled substances.

Under Count Two, the indictment charges that defendant Troy Solomon committed the crime of conspiracy to commit money laundering.

Under Counts Three, Four, Five, and Six, the indictment charges that defendants Troy Solomon and Christopher Elder, committed the crime of unlawful distribution of controlled substances.

Under Counts Seven, Eight, Nine, and Ten, the indictment charges that defendants Troy Solomon and Christopher Elder, committed the crime of unlawful distribution of a controlled substance.

Under Counts Eleven and Twelve, the indictment charges that defendant Troy Solomon committed the crime of distribution of a controlled substance.

Each defendant has pleaded not guilty to each crime with which he is charged.

As I told you at the beginning of trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, each defendant is presumed to be innocent. Thus each defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find each defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a

separate verdict for each defendant. Also keep in mind that you must consider, separately, each crime charged against each individual defendant, and must return a separate verdict for each of those crimes charged.

[There is no burden upon a defendant to prove that he is innocent.] [Accordingly, the fact that [a] defendant did not testify must not be considered by you in any way, or even discussed in arriving at your verdict.]

Plaintiff's Instruction No. 20
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 3.08

INSTRUCTION NO. _____

You have heard evidence that some witnesses have made a plea agreement with the Government. You have also heard evidence that some witnesses have received a promise from the Government that their testimony will not be used against them in a criminal case. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the plea agreement or Government's promise is for you to determine.

[The witnesses' guilty pleas cannot be considered by you as any evidence of these defendants' guilt. The witnesses' guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon the witnesses' testimony.]

Plaintiff's Instruction No. 21

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 4.04 (Modified)

INSTRUCTION NO. _____

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

Plaintiff's Instruction No. 22

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 4.10 (Modified)

INSTRUCTION NO. ____

You will remember that certain charts were admitted in evidence. You may use those charts as evidence. It is for you to decide how much weight, if any, you will give to them.

Plaintiff's Instruction No. 23

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 4.12 (as modified)

INSTRUCTION NO. _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

Plaintiff's Instruction No. 24
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 3.11

INSTRUCTION NO. ____

The crime of conspiracy to distribute controlled substances as charged in Count One of the indictment has four essential elements, which are:

One, from at least in or about August 2004, and continuing through October 2005, two or persons reached an agreement or came to an understanding to distribute or dispense Schedule III controlled substances, including but not limited to hydrocodone, and/or Schedule IV controlled substances, including but not limited to alprazolam, and/or Schedule V controlled substances, including but not limited to codeine, other than for a legitimate medical purpose and not in the usual course of professional practice;

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

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

Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more of the following acts:

- a. In or before August 2004, defendant MARTIN introduced defendant SOLOMON to defendant ROSTIE for the purpose of obtaining controlled substances from defendant ROSTIE.
- b. Between on or about September 1, 2004, and October 25, 2005, three patients had controlled substance prescriptions filled on multiple dates after they had died. These prescriptions were issued by defendant ELDER and filled by defendant ROSTIE.
- c. From October 2004 through December 2004, multiple patients of defendant

ELDER had prescriptions filled for 120 tablets of hydrocodone and 90 tablets of alprazolam on the same days. Beginning on December 1, 2004, the same patients began having prescriptions filled for 240 ml of promethazine with codeine syrup in addition to the first two controlled substances on the same days.

d. On or about June 9 and 10, 2005, defendant ROSTIE filled over one hundred prescriptions for patients whose last names began with the letter “L”.

e. On or about June 10 and 11, 2005, defendant ROSTIE filled over one hundred prescriptions for patients whose last names began with the letter “M”.

f. On or about June 20, 2005, defendant ROSTIE filled over one hundred prescriptions for patients whose last names began with the letter “W”.

g. From on or about January 4, 2005, through on or about September 22, 2005, the defendants ROSTIE and SOLOMON, using Dr. B’s DEA registration number and prescription pad, ordered, filled, and shipped 170,280 milliliters of promethazine with codeine syrup, a Schedule V controlled substance.

h. On or about May 10, 2006, defendant ROSTIE possessed prescriptions issued by defendant ELDER on prescription pads of Westfield Medical Clinic and dated February 1, 2005 (approximately 71 prescriptions), and February 2, 2005 (approximately 61 prescriptions).

i. On or about May 10, 2006, defendant ROSTIE possessed handwritten notes concerning the pricing of hydrocodone (10/500mg and 10/650mg), alprazolam, and promethazine with codeine. Some of the notes refer to an unindicted co-conspirator and defendant ELDER.

