

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA, *
 *
 * CRIMINAL NO. 02-200
 *
 Plaintiff, *
 *
 v. *
 *
 *
 *
 CREG WILLIAMS DANCE and *
 LIBERATO ALESSANDRO IANNONE, *
 *
 *
 Defendants. * JURY INSTRUCTIONS
 *
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135-5-11-91-80
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INSTRUCTION NO. 1

INTRODUCTION

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 of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. In considering these instructions, you will attach no importance or significance whatever to the order in which they are given. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

DUTY OF JURY

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.

INSTRUCTION NO. 3

EVIDENCE

I have mentioned the word “evidence.” The “evidence” in this case consists of:

- 1) the testimony of witnesses,
- 2) the documents and other things received as exhibits,
- 3) the facts that have been stipulated -- this is, formally agreed to by the parties,
- 4) the facts that have been judicially noticed -- this 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.

INSTRUCTION NO. 4

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence—such as the testimony of an eyewitness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of a defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

INSTRUCTION NO. 5

CREDIBILITY OF WITNESSES

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

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's 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.

INSTRUCTION NO. 6

EXPERT WITNESSES

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.

INSTRUCTION NO. 7

INDICTMENT

The Indictment in this case charges the defendants with twenty-eight crimes.

1) Count 1 charges CREG WILLIAMS DANCE and LIBERATO ALESSANDRO IANNONE committed the crime of conspiracy;

(2) Counts 2-17 charge CREG WILLIAMS DANCE and LIBERATO ALESSANDRO IANNONE committed the crime of illegal insider trading.

(3) Counts 18-28 charge CREG WILLIAMS DANCE and LIBERATO ALESSANDRO IANNONE committed the crime of wire fraud.

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. So the presumption of innocence alone is sufficient to find the 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.

INSTRUCTION NO. 8

DEFINITION OF “ON OR ABOUT”

The Indictment charges that the offenses were committed “on or about” certain dates and that certain approximate amounts of money were involved in the crimes charged.

Although it is necessary for the government to prove beyond a reasonable doubt that each of the offenses were committed on a date reasonably near the dates alleged in the Indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged. Likewise, it is not necessary for the Government to prove the exact or precise amounts of money involved in the transactions alleged in the Indictment.

INSTRUCTION NO. 9

STATUTES

Title 18, United States Code, Section 371 provides the offense of conspiracy is committed when:

[T]wo or more persons conspire . . . to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy,

Title 15, United States Code, Section 78j(b) provides in pertinent part:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—[. . .]

(b) To use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe

Rule 10b-5 of the Securities and Exchange Commission (17 C.F.R. § 240.10b-5) provides:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Title 15 United States Code, Section 78ff(a) provides that the offense of wire fraud is committed when:

Any person who willfully violates any provision of this chapter . . . or any rule or regulation thereunder the violation of which is made unlawful or the observance

of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder . . . which statement was false or misleading with respect to any material fact

Title 18, United States Code, Section 1343 provides that an offense has been committed when:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice

Title 18, United States Code, Section 1346 provides:

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

INSTRUCTION NO. 10

COUNT ONE: ELEMENTS OF THE OFFENSE (CONSPIRACY)

The crime of conspiracy as charged in Count One of the Indictment, has four essential elements, which are:

One, in or about November 1998, and continuing until in or about January 1999, two or more persons reached an agreement or came to an understanding to engage in illegal insider trading, or to commit wire fraud, or to commit both of these offenses;

Two, the defendant under consideration 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 under consideration 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 for the purpose of carrying out or carrying forward the agreement or understanding.:

1. Defendants Dance and Iannone placed, received, and participated in one or more interstate or international telephone calls, during the period November 19, 1998 to November 29, 1998.
2. Defendant Iannone purchased AVEI call options on one or more occasions, during the period November 19, 1998 to November 27, 1998.
3. Defendant Iannone placed and attempted to place additional orders to purchase AVEI call options, which were not filled, on one or more occasions during the period November 25, 1998 to November 30, 1998.
4. Defendant Iannone engaged in personal and telephone conversations with numerous friends, associates, and family members on one or more occasions during the period November 19, 1998 to November 30, 1998, and encouraged them to purchase shares and call options in AVEI and, on at least one occasion, stated that the information he was providing should be kept confidential, with

