UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	CASE NO. 21-CR-536 (ACR)
v.	:	
	:	
[1] KAROL J. CHWIESIUK,	:	
[2] AGNIESZKA CHWIESIUK,	:	
	:	
Defendants.	:	

PROPOSED JURY INSTRUCTIONS

The parties submit the proposed jury instructions, subject to any issues that may arise during trial. The parties jointly propose all instructions that are not highlighted. Where one party has objected to a proposed instruction, that portion of the instruction is highlighted, and the party's objection is included in a footnote.

I. Instructions Before and During Trial

The parties have no objection to the Pattern Criminal Jury Instructions for the District of Columbia ("Redbook"), as appropriate based on the developments at trial.

II. Final Instructions

The parties propose the following Pattern Criminal Jury Instructions:

1. **Furnishing the Jury with a Copy of the Instructions**, Redbook 2.100

I will provide you with a copy of my instructions. During your deliberations, you may, if you want, refer to these instructions. While you may refer to any particular portion of the instructions, you are to consider the instructions as a whole and you may not follow some and ignore others. If you have any questions about your instructions, you should feel free to send me a note. Please return your instructions to me when your verdict is rendered.

2. **Function of the Court**, Redbook 2.101

My function is to conduct this trial in an orderly, fair, and efficient manner; to rule on questions of law; and to instruct you on the law that applies in this case. It is your duty to accept the law as I instruct you. You should consider all the instructions as a whole. You may not ignore or refuse to follow any of them.

3. **Function of the Jury**, Redbook 2.102

Your function, as the jury, is to determine what the facts are in this case. You are the sole judges of the facts. While it is my responsibility to decide what is admitted as evidence during the trial, you alone decide what weight, if any, to give to that evidence. You alone decide the credibility or believability of the witnesses.

As I explained earlier, as human beings, we all have personal likes and dislikes, opinions, prejudices, and biases. Generally, we are aware of these things, but you also should consider the possibility that you have implicit biases, that is, biases of which you may not be consciously aware. Personal prejudices, preferences, or biases have no place in a courtroom, where the goal is to arrive at a just and impartial verdict. All people deserve fair treatment in the legal system regardless of any personal characteristic, such as a race, national or ethnic origin, religion, age, disability, sex, gender identity or expression, sexual orientation, education, or income level, or any other personal characteristic. You should determine the facts solely from a fair consideration of the evidence.

You may not take anything I may have said or done as indicating how I think you should decide this case. If you believe that I have expressed or indicated any such opinion, you should ignore it. The verdict in this case is your sole and exclusive responsibility.

4. **Jury's Recollection Controls**, Redbook 2.103

If any reference by me or the attorneys to the evidence is different from your own memory of the evidence, it is your memory that should control during your deliberations.

5. **Notetaking by Jurors**, Redbook 1.105.B.

During the trial, I have permitted those jurors who wanted to do so to take notes. You may take your notebooks with you to the jury room and use them during your deliberations if you wish. As I told you at the beginning of the trial, your notes are only to be an aid to your memory. They are not evidence in the case, and they should not replace your own memory of the evidence. Those jurors who have not taken notes should rely on their own memory of the evidence. The notes are intended to be for the notetaker's own personal use.

6. **Evidence in the Case – Stipulations**, Redbook 2.104 (bracketed instructions should the trial include judicial notice or stipulations)

During your deliberations, you may consider only the evidence properly admitted in this trial. The evidence in this case consists of the sworn testimony of the witnesses, the exhibits that were admitted into evidence, [the facts of which I took judicial notice], and the facts stipulated to by the parties.

I may take what is called "judicial notice" of public acts, places, facts, and events that I consider to be matters of common knowledge or matters that can be determined easily through undisputed sources. In this case, I took judicial notice of [describe fact of which the court took judicial notice]. When I take judicial notice of a particular fact, you may regard that fact as proven evidence.

During the trial, you were told that the parties had stipulated—that is, agreed—to certain facts. You should consider any stipulation of fact to be undisputed evidence.

7. **Statements of Counsel**, Redbook 2.105

The statements and arguments of the lawyers are not evidence. They are only intended to assist you in understanding the evidence. Similarly, the questions of the lawyers are not evidence.