If you find these four elements unanimously and beyond a reasonable doubt, then you must find the defendant guilty of the crime of conspiracy to distribute Schedule III, IV, and V controlled substances, as charged in Count One of the indictment. Record your determination on the Verdict Forms which will be submitted to you with these instructions.

Plaintiff's Instruction No. 25
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 6.21.846A and 3.09

INSTRUCTION NO. ____

The crime of conspiracy to commit money laundering, as charged against defendant TROY R. SOLOMON in Count Two of the indictment, has four elements, which are:

One, beginning at a time unknown, but in or about August 2004, and continuing until or about October 2005, two or more persons reached an agreement or came to an understanding to commit money laundering as set forth in Instruction No. ____;

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

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

Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more of the following acts:

- a. From on or about September 2, 2004, through October 31, 2005, approximately 70 packages were shipped via United Parcel Service from Houston, Texas to defendant MARTIN in Belton, Missouri. The invoices for these packages were sent using the address of 5833 Sunforest Dr., Houston, Texas. This address was the residence of Delmon Johnson, and was owned by defendant SOLOMON.
- b. From October 8, 2004 through October 17, 2005, defendant MARTIN deposited miscellaneous United States currency into her personal checking account with the account number 003477654976 at Bank of America on 29 separate occasions totaling approximately \$71,666.80.
- c. From on or about September 2, 2004, through October 31, 2005, defendant MARTIN entered the business of defendant ROSTIE, at ROSTIE ENTERPRISES, LLC, d/b/a The Medicine Shoppe, and provided currency to defendant ROSTIE for payment on the account of South Texas Wellness Center. This currency represents proceeds of the illegal sale of hydrocodone, alprazolam, and promethazine with codeine.
- d. From at least in or about August 2004, and continuing through on or about October 29, 2005, defendant ROSTIE, deposited into the business checking account of

ROSTIE ENTERPRISES LLC, d/b/a The Medicine Shoppe with the account number 3501673 at Allen Bank and Trust Company gross sales of \$991,114, which includes proceeds of the illegal sale of hydrocodone, alprazolam, and promethazine with codeine.

e. Defendant ROSTIE, using the mail services provided by Federal Express, then mailed the filled prescriptions to defendant SOLOMON and Delmon Johnson at the business locations of South Texas Wellness Center and Ascensia Nutritional Pharmacy in Houston, Texas.

If all of these elements have been proved beyond a reasonable doubt as to a defendant, then you must find that defendant guilty of the crime charged under Count Two; otherwise you must find that defendant guilty of this crime under Count Two. Record your determinations on the Verdict Forms which will be submitted to you with these instructions.

Plaintiff's Instruction No. 26
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 5.06A and 3.09

INSTRUCTION NO. _____

Under Count One and Count Two, the Government must prove that a defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the indictment. You do not have to find that all of the persons charged were members of the conspiracy.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

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

You must decide, after considering all of the evidence, whether the conspiracies alleged in Count One and Count Two of the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant whose case you are considering voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time

while it was still in effect. In making that decision, you must consider only evidence of that defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by that defendant.

Plaintiff's Instruction No. 27
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 5.06B

JURY INSTRUCTION NO. ____

Under Count Two, to assist you in determining whether there was an agreement or understanding to commit money laundering, you are advised as to the elements of 18 U.S.C. § 1956(a)(1)(A)(i)(promotional money laundering), 18 U.S.C. § 1956(a)(1)(B)(i)(concealment money laundering).

Keep in mind that the Indictment charges a conspiracy to commit money laundering and not that any particular type of money laundering was committed.

Plaintiff's Instruction No. 28

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition) § 5.06C

INSTRUCTION NO. _____

It is not necessary under Count One or Count Two for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

Plaintiff's Instruction No. 29

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2003)
No. 5.06E

INSTRUCTION NO. _____

Under Count One and Count Two, it is not necessary that the act done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself.

It is not necessary that the defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of “partnership” so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

It is not necessary that the Government prove, beyond a reasonable doubt, that more than one act was done in furtherance of the conspiracy. It is sufficient if the Government proves beyond a reasonable doubt, one such act; but in that event, in order to return a verdict of guilty, you must unanimously agree upon which act was done.