- each such conversation being a separate overt act;
5. On or about December 1, 1998, after the AVEI/Medtronic merger was publicly announced, Defendant Iannone placed three telephone calls to Defendant Dance, and Defendant Dance placed a fourth telephone call to Defendant Iannone, with each such telephone call being a separate overt act.
 6. On or about December 15, 1998, after the Securities and Exchange Commission issued subpoenas to AVEI and Medtronic and began contacting individuals who had traded in the securities of AVEI, Defendant Dance placed a 38 minute telephone call to Defendant Iannone;
 7. Defendant Iannone sold AVEI call options on one or more occasions, during the period November 30, 1998 to January 19, 1999.

For you to find the defendant, CREG WILLIAMS DANCE guilty of the crime charged under Count One, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant, CREG WILLIAMS DANCE not guilty of Count One. For you to find the defendant, LIBERATO ALLESSANDRO IANNONE guilty of the crime charged under Count One, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant, LIBERATO ALLESSANDRO IANNONE not guilty of Count One.

INSTRUCTION NO. 11

CONSPIRACY: "AGREEMENT" EXPLAINED

The government must prove that each 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.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or the 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. Similarly, mere knowledge, approval, or acquiescence in the object of the alleged conspiracy is insufficient to render an individual a part of a conspiracy—there must exist some element of affirmative cooperation or agreement to cooperate in the object of the conspiracy.

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 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 it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in

Count One of the Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendants 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 each 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 the defendants.

INSTRUCTION NO. 12

CONSPIRACY: "OVERT ACT" - EXPLAINED

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 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.

INSTRUCTION NO. 13

CONSPIRACY: SUCCESS IMMATERIAL

It is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

INSTRUCTION NO. 14

CONSPIRACY: MULTIPLE OFFENSES

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.

INSTRUCTION NO. 15

COUNTS 2-17: ELEMENTS OF THE OFFENSE (ILLEGAL INSIDER TRADING) WITH
RESPECT TO DEFENDANT IANNONE

The crime of illegal insider trading, as charged in Counts Two through Seventeen of the Indictment, has eight essential elements, which are:

One, that Dance possessed material nonpublic information regarding Arterial Vascular Engineering, Inc.;

Two, that Dance disclosed this information to Iannone;

Three, that Iannone traded in Arterial Vascular Engineering stocks or options on the basis of material, nonpublic information provided by Dance;

Four, that Dance violated a relationship of trust by relaying the information;

Five, that Iannone knew or should have known that Dance violated a relationship of trust by relaying the information;

Six, that Dance benefitted by the disclosure to Iannone;

Seven, that Iannone acted willfully and knowingly; and

Eight, that Iannone knowingly used, or caused to be used, any means or instruments of transportation or communication in interstate commerce or the use of the mails or of a national securities exchange, in furtherance of the scheme to engage in illegal insider trading.

For you to find the defendant, LIBERATO ALLESSANDRO IANNONE guilty of the crimes charged under Counts Two through Seventeen, the government must prove each of these essential elements beyond a reasonable doubt as to each count, otherwise you must find the defendant, LIBERATO ALLESSANDRO IANNONE not guilty of the count under consideration.

INSTRUCTION NO. 16

COUNTS 2-17: ELEMENTS OF THE OFFENSE (ILLEGAL INSIDER TRADING) WITH
RESPECT TO DEFENDANT DANCE

The crime of illegal insider trading, as charged in Counts Two through Seventeen of the Indictment, has eight essential elements, which are:

One, that Dance possessed material nonpublic information regarding Arterial Vascular Engineering, Inc.;

Two, that Dance disclosed this information to Iannone;

Three, that Iannone traded in Arterial Vascular Engineering stocks or options on the basis of material, nonpublic information provided by Dance;

Four, that Dance violated a relationship of trust by relaying the information; and

Five, that Dance knew or should have known that Iannone would trade in Arterial Vascular Engineering stocks or options on the basis of material, nonpublic information provided by Dance;

Six, that Dance benefitted by the disclosure to Iannone;

Seven, that Dance acted willfully and knowingly; and

Eight, that Dance knowingly used, or caused to be used, any means or instruments of transportation or communication in interstate commerce or the use of the mails or of a national securities exchange, in furtherance of the scheme to engage in illegal insider trading.