8. **Information Not Evidence**, Redbook 2.106

The information is merely the formal way of accusing a person of a crime. You must not consider the information as evidence of any kind – you may not consider it as any evidence of the defendants' guilt or draw any inference of guilt from it.

9. **Burden of Proof**, Redbook 2.107

Every defendant in a criminal case is presumed to be innocent. This presumption of innocence remains with the defendant throughout the trial unless and until the government has proven the defendant is guilty beyond a reasonable doubt. This burden never shifts throughout the trial. The law does not require the defendants to prove their innocence or to produce any evidence at all. If you find that the government has proven beyond a reasonable doubt every element of a particular offense with which Karol Chwiesiuk or Agnieszka Chwiesiuk is charged, it is your duty to find him or her guilty of that offense. On the other hand, if you find the government has failed to prove any element of a particular offense beyond a reasonable doubt, it is your duty to find Karol Chwiesiuk or Agnieszka Chwiesiuk not guilty of that offense.

10. **Reasonable Doubt**, Redbook 2.108

The government has the burden of proving Karol Chwiesiuk or Agnieszka Chwiesiuk guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true that not, or, in some cases, that its truth is highly probable. In criminal cases such as this one, the government's proof must be more powerful than that. It must be beyond a reasonable doubt. Reasonable doubt, as the name implies, is a doubt based on reason – a doubt for which you have a reason based upon the evidence or lack of evidence in the case. If, after careful, honest, and impartial consideration of all the evidence, you cannot say that you are firmly convinced of the defendant's guilty, then you have a reasonable doubt.

Reasonable doubt is the kind of doubt that would cause a reasonable person, after careful

and thoughtful reflection, to hesitate to act in the graver or more important matters in life. However, it is not an imaginary doubt, nor a doubt based on speculation or guesswork; it is a doubt based on reason. The government is not required to prove guilt beyond all doubt, or to a mathematical or scientific certainty. Its burden is to prove guilt beyond a reasonable doubt.

11. Direct and Circumstantial Evidence, Redbook 2.109

There are two types of evidence from which you may determine what the facts are in this case – direct evidence and circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness's testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence.

Let me give you an example. Assume a person looked out a window and saw that snow was falling. If he later testified in court about what he had seen, his testimony would be direct evidence that snow was falling at the time he saw it happen. Assume, however, that he looked out a window and saw no snow on the ground, and then went to sleep and saw snow on the ground after he woke up. His testimony about what he had seen would be circumstantial evidence that it had snowed while he was asleep.

The law says that both direct and circumstantial evidence are acceptable as a means of proving a fact. The law does not favor one form of evidence over another. It is for you to decide how much weight to give to any particular evidence, whether it is direct or circumstantial. You are permitted to give equal weight to both. Circumstantial evidence does not require a greater degree of certainty than direct evidence. In reaching a verdict in this case, you should consider all of the evidence presented, both direct and circumstantial.

12. Nature of Charges Not to be Considered, Redbook 2.101

One of the questions you were asked when we were selecting this jury was whether the nature of the charges themselves would affect your ability to reach a fair and impartial verdict. We asked you that question because you must not allow the nature of a charge to affect your verdict. You must consider only the evidence that has been presented in this case in reaching a fair and impartial verdict.

13. Number of Witnesses, Redbook 2.111

The weight of the evidence is not necessarily determined by the number of witnesses testifying for each side. Rather, you should consider all the facts and circumstances in evidence to determine which of the witnesses you believe. You might find that the testimony of a smaller number of witnesses on one side is more believable than the testimony of a greater number of witnesses on the other side or you might find the opposite.

14. Inadmissible and Stricken Evidence, Redbook 2.112

The lawyers in this case sometimes objected when the other side asked a question, made an argument, or offered evidence that the objective lawyer believed was not proper. You must not hold such objections against the lawyer who made them or the party s/he represents. It is the lawyers' responsibility to object to evidence that they believe is not admissible.

If, during the course of the trial, I sustained an objection to a lawyer's question, you should ignore the question, and you must not speculate as to what the answer would have been. If, after a witness answered a question, I ruled that the answer should be stricken, you should ignore both the question and the answer and they should play no part in your deliberations.

15. Credibility of Witnesses, Redbook 2.200

In determining whether the government has proved the charges against the defendant beyond a reasonable doubt, you must consider the testimony of all the witnesses who have testified.