Plaintiff's Instruction No. 30
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009)
No. 5.06D

INSTRUCTION NO. _____

Under Count One and Count Two, you may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

Plaintiff's Instruction No. 31
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2007)
No. 5.06I

INSTRUCTION NO. _____

Count One of the indictment charges a conspiracy to commit two separate crimes or offenses. It is not necessary for the Government to prove a conspiracy to commit both of those offenses. It would be sufficient if the Government proves, beyond a reasonable doubt, a conspiracy to commit *one* of those offenses; but, in that event, in order to return a verdict of guilty, you must unanimously agree upon *which* of the two offenses was the subject of the conspiracy. If you cannot agree in that manner, you must find the defendant not guilty. In this case, you must decide which of the controlled substances, if any, each defendant conspired to distribute and record your unanimous verdict on the form provided.

Plaintiff's Instruction No. 32

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit

No. 5.06F

JURY INSTRUCTION NO. _____

The crime of promotional money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), has four essential elements, which are:

One, the defendant conducted a financial transaction, that is, transporting United States currency through United Parcel Service shipments from Texas to Missouri, and depositing United States currency into a bank account, which in any way or degree affected interstate or foreign commerce;

Two, the defendant conducted the financial transaction with money or funds that involved the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances;

Three, at the time the defendant conducted the financial transaction, the defendant knew the money or funds represented the proceeds of some form of unlawful activity; and

Four, the defendant conducted the financial transaction with the intent to promote the carrying on of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances.

To prove the charge of promotional money laundering, it is not necessary to show that a defendant intended to commit the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances himself; it is sufficient that in conducting or attempting to conduct the financial transaction, a defendant himself intended to make the unlawful activity easier or less difficult.

The phrase "financial transaction," as used in this Instruction means: (A) a transaction which in any way or degree affects interstate or foreign commerce involving (i) the movement of funds by wire or other means, (ii) a transaction involving one or more monetary instruments, or

(iii) a transaction involving the transfer of title to any real property, vehicle, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

The term "transaction," as used above, means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property with respect to a financial institution, a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means.

Plaintiff's Instruction No. 33

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit, § 6.18.1956A and § 6.18.1956J(1).

JURY INSTRUCTION NO. ____

The crime of concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), has four essential elements, which are:

One, the defendant conducted a financial transaction, that is, transporting United States currency through United Parcel Service shipments from Texas to Missouri, and depositing United States currency into a bank account, which in any way or degree affected interstate or foreign commerce;

Two, the defendant conducted the financial transaction with funds or money that involved the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances;

Three, at the time the defendant conducted the financial transaction, the defendant knew the funds or money represented the proceeds of some form of unlawful activity; and

Four, the defendant conducted the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances.

You may find that a defendant knew the purpose of the financial transaction was to conceal or disguise the nature, location, source, ownership or control of the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances if you find beyond a reasonable doubt that the defendant was aware of a high probability that the purpose of the financial transaction was to conceal or disguise the nature, location, source, ownership or control of the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances and that he deliberately avoided

learning the truth. The element of knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him.

You may not find that the defendant knew that the purpose of the financial transaction was to conceal or disguise the nature, location, source, ownership or control of the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances, however, if you find that the defendant was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding of knowledge.

The phrase "financial transaction," as used in this Instruction means: (A) a transaction which in any way or degree affects interstate or foreign commerce involving (i) the movement of funds by wire or other means, (ii) a transaction involving one or more monetary instruments, or (iii) a transaction involving the transfer of title to any real property, vehicle, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

The term "transaction," as used above, means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property with respect to a financial institution, a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means.

Plaintiff's Instruction No. 34

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit, § 6.18.1956B (incorporating, as suggested, § 7.04) and
§ 6.18.1956J(1).

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, either hydrocodone (Lorcet) or alprazolam (Xanax), as charged in Count Three of the Indictment, has two essential elements, which are:

One, on or about October 19, 2004, the defendant intentionally distributed or dispensed a controlled substance, either hydrocodone or alprazolam; and

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance, either hydrocodone or alprazolam, other than for a legitimate medical purpose and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of distribution or dispensing of a controlled substance, hydrocodone or alprazolam, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of unlawful distribution or dispensing of a controlled substance, hydrocodone or alprazolam, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was hydrocodone or alprazolam.

For you to find the defendant guilty of unlawful distribution or dispensing of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Three; otherwise you must find the defendant not guilty of the crime charged in Count Three. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 35

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
Nos. 6.21.841 (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, either hydrocodone (Lorcet) or alprazolam (Xanax), as charged in Count Four of the Indictment, has two essential elements, which are:

One, on or about October 19, 2004, the defendant intentionally distributed or dispensed a controlled substance, either hydrocodone or alprazolam; and

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance, either hydrocodone (Lorcet) or alprazolam (Xanax); other than for a legitimate medical purpose and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of distribution or dispensing of a controlled substance, hydrocodone or alprazolam, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of unlawful distribution or dispensing of a controlled substance, hydrocodone or alprazolam, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was hydrocodone or alprazolam.