For you to find the defendant, CREG WILLIAMS DANCE guilty of the crimes charged under each of Counts Two through Seventeen, the government must prove each of these essential elements beyond a reasonable doubt as to each count, otherwise you must find the defendant, CREG WILLIAMS DANCE not guilty of the count under consideration.

INSTRUCTION NO. 17

DEFINITION--MATERIAL NON-PUBLIC INFORMATION

In order for information to be material, there must be a substantial likelihood that the information would have been viewed by the reasonable investor as having altered the total mix of information available. Whether merger discussions in any particular case are material depends on the facts of that case.

To constitute nonpublic information, information must be more specific and more private than general rumor. Information is nonpublic if it is not available to the public through such sources as press releases, Securities and Exchange Commission filings, trade publications, analysts' reports, newspapers, magazines, rumors, word of mouth, or other sources.

INSTRUCTION NO. 18

DEFINITION–VIOLATION OF A RELATIONSHIP OF TRUST

The Government must prove that Dance violated a position of trust by relaying material non-public information to Iannone. The following explanation may assist you in determining whether Dance held or violated a position of trust. An “insider” is one who comes into possession of material, confidential, non-public information about a security by virtue of a business relationship which involves trust and confidence. When a person has such “inside information” and he holds a position of trust or confidence that prevents him from disclosing that information, the law forbids him from buying or selling the securities in question, or from disclosing this information for the purpose of having another person buy or sell the securities in question. Persons who are corporate officers, directors, and controlling shareholders are considered “insiders” for purposes of this rule.

In this case, the Government alleges that Defendant Dance was an “insider.” For the Government to establish that Dance was forbidden from trading in the securities in question, or from disclosing this information to another for purposes of trading in securities, it must show that Defendant Dance was expected to keep the material corporate information confidential, or at least that the relationship implied such a duty. A mere working relationship is insufficient to satisfy this element by imposing insider status on the defendant. In order for Dance to have been an insider, the nature of his relationship with AVEI must have been one of trust and confidence.

INSTRUCTION NO. 19

DEFINITION-GENERAL

The Government is required to prove beyond a reasonable doubt that Dance knew or should have known that Iannone would trade in Arterial Vascular Engineering stocks or options on the basis of nonpublic information provided by Dance. With regard to this, you are instructed that you may, but are not required to infer, that an insider's knowledge that he was breaching a duty to the owner of confidential information suffices to establish his expectation that the breach will lead to some kind of misuse of the information.

INSTRUCTION NO. 20

DEFINITION–RELIANCE

The Government must prove that Defendant Iannone actually used material, nonpublic information provided to him by Defendant Dance, in making his decision to trade in securities of Arterial Vascular Engineering, Inc. Thus, it is insufficient for the Government to prove that Iannone traded in AVE securities while merely possessing material, nonpublic information. However, you may, but are not required to find that possession of material nonpublic information at the time of a trade gives rise to a strong inference of use.

INSTRUCTION NO. 21

DEFINITION–BENEFIT

With regard to the crime of illegal insider trading, the Government must prove beyond a reasonable doubt that Dance benefitted from the disclosure of material, nonpublic information to Iannone. This “benefit” may be either direct or indirect. You may, but are not required, to find that an individual receives a benefit when the relationship between an insider and the recipient of information suggests a quid pro quo from the latter, or an intention to benefit the particular recipient. Likewise, you may, but are not required, to find that an individual benefits by making a gift of confidential information to a trading relative or friend.

INSTRUCTION NO. 22

DEFINITION—KNOWLEDGE AND WILLFULNESS

The Government must establish beyond a reasonable doubt that each defendant participated in the scheme to defraud knowingly and willfully. The question of whether a person acted knowingly and willfully is a question of fact for you to decide, like any other fact question. This question involves one's state of mind.

“Knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently. “Willfully” means to act knowingly and purposely, with an intent to do a wrongful act. To act “knowingly” and “willfully” does not, however, require the defendant to know that his actions are a violation of some particular law, rule or regulation.

INSTRUCTION NO. 23

DEFINITION—INSTRUMENTALITY OF INTERSTATE COMMERCE

The use of any means or instrumentality of interstate commerce or of the mails, or of any national securities exchange is an essential element of the crime of securities fraud as charged in Counts Two through Seventeen of the indictment.

The term "interstate commerce" as used in these instructions means "trade or commerce in securities or any transportation or communication relating . . . to such trade or commerce among the several states . . ." "Instrumentalities" means devices used to conduct trade, commerce, transportation, or communication between states, and includes items such as telephones or computers.

This element of the crime charged may be established if the government proves beyond a reasonable doubt that any means or instrumentality of interstate transportation or communication, including the mails, or the facilities of a national securities exchange were, in fact, used in the scheme or that such use was reasonably foreseeable.

In this regard, however, it is not necessary for the government to prove that a particular defendant personally used any means or instrumentality of interstate commerce or the mails, or used a national exchange, or that such use was contemplated or intended by anyone involved in any scheme. It is sufficient for the government to prove that the defendant set forces in motion which foreseeably resulted in such use.

The matter, material, or information mailed, transported, or communicated need not itself contain a fraudulent representation or request money, but must be a part of the overall scheme.

INSTRUCTION NO. 24

COUNTS 18-28: ELEMENTS OF THE OFFENSE (WIRE FRAUD)

The crime of wire fraud, as charged in Counts Eighteen through Twenty-Eight of the indictment, has four essential elements, which are:

One, the defendant whose case you are considering voluntarily and intentionally devised or participated in a scheme to defraud Arterial Vascular Engineering, Inc. or its shareholders of money, property, property rights, or the intangible right to honest services;

Two, the defendant did so with the intent to defraud;

Three, it was reasonably foreseeable that an interstate or international wire transmission would be used; and

Four, an interstate or international wire transmission was used in furtherance of some essential step in the scheme.

The phrase “scheme to defraud” includes any plan or course of action intended to deceive or cheat another out of money, property, property rights, or the intangible right to honest services by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money, property, or the intangible right to honest services from another by means of material false representations or promises.

A statement or representation is “false” when it is untrue when made or effectively conceals or omits a material fact.

A fact, falsehood, representation, or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction.

To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss, loss of property or property rights, or loss of an intangible right to honest services to another or bringing about some financial gain to oneself or another to the detriment of a third party.

The term property rights, as used in the wire fraud statute, includes intangible as well as tangible property rights. It includes any property right which has a value -- not necessarily a monetary value -- to the owner of the property right, and it includes confidential business information.

It is not necessary that the use of interstate or international wires by the participants themselves be contemplated or that the defendant whose case you are considering actually used the interstate or international wires. It is sufficient if the interstate or international wires were in fact used to carry out the scheme and the use of interstate or international wires by someone was reasonably foreseeable.

Each separate use of interstate or international wires in furtherance of the scheme to defraud constitutes a separate offense.

The wire fraud counts of the indictment charge that each defendant, along with the other defendant, devised or participated in a scheme. The Government need not prove, however, that the defendants met together to formulate the scheme charged, or that there was a formal agreement among them, in order for them to be held jointly responsible for the operation of the scheme and the use of interstate or international wires for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and the others knowingly, voluntarily and intentionally join in and participate in some way in the operation of the scheme in

order for such others to be held jointly responsible.

It is not necessary that the Government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme or that the interstate or international wire transmission were themselves false or fraudulent. Likewise the Government need not prove that the alleged scheme actually succeeded in defrauding anyone or that the use of interstate or international wire transmissions were intended as the specific or exclusive means of accomplishing the alleged fraud.

For you to find the defendant, CREG WILLIAMS DANCE guilty of the crimes charged under each of Counts Eighteen through Twenty-Eight, the government must prove each of these essential elements beyond a reasonable doubt as to each count, otherwise you must find the defendant