You are the sole judges of the credibility of the witnesses. You alone determine whether to believe any witness and the extent to which a witness should be believed. Judging a witness's credibility means evaluating whether the witness has testified truthfully and also whether the witness accurately observed, recalled, and described the matters about which the witness testified.

As I instructed you at the beginning of trial and again just not, you should evaluate the credibility of witnesses free from prejudices and biases.

You may consider anything else that in your judgment affects the credibility of any witness. For example, you may consider the demeanor and the behavior of the witness on the witness stand; the witness's manner of testifying; whether the witness impresses you as having an accurate memory; whether the witness has any reason for not telling the truth; whether the witness had a meaningful opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case, stands to gain anything by testifying, or has friendship or hostility toward other people concerned with this case.

In evaluating the accuracy of a witness's memory, you may consider the circumstances surrounding the event, including the time that elapsed between the event and any later recollections of the event, and the circumstances under which the witness was asked to recall details of the event.

You may consider whether there are any inconsistencies in a witness's testimony or between the witness's testimony and any previous statements made by the witness. You may also consider any consistencies or inconsistencies between the witness's testimony and any other evidence that you credit. You may consider whether any inconsistencies are the result of lapses in memory, mistake, misunderstanding, intentional falsehood, or differences in perception.

16. **Law Enforcement Officer Testimony**, Redbook 2.207 (proposed alteration italicized below)

You have heard testimony from officers of the United States Capitol Police, the Federal Bureau of Investigation, and the United States Secret Service. A law enforcement officer's testimony should be evaluated by you just as any other evidence in the case. In evaluating the officer's credibility, you should use the same guidelines that you apply to the testimony of any witness. In no event should you give either greater or lesser weight to the testimony of any witness merely because he or she is a law enforcement officer.

17. **Right of Defendant Not to Testify**, Redbook 2.208 (if either defendant chooses not to testify)

Every defendant in a criminal case has an absolute right not to testify. [Name of defendant] has chosen to exercise this right. You must not hold this decision against him/her, and it would be improper for you to speculate as to the reason or reasons for his/her decision. You must not assume the defendant is guilty because he/she chose not to testify.

18. **Defendant as Witness**, Redbook 2.209 (if either defendant chooses to testify)

A defendant has a right to become a witness in his/her own behalf. His/Her testimony should not be disbelieved merely because s/he is the defendant. In evaluating his/her testimony, however, you may consider the fact that defendant has a vital interest in the outcome of this trial. As with the testimony of any other witness, you should give the defendant's testimony as much weight as in your judgment it deserves.

19. **Overview of Charges**

I will now instruct you on the specific offenses charged in the information. The information in this case contains five counts. Four of those counts related to both Mr. Chwiesiuk and Ms. Chwiesiuk:

- Count One—Entering or Remaining in a Restricted Building or Grounds;

- Count Two—Disorderly or Disruptive Conduct in a Restricted Building or Grounds;
- Count Four—Disorderly Conduct in a Capitol Building; and
- Count Five—Parading, Demonstrating, or Picketing in a Capitol Building.

The information in this case contains one additional count related to Mr. Chwiesiuk:

- Count Three—Entering or Remaining in a Room Designated for the Use of a Member of Congress.

20. Count One—Entering or Remaining in a Restricted Building or Grounds

Count One of the Information charges the defendants with entering or remaining in a restricted building or grounds, which is a violation of federal law.

In order to find the defendants guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt as to each defendant:

1. First, that the defendant entered or remained in a restricted building or grounds without lawful authority to do so.
2. Second, that the defendant did so knowingly.

The term "restricted building or grounds" means any posted, cordoned off, or otherwise restricted area of a building or grounds where a person protected by the Secret Service is or will be temporarily visiting.

The term "person protected by the Secret Service" includes the Vice President and the immediate family of the Vice President.

A person acts "knowingly" if he or she realizes what he or she is doing and is aware of the nature of his or her conduct, and does not act through ignorance, mistake, or accident. In deciding

whether the defendant knowingly entered or remained in a restricted building, you may consider all of the evidence, including what the defendant did, said, or perceived.[1]

21. Count Two—Disorderly or Disruptive Conduct in a Restricted Building or Grounds

Count Two of the Information charges the defendants with disorderly or disruptive conduct in a restricted building or grounds, which is a violation of federal law.