For you to find the defendant guilty of unlawful distribution or dispensing of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Four; otherwise you must find the defendant not guilty of the crime charged in Count Four. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 36

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, either hydrocodone (Lortab) or alprazolam (Xanax), as charged in Count Five of the Indictment, has two essential elements, which are:

One, on or about October 27, 2004, the defendant intentionally distributed or dispensed a controlled substance, either hydrocodone or alprazolam; and

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance, either hydrocodone or alprazolam, other than for a legitimate medical purpose and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of unlawful distribution or dispensing of a controlled substance, hydrocodone or alprazolam, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of distribution or dispensing of a controlled substance, hydrocodone or alprazolam, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was hydrocodone or alprazolam.

For you to find the defendant guilty of unlawful distribution or dispensing of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Five; otherwise you must find the defendant not guilty of the crime charged in Count Five. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 37

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, either hydrocodone (Lortab) or alprazolam (Xanax), as charged in Count Six of the Indictment, has two essential elements, which are:

One, on or about October 27, 2004, the defendant intentionally distributed or dispensed a controlled substance, either hydrocodone or alprazolam; and

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance, either hydrocodone or alprazolam, other than for a legitimate medical purpose and not in the usual course of professional practice

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of distribution or dispensing of a controlled substance, hydrocodone or alprazolam, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of unlawful distribution or dispensing of a controlled substance, hydrocodone or alprazolam, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was hydrocodone or alprazolam.

For you to find the defendant guilty of unlawful distribution or dispensing of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Six; otherwise you must find the defendant not guilty of the crime charged in Count Six. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 38

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)

Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, either hydrocodone or alprazolam, as charged in Count Seven of the Indictment, has two essential elements, which are:

One, on or about September 14, 2004, the defendant intentionally distributed or dispensed a controlled substance, either hydrocodone or alprazolam;

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance, either hydrocodone or alprazolam, other than for a legitimate medical purposes and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of unlawful distribution or dispensing of a controlled substance, hydrocodone or alprazolam, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of unlawful distribution or dispensing of a controlled substance, hydrocodone or alprazolam, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was hydrocodone or alprazolam.

For you to find the defendant guilty of unlawful distribution or dispensing of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Seven; otherwise you must find the defendant not guilty of the crime charged in Count Seven. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 39

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)

Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, either hydrocodone or alprazolam, as charged in Count Eight of the Indictment, has two essential elements, which are:

One, on or about September 14, 2004, the defendant intentionally distributed or dispensed a controlled substance, either hydrocodone or alprazolam; and

Two, at the time of the distribution or dispensing, the defendant knew he was distributing or dispensing a controlled substance, either hydrocodone or alprazolam, other than for a legitimate medical purpose and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of unlawful distribution or dispensing of a controlled substance, hydrocodone or alprazolam, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of distribution or dispensing of a controlled substance, hydrocodone or alprazolam, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was hydrocodone or alprazolam.

For you to find the defendant guilty of unlawful distribution or of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Eight; otherwise you must find the defendant not guilty of the crime charged in Count Eight. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 40

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, either hydrocodone, alprazolam, or promethazine with codeine, as charged in Count Nine of the Indictment, has two essential elements, which are:

One, on or about April 29, 2005, the defendant intentionally distributed or dispensed a controlled substance, either hydrocodone, alprazolam, or promethazine with codeine;

Two, at the time of the distribution or dispensing, the defendant knew that he distributing or dispensing was a controlled substance, either hydrocodone, alprazolam, or promethazine with codeine, other than for a legitimate medical purpose and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of distribution or dispensing of a controlled substance, hydrocodone, alprazolam, or promethazine with codeine, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution of a controlled substance.

In order to have aided and abetted the commission of the crime of unlawful distribution or dispensing of a controlled substance, hydrocodone, alprazolam, or promethazine with codeine, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was hydrocodone, alprazolam, or promethazine with codeine.

For you to find the defendant guilty of unlawful distribution or dispensing of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Nine; otherwise you must find the defendant not guilty of the crime charged in Count Nine. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 41

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, either hydrocodone, alprazolam, or promethazine with codeine, as charged in Count Ten of the Indictment, has two essential elements, which are:

One, on or about April 29, 2005, the defendant intentionally distributed or dispensed a controlled substance, either hydrocodone, alprazolam, or promethazine with codeine; and

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance, either hydrocodone, alprazolam, or promethazine with codeine, other than for a legitimate medical purposes and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of distribution or dispensing of a controlled substance, hydrocodone, alprazolam, or promethazine with codeine, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of unlawful distribution or dispensing of a controlled substance, hydrocodone, alprazolam, promethazine with codeine, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was hydrocodone, alprazolam, or promethazine with codeine.

For you to find the defendant guilty of unlawful distribution or dispensing of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Ten; otherwise you must find the defendant not guilty of the crime charged in Count Ten. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 42

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, promethazine with codeine, as charged in Count Eleven of the Indictment, has two essential elements, which are:

One, on or about January 4, 2005, defendant TROY R. SOLOMON intentionally distributed or dispensed a controlled substance, promethazine with codeine; and

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance, promethazine with codeine, other than for a legitimate medical purpose and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of unlawful distribution or dispensing of a controlled substance, promethazine with codeine, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of unlawful distribution or dispensing of a controlled substance, promethazine with codeine, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was promethazine with codeine.

For you to find the defendant guilty of distribution or dispensing of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Eleven; otherwise you must find the defendant not guilty of the crime charged in Count Eleven. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 43

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

The crime of unlawful distributing or dispensing a controlled substance, promethazine with codeine, as charged in Count Twelve of the Indictment, has two essential elements, which are:

One, on or about January 4, 2005, defendant TROY R. SOLOMON intentionally distributed or dispensed a controlled substance, promethazine with codeine; and

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance, promethazine with codeine, other than for a legitimate medical purpose and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth below in Jury Instruction No. ____.

A person may also be found guilty of unlawful distribution or dispensing of a controlled substance, promethazine with codeine, even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution or dispensing of a controlled substance.

In order to have aided and abetted the commission of the crime of unlawful distribution or dispensing of a controlled substance, promethazine with codeine, a person must:

One, have known that the distribution or dispensing of a controlled substance was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of distribution or dispensing of a controlled substance; and

Three, have known that the substance was promethazine with codeine.

For you to find the defendant guilty of unlawful distribution of a controlled substance by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the elements of distribution or dispensing of a controlled substance were committed by some person or persons, and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associated with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count Twelve; otherwise you must find the defendant not guilty of the crime charged in Count Twelve. Record your determination on the Verdict Form which will be submitted to you with these instructions.

Plaintiff's Instruction No. 44

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
Nos. 6.21.841B (modified); 5.01; and 3.09

INSTRUCTION NO. _____

You are instructed that the term “distribute,” as used in these instructions, means to deliver or to transfer possession or control of something from one person to another. The term “distribute” includes the sale of something by one person to another. Moreover, the term “distribute” includes the actual transfer, constructive transfer, or attempted transfer of a controlled substance.

With respect to the terms “constructive transfer,” as used in these instructions, you are instructed that a person who does not actually transfer a thing but who has both the power and the intention at a given time to cause the transfer of a thing, either directly or through another person or persons, has constructively transferred it.

The term “dispense” means to deliver a controlled substance to an ultimate user by, or pursuant to a lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for delivery. The term “dispenser” means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

The term “practitioner” means a physician or pharmacy licensed or registered to distribute or dispense a controlled substance in the usual course of professional practice.

Plaintiff's Instruction No. 45

SOURCE: 21 U.S.C. § § 802 (8), (10), (11), and (21)

INSTRUCTION NO. _____

As indicated, the Federal Controlled Substances Act, Title 21, United States Code, Section 841(a)(1), combined with its implementing regulation found in Title 21, Code of Federal Regulations, Section 1306.04, make it a crime for any “person” to knowingly or intentionally distribute or dispense controlled substances other than for a legitimate medical purpose and in the usual course of professional practice.¹

The term “person,” as used in this statute, has the same meaning as the ordinary meaning of that term and does not just include licensed medical professionals, such as physicians or pharmacists, but also unlicensed persons who may violate this statute.²

The Federal Controlled Substances Act is not violated if a person distributes or dispenses controlled substances pursuant to a lawful prescription issued for a legitimate medical purposes by an individual practitioner acting in the usual course of his or her professional practice.³ However, an order purporting to be a prescription that is issued without a legitimate medical purpose and issued outside the usual course of professional practice is not a prescription within

¹18 U.S.C. §841(a)(1).