In order to find the defendants guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt as to each defendant:

1. First, that the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building or grounds.

2. Second, that the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of Government business or official functions.

3. Third, that the defendant's conduct occurred when, or so that, his or her conduct in fact impeded or disrupted the orderly conduct of Government business or official functions.

"Disorderly conduct" is conduct that tends to disturb the public peace or undermine public safety.[2]

"Disruptive conduct" is a disturbance that interrupts an event, activity, or the normal course of a process.[3]

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[1] *See* Seventh Circuit Pattern Criminal Jury Instructions; *see also Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005); *and United States v. Carpenter*, 21-cr-00305 (JEB), ECF No. 97, at 12.

[2] *United States v. Grider*, 21-cr-22 (CKK) (ECF No. 150 at 24) ("'[D]isorderly' conduct is that which 'tends to disturb the public peace, offend public morals, or undermine public safety.' 'Disorderly,' *Black's Law Dictionary* (9th ed. 2009); *see also* 'Disorderly,' *Oxford English Dictionary* (2nd ed. 1989) ('Not according to order or rule; in a lawless or unruly way; tumultuously, riotously.')").

[3] Redbook 6.643.

The terms "restricted building or grounds" and "knowingly" have the same meanings described in the instructions for Count One.

22. Count Three—Entering or Remaining Certain Rooms in the Capitol Building

Count Three of the Information charges the defendant Karol Chwiesiuk with entering and remaining in certain rooms in a Capitol building, which is a violation of federal law.

In order to find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

1. First, that the defendant entered or remained in any room in any of the United States Capitol buildings set aside or designated for the use of either House of Congress or a Member, committee, officer, or employee of Congress.

2. Second, that the defendant did so with the intent to disrupt the orderly conduct of official business.

3. Third, that the defendant acted willfully and knowingly.[4]

The term "United States Capitol buildings" includes the United States Capitol located at First Street, Southeast, in Washington, D.C.[5]

The term "disrupt the orderly conduct" has the same meaning described in the instructions for Count Four defining "disorderly conduct" and "disruptive conduct."

The term "official business" includes all matters that directly or indirectly pertain to the legislative process, all congressional representative functions generally, and all actions taken as part of the functioning, working, or operating of Congress.[6]

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[4] *See*, *United States v. Barnett*, 21-cr-00038 (CRC), ECF No. 158, at 21.

[5] 40 U.S.C. § 5101

[6] *See* 39 U.S.C. § 3210(a)(2); *Coal. to End Permanent Cong. v. Runyon*, 979 F.2d 219, 222 (1992); *see also United States v. Williams*, No. 21-0618 (ABJ), 2022 U.S. Dist. LEXIS 110743, at *31 (D.D.C. June 22, 2022).

Government's Proposed Definition of Willfully

A person acts "willfully" if he acts with the intent to do something that the law forbids, that is, to disobey or disregard the law. "Willfully" does not, however, require proof that the defendant be aware of the specific law or rule that his conduct may be violating.[7] [8]

Defendant's Proposed Definition of Willfully

A person acts willfully if he acts intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law. Now, the person need not be aware of the specific law or rule that his conduct may be violating. But he

[7] *See United States v. Bryan*, 524 U.S. 184, 190 (1998); *United States v. Akhigbe*, 642 F.3d 1078, 1084 (D.C. Cir. 2011); *United States v. Eicher*, 22-cr-38 (BAH), Jury Instructions, ECF No. 82, at 6; *United States v. Kelly*, 21-cr-708 (RCL), Jury Instructions, ECF No. 101, at 16.

[8] Objection: The defendants object to the government's proposed definition of willfully. The proposed instruction states, "A person acts "willfully" if he acts with the intent to do something that the law forbids, that is, to disobey or disregard the law. "Willfully" does not, however, require proof that the defendant be aware of the specific law or rule that his conduct may be violating." This instruction comes from *United States v. Bryan*. 524 U.S. 184 (1998). However, the proposed instruction omits key language and is generally less clear. This is the exact language of the case:

"A person acts willfully if he acts intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law. Now, the person need not be aware of the specific law or rule that his conduct may be violating. But he must act with the intent to do something that the law forbids." *Id.* at 190.