²See United States v. Johnson, 831 F.2d 124 (6th Cir. 1987)(individuals who are not medical professionals with licenses may be charged with unlawful distribution of controlled substances or conspiracy to distribute controlled substances outside the scope of professional practice); see also United States v. Nelson, 383 F.3d 1227, 1229 (10th Cir. 2004) (noting that an Internet pharmacy operator, Clayton Fuchs, conspired with the defendant, a licensed physician, to illegally distribute hydrocodone, a Schedule III controlled substance, over the Internet); United States v. Wacker, 72 F.3d 1453, 1475 (10th Cir. 1996)(rejecting defendant’s argument that Controlled Substances Act only applies to those who are required to be licensed or registered; “[t]he statute on its face applies broadly to ‘any person’ and the case law has universally interpreted it as so applying.”).

³21 C.F.R. §1306.04.

the meaning of the Federal Controlled Substances Act.⁴ “Usual course of professional practice” means that the practitioner acted in accordance with a standard of medical practice generally recognized and accepted in the United States.⁵ In issuing prescriptions, practitioners are not free to disregard prevailing standards of treatment.⁶

Thus, under federal law, any person who issues a prescription for a controlled substance without a legitimate medical purpose and outside the usual course of professional practice is guilty of illegally dispensing a controlled substance and shall be subject to the penalties provided for violations of the Controlled Substances Act.⁷ Similarly, under federal law, any person who knowingly fills a prescription for a controlled substance without a legitimate medical purpose and outside the usual course of professional practice is guilty of illegally distributing a controlled substance and shall be subject to the penalties provided for violations of the Controlled Substances Act.⁸

Moreover, any person who assists another or others in issuing and/or filling a prescription for controlled substances bears responsibility for the proper prescribing, dispensing, and distributing of controlled substances.⁹ A person may not assist another or others in filling a

⁴21 C.F.R. §1306.04.

⁵United States v. Vamos, 797 F.2d 1146, 1151 (2d Cir. 1986)(quoting United States v. Moore, 423 U.S. 122, 138-39 (1975)); United States v. Singh, 390 F.3d 168, 185 (2d Cir. 2004); United States v. Leal, 75 F.3d 219, 226 (6th Cir. 1996).

⁶United States v. Norris, 780 F.2d 1207, 1209 (5th Cir. 1986).

⁷21 C.F.R. §1306.04; United States v. Moore, 423 U.S. 122, 124 (1975); United States v. Plesons, 560 F.2d 890, 896 (8th Cir. 1977).

⁸Id.

⁹21 C.F.R. §§1306.04-.05.

written order from a practitioner, appearing on its face to be a prescription, if the person knows the practitioner issued it other than for a legitimate medical purpose and outside the usual course of professional practice.¹⁰ Thus, under federal law, any person who assists another in issuing a prescription for a controlled substance or who assists another in knowingly filling a prescription for a controlled substance without a legitimate medical purpose and outside the usual course of professional practice is guilty of illegally dispensing and/or distributing a controlled substance and shall be subject to the penalties provided for violations of the Controlled Substances Act.

Plaintiff's Instruction No. 46

SOURCE: See footnotes.

¹⁰18 U.S.C. 841(a)(1); 21 C.F.R. § 1306.04(a) (instruction taken from Court's instruction in U.S. v. Fuchs, et al., No. 3:02-CR-369-P (N.D. Tex).

INSTRUCTION NO. _____

“ON OR ABOUT”/ “IN OR ABOUT”

You will note that the indictment charges that the offenses were committed “in or about” a certain date through “on or about” a certain date. The Indictment also charges that the offenses alleged were committed “on or about” a certain date. Although it is necessary for the United States to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged in the Indictment, it is not necessary for the United States to prove that the offenses were committed precisely on the dates charged.

Plaintiff’s Instruction No. 47

SOURCE: 1A O’Malley, Grenig & Lee, Federal Jury Practice and Instructions § 13.05 (5th ed. 2000) (as modified)

INSTRUCTION NO. _____

You may find that the defendant acted knowingly if you find beyond a reasonable doubt that the defendant was aware of a high probability that such purported prescriptions had not been issued for a legitimate medical purpose and within the usual course of professional practice, and that the defendant deliberately avoided learning the truth. The element of knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him.

Plaintiff's Instruction No. 48

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 7.04 (modified)

INSTRUCTION NO. _____

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word “possession” has been used in these instruction it includes actual as well as constructive possession and also sole as well as joint possession.

Plaintiff's Instruction No. 49

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 8.02

INSTRUCTION NO. _____

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Plaintiff's Instruction No. 50

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 7.05

INSTRUCTION NO. _____

You are instructed, as a matter of law, that hydrocodone, Lortab, and Lorcet are Schedule III controlled substances.

Plaintiff's Instruction No. 51
SOURCE: 21 C.F.R. § 1308.13 (1) - (2)

INSTRUCTION NO. _____

You are instructed, as a matter of law, that alprazolam and Xanax are Schedule IV controlled substances.

Plaintiff's Instruction No. 52
SOURCE: 21 C.F.R. § 1308.14

INSTRUCTION NO. _____

You are instructed, as a matter of law, that promethazine with codeine is a Schedule V controlled substance.

Plaintiff's Instruction No. 53

SOURCE: 21 C.F.R. § 1308.13 (1) - (2)

INSTRUCTION NO. ____

You have heard evidence that the defendant was previously convicted of a crime. You may use that evidence only to help you decide whether to believe his testimony and how much weight to give it. That evidence does not mean that he committed the crime charged here, and you must not use that evidence as any proof of the crime charged in this case.

Plaintiff's Instruction No. 54

SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)

No. 2.16

INSTRUCTION NO. _____

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

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

Third, if a defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous.

Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. [The form reads: (read form)]. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

If more than one form was furnished, you will bring the unused forms with you.

Plaintiff's Instruction No. 55
SOURCE: Manual of Model Criminal Instructions
for the Eighth Circuit (2009 Edition)
No. 3.12

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
 TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM A

COUNT ONE

We, the jury, find the defendant, TROY R. SOLOMON, _____ of
(guilty/not guilty)

Conspiracy to Distribute and Dispense:

- _____ some amount of hydrocodone (such as Lortab and Lorcet); and/or
- _____ some amount of alprazolam (such as Xanax); and/or
- _____ some amount of promethazine with codeine (such as Phernegan with codeine),

as charged in Count One of the indictment.

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-04-CR-W-FJG
)
CHRISTOPHER L. ELDER,)
)
 Defendant.)

VERDICT FORM B

COUNT ONE

We, the jury, find the defendant, CHRISTOPHER L. ELDER, _____ of
(guilty/not guilty)

Conspiracy to Distribute and Dispense:

_____ some amount of hydrocodone (such as Lortab and Lorcet); and/or

_____ some amount of alprazolam (such as Xanax); and/or

_____ some amount of promethazine with codeine (such as Phernegan with codeine),

as charged in Count One of the indictment.

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM C

COUNT TWO

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Conspiracy
(guilty/not guilty)
to Commit Money Laundering, as charged in Count Two of the Indictment.

FOREPERSON OF THE JURY

DATE: _____
 Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-0026-03-CR-W-FJG
)
 TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM D
COUNT THREE

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)
Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in Count
Three of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed Lorcet (hydrocodone); and/or
2. _____ the defendant distributed Xanax (alprazolam).

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-05-CR-W-FJG
)
 CHRISTOPHER L. ELDER,)
)
 Defendant.)

VERDICT FORM E

COUNT THREE

_____ We, the jury, find the defendant, CHRISTOPHER L. ELDER _____ of
(guilty/not guilty)
Aiding and Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged
in Count Three of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed Lorcet (hydrocodone); and/or
2. _____ the defendant distributed Xanax (alprazolam).

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
 TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM F
COUNT FOUR

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)

Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in Count
Four of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed Lorcet (hydrocodone); and/or
2. _____ the defendant distributed Xanax (alprazolam).

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-04-CR-W-FJG
)
 CHRISTOPHER L. ELDER,)
)
 Defendant.)

VERDICT FORM G
COUNT FOUR

We, the jury, find the defendant, CHRISTOPHER E. ELDER _____ of Aiding
(guilty/not guilty)
and Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in
Count Four of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed Lorcet (hydrocodone); and/or
2. _____ the defendant distributed Xanax (alprazolam).

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 TROY R. SOLOMON,)
)
 Defendant.)

No. 08-00026-03-CR-W-FJG

VERDICT FORM H
COUNT FIVE

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)

Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in Count
Five of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed Lortab (hydrocodone); and/or
2. _____ the defendant distributed Xanax (alprazolam).

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-04-CR-W-FJG
)
CHRISTOPHER L. ELDER,)
)
 Defendant.)

VERDICT FORM I
COUNT FIVE

We, the jury, find the defendant, CHRISTOPHER L. ELDER _____ of Aiding
(guilty/not guilty)
and Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in
Count Five of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed Lortab (hydrocodone); and/or
2. _____ the defendant distributed Xanax (alprazolam).

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v. No. 08-00026-03-CR-W-FJG
)
TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM J
COUNT SIX

We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)

Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in Count
Six of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed Lortab (hydrocodone); and/or
2. _____ the defendant distributed Xanax (alprazolam).