First, by rewording the language of the case upon which it relied, the government's proposed instruction makes it less clear what knowledge the government must prove in connection to "willfully." The Court in *Bryan* held, "the Government must prove that the defendant acted with knowledge that his conduct was unlawful." *Id.* at 192. The proposed instruction implies that an intention to do the act, without knowledge that it was unlawful, would itself be sufficient, which is an incorrect statement of the law.

Further, the government removes the phrase, "intentionally and purposely," which implies a lesser burden than that which the law requires. Similarly, the government removes the final sentence entirely which is necessary to clarify the difference between "acting with the intent to disobey the law" and "acting with the intent to disobey a specific known law." Further, the government changes the language from "person," to "defendant," unnecessarily. The meaning is much clearer in the original text and the defendants propose adopting it in full.

must act with the intent to do something that the law forbids.[9] [10]

The term "knowingly" has the same meaning as that described in the instructions for Count One.

23. Count Four—Disorderly Conduct in a Capitol Building

Count Four of the Information charges the defendants with disorderly and disruptive conduct in a Capitol Building, which is a violation of federal law.

In order to find the defendants guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt as to each defendant:

1. First, that the defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings.

2. Second, that the defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress.

3. Third, that the defendant acted willfully and knowingly.

The term "disorderly or disruptive conduct" has the same meaning described in the instructions for Count Two defining "disorderly conduct" and "disruptive conduct."

The terms "United States Capitol Buildings," and "knowingly" have the same meanings described in the instructions for Counts One.

The term "willfully" has the same meaning as that described in the instructions for Count Three.[11]

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[9] *United States v. Bryan*, 524 U.S. 184, 190 (1998).

[10] Objection: The Government objects to the defendants' proposed definition of willfully. In particular, the term "bad" is confusing in this context. One might understand the instruction to mean that if the defendant believed he had a "good" purpose, that is, if he subjectively believed that his violation of the law was righteous, even if he knew he was violating the law, that the defendant did not act "willfully."

[11] Objection: The defendants object to this instruction to the extent it incorporates the

24. Count Five—Parading, Demonstrating, or Picketing in a Capitol Building

Count Five of the Information charges the defendants with parading, demonstrating, or picketing in a Capitol Building, which is a violation of federal law.

In order to find the defendants guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt as to each defendant:

1. First, that the defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings.

2. Second, that the defendant acted willfully and knowingly.

The term "demonstrate" refers to conduct that would disrupt the orderly business of Congress by, for example, impeding or obstructing passageways, hearings, or meetings, but does not include activities such as quiet praying.[12] [13]

The terms "United States Capitol Buildings," and "knowingly" have the same meanings described in the instructions for Counts One.

The term "willfully" has the same meaning as that described in the instructions for Count Three.[14]

Government's proposed definition of "willfully."

[12] *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000) (construing the statute that is now Section 5104(e)(2) and noting that the "prohibition against "demonstrat[ing]" appears aimed at controlling only such conduct that would disrupt the orderly business of Congress—not activities such as quiet praying, accompanied by bowed heads and folded hands. The police could properly use [the statute] to control, for example, groups of people praying in a way that impeded or obstructed passageways, hearings or meetings.").

[13] Objection: The defendants object because this is not an accurate statement of the law nor is it an accurate definition of the ordinary meaning of the word itself. The case upon which the government relies does not include this definition. See *Bynum v. United States Capitol Police Board*, 93 F. Supp. 2d 50, 58 (D.D.C. 2000). In *Bynum*, the Court did state that the prohibition against demonstrating appeared to be aimed at activities that would disrupt Congress but the Court did not define "demonstrate" in that term.

[14] Objection: The defendants object to this instruction to the extent it incorporates the

25. Proof of State of Mind, Redbook 3.101 (alterations italicized below)

Someone's intent or knowledge ordinarily cannot be proved directly, because there is no way of knowing what a person is actually thinking, but you may infer someone's intent or knowledge from the surrounding circumstances. You may consider any statement made or acts done by the defendant, and all other facts and circumstances received in evidence which indicate *his or her* intent or knowledge.

You may infer, but are not required to infer, that a person intends the natural and probable consequences of acts she intentionally did or intentionally did not do. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial. You should consider all the circumstances in evidence that you think are relevant in determining whether the government has proved beyond a reasonable doubt that *each* defendant acted with the necessary state of mind.

26. Good Faith

You have heard evidence that [name of defendant] believed s/he had a right to enter or be present in the area in question. One who enters a restricted area with a good faith belief that s/he is entering with lawful authority is not guilty of unlawful entry. Thus, you cannot find [name of defendant] guilty of unlawful entry unless you are convinced beyond a reasonable doubt that s/he did not have a good faith belief of his/her lawful authority to enter the area.[15]

Government's proposed definition of "willfully."

[15] Objection: The Government objects to a good faith instruction. *United States v. Germeil*, Nos. 19-1492 & 19-14961, 2023 WL 1991723 (11th Cir. Feb. 14, 2023) ("The district court didn't abuse its discretion by rejecting [the defendant's] proposed good faith instruction because it instructed that a conviction required [the defendant] to act 'knowingly,' and we've held, repeatedly, that the good faith defense is 'substantially included in the instruction that the criminal act must be done 'knowingly.'"); *United States v. Al Morshed*, 69 F. App'x 13, 16 (2d Cir. 2003) ("This court has long adhered to the view held by a majority of the circuits that a district court is not required to give a separate 'good faith defense' instruction provided it properly instructs the jury on the

27. Multiple Defendants—Multiple Counts, Redbook 2.404

Each count of the indictment charges a separate offense. Moreover, each defendant is entitled to have the issue of his or her guilt as to each of the crimes for which the defendant is on trial determined from his or her own conduct and from the evidence that applies to that defendant as if he or she were being tried alone. You should, therefore, consider separately each offense, and the evidence which applies to it, and you should return separate verdicts as to each count of the indictment, as well as to each defendant.

The fact that you may find any one defendant guilty or not guilty on any one count of the indictment should not influence your verdict with respect to any other count of the indictment for that defendant. Nor should it influence your verdict with respect to any other count of the indictment for that defendant. Nor should it influence your verdict with respect to any other defendant as to that count or any other count in the indictment. Thus, you may find any one of the defendants guilty or not guilty on any one or more counts of the indictment, and you may return different verdicts as to different defendants and as to different counts. At any time during your deliberations you may return your verdict of guilty or not guilty with respect to any defendant on any count.

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government's burden to prove the elements of knowledge and intent, because, in so doing, it necessarily captures the essence of a good faith defense."); *United States v. Koster*, 163 F.3d 1008, 1012 (7th Cir. 1998) ("The district court denied both of [the defendant's] good faith defense instructions, concluding that the 'knowledge' element of the mail fraud and false statement charges encompassed any good faith defense. We agree with the district court's conclusion. An action taken in good faith is the other side of an action taken knowingly."); *see also United States v. Gambler*, 662 F.2d 834, 837 (D.D.C. 1981) ("A review of the instructions given by [the district judge] reveals that the trial court took care to emphasize the Government's burden of proving the element of specific intent beyond a reasonable doubt. We believe that these instructions sufficiently covered the particular point raised by appellant's requested 'good faith' instruction.") (cleaned up).

28. Unanimity—General, Redbook 2.405

A verdict must represent the considered judgment of each juror, and in order to return a verdict, each juror must agree on the verdict. In other words, your verdict on each count must be unanimous.

29. Verdict Form Explanation, Redbook 2.407 (proposed alterations in italics)

You will be provided with *two* Verdict Form*s* for use when you have concluded your deliberations – *one for each defendant*. The form*s* are not evidence in this case, and nothing in *them* should be taken to suggest or convey any opinion by me as to what the verdict should be. Nothing in the form*s* replaces the instructions of law I have already given you, and nothing in *them* replaces or modifies the instructions about the elements which the government must prove beyond a reasonable doubt. The form*s* are meant only to assist you in recording your verdict.

30. Redacted Exhibits, Redbook 2.500

During the course of this trial, a number of exhibits were admitted in evidence. Sometimes only portions of an exhibit were admitted, such as portions of a longer video, a document with some words or pictures blacked out or otherwise removed. There are a variety of reasons why only a portion of an exhibit is admitted, including that the other portions are inadmissible or implicate an individual's privacy. As you examine the exhibits, and you see or hear portions where there appear to be omissions, you should consider only the portions that were admitted. You should not guess as to what has been taken out or why, and you should not hold it against either party. You are to decide the facts only from the evidence that is before you.