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-04-CR-W-FJG
)
 CHRISTOPHER L. ELDER,)
)
 Defendant.)

VERDICT FORM K
COUNT SIX

We, the jury, find the defendant, CHRISTOPHER L. ELDER _____ of Aiding
(guilty/not guilty)
and Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in
Count Six of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed Lortab (hydrocodone); and/or
2. _____ the defendant distributed Xanax (alprazolam).

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
 TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM L
COUNT SEVEN

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)

Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in Count
Seven of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed hydrocodone [Rx# 194227]; and/or
2. _____ the defendant distributed alprazolam [Rx# 194228].

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-04-CR-W-FJG
)
 CHRISTOPHER L. ELDER,)
)
 Defendant.)

VERDICT FORM M
COUNT SEVEN

_____ We, the jury, find the defendant, CHRISTOPHER L. ELDER _____ of Aiding
(guilty/not guilty)

and Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in
Count Seven of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed hydrocodone [Rx# 194227]; and/or
2. _____ the defendant distributed alprazolam [Rx# 194228].

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
 TROY R. SOLOMON,)
)
) Defendant.)

VERDICT FORM N
COUNT EIGHT

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)

Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in Count
Eight of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed hydrocodone [Rx# 194254]; and/or;
2. _____ the defendant distributed alprazolam [Rx#194256].

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v. No. 08-00026-04-CR-W-FJG
)
CHRISTOPHER L. ELDER,)
)
 Defendant.)

VERDICT FORM O
COUNT EIGHT

_____ We, the jury, find the defendant, CHRISTOPHER L. ELDER _____ of Aiding
(guilty/not guilty)

and Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in
Count Eight of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed hydrocodone [RX # 194254]; and/or
2. _____ the defendant distributed alprazolam [RX # 194256].

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
 TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM P
COUNT NINE

We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)

Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in Count
Nine of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed hydrocodone [Rx# 214514]; and/or
2. _____ the defendant distributed alprazolam [Rx# 214515]; and/or
3. _____ the defendant distributed promethazine with codeine [Rx#
214516].

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) No. 08-00026-04-CR-W-FJG
CHRISTOPHER L. ELDER,)
Defendant.)

VERDICT FORM Q
COUNT NINE

_____ We, the jury, find the defendant, CHRISTOPHER L. ELDER _____ of Aiding
(guilty/not guilty)
and Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in
Count Nine of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.
Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed hydrocodone [RX # 214514]; and/or
2. _____ the defendant distributed alprazolam [RX # 214515]; and/or
3. _____ the defendant distributed promethazine with codeine
[RX # 214516].

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM R
COUNT TEN

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)

Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in Count
Ten of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed hydrocodone [Rx# 214565]; and/or
2. _____ the defendant distributed alprazolam [Rx# 214566]; and/or;
3. _____ the defendant distributed promethazine with codeine [Rx#
214567].

FOREPERSON OF THE JURY

DATE: _____
 Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-04-CR-W-FJG
)
 CHRISTOPHER L. ELDER,)
)
 Defendant.)

VERDICT FORM S
COUNT TEN

_____ We, the jury, find the defendant, CHRISTOPHER L. ELDER _____ of Aiding
(guilty/not guilty)

and Abetting Unlawful Distribution and Dispensing of Controlled Substances, as charged in
Count Ten of the Indictment.

To find that the defendant is guilty of Aiding and Abetting Unlawful Distribution and
Dispensing of Controlled Substances, you must unanimously find one or more of the following.

Please mark in the blank those facts which are applicable in this verdict:

1. _____ the defendant distributed hydrocodone [Rx# 214565]; and/or
2. _____ the defendant distributed alprazolam [Rx# 214566]; and/or
3. _____ the defendant distributed promethazine with codeine [Rx#
214567].

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
TROY R. SOLOMON,)
)
 Defendant.)

VERDICT FORM T
COUNT ELEVEN

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)

Abetting Unlawful Distribution and Dispensing of Controlled Substance, as charged in Count
Eleven of the Indictment.

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 v.) No. 08-00026-03-CR-W-FJG
)
 TROY R. SOLOMON,)
)
) Defendant.)

VERDICT FORM U

COUNT TWELVE

_____ We, the jury, find the defendant, TROY R. SOLOMON _____ of Aiding and
(guilty/not guilty)
Abetting Unlawful Distribution and Dispensing of Controlled Substance, as charged in Count
Twelve of the Indictment.

FOREPERSON OF THE JURY

DATE: _____
Kansas City, Missouri