31. Exhibits During Deliberations, Redbook 2.501

I will be sending into the jury room with you the exhibits that have been admitted into evidence. You may examine any or all of them as you consider your verdicts. Please keep in mind that exhibits that were only marked for identification but were not admitted into evidence will not

be given to you to examine or consider in reaching your verdict.

32. Selection of Foreperson, Redbook 2.502

When you return to the jury room, you should first select a foreperson to preside over your deliberations and to be your spokesperson here in court. There are no specific rules regarding how you should select a foreperson. That is up to you. However, as you go about the task, be mindful of your mission – to reach a fair and just verdict based on the evidence. Consider selecting a foreperson who will be able to facilitate your discussions, who can help you organize the evidence, who will encourage civility and mutual respect among all of you, who will invite each juror to speak up regarding his or her views about the evidence, and who will promote a full and fair consideration of that evidence.

33. Possible Punishment Not Relevant, Redbook 2.505

The question of possible punishment of the defendant in the event of a conviction is not a concern of yours and should not enter into or influence your deliberations in any way. The duty of imposing sentence in the event of a conviction rests exclusively with me. Your verdict should be based solely on the evidence in this case, and you should not consider the matter of punishment at all.

34. Cautionary Instruction on Publicity, Communications, Research, Redbook 2.508

I would like to remind you that, in some cases, although not necessarily this one, there may be reports in the newspaper or on the radio, internet, or television concerning this case. If there should be such media coverage in this case, you may be tempted to read, listen to, or watch it. You must not read, listen to, or watch such reports because you must decide this case solely on the evidence presented in this courtroom. If any publicity about this trial inadvertently comes to your attention, do not discuss it with other jurors or anyone else. Just let me or my clerk know as soon after it happens as you can, and I will then briefly discuss it with you.

As you retire to the jury room to deliberate, I also wish to remind you of an instruction I gave you at the beginning of the trial. During deliberations, you may not communicate with anyone not on the jury about this case. This includes any electronic communications such as email or text or any blogging about the case. In addition, you may not conduct any independent investigation during deliberations. This means you may not conduct any research in person or electronically via the internet or in another way.

35. Communications Between Court and Jury During Deliberations, Redbook 2.509

If it becomes necessary during your deliberations to communicate with me, you may send a note by the clerk or marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should try to communicate with me except by such a signed note, and I will never communicate with any member of the jury on any matter concerning the merits of this case, except in writing or orally here in open court.

Bear in mind also that you are never, under any circumstances, to reveal to any person – not the clerk, the marshal or me – how jurors are voting until after you have reached a unanimous verdict. This means that you should never tell me, in writing or in open court, how the jury is divided on any matter – for example, 6-6 or 7-5 or 11-1, or in any other fashion – whether the vote is for conviction or acquittal or on any other issue in the case.

36. Attitude and Conduct of Jurors in Deliberations, Redbook 2.510

The attitude and conduct of jurors at the beginning of their deliberations are matters of considerable importance. It may not be useful for a juror, upon entering the jury room, to voice a strong expression of an opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may cause that juror to hesitate to back away from an announced position after a discussion of the case. Furthermore, many juries find it useful to avoid an initial vote upon retiring to the jury room. Calmy reviewing and discussing the

case at the beginning of deliberations is often a more useful way to proceed. Remember that you are not partisans or advocates in this matter, but you are judges of the facts.

37. Excusing Alternate Jurors, Redbook 2.511

The last thing I must do before you begin your deliberations is to excuse the alternate jurors. As I told you before, the selection of alternates was an entirely random process; it's nothing person. We selected two seats to be the alternate seats before any of you entered the courtroom. Since the rest of you have remained healthy and attentive, I can now excuse those jurors in seats [insert seat numbers].

Before you two leave, I am going to ask you to tear out a page from your notebook, and to write down your name and daytime phone number and hand this to the clerk. I do this because it is possible, though unlikely, that we will need to summon you back to rejoin the jury in case something happens to a regular juror. Since that possibility exists, I am also going to instruct you not to discuss the case with anyone until we call you. My earlier instruction on use of the Internet still applies; do not research this case or communicate about it on the Internet. In all likelihood, we will be calling you to tell you there has been a verdict and you are now free to discuss the case; there is, however, the small change that we will need to bring you back on to the jury. Thank you very much for your service, and please report back to the jury office to turn in your badge on your way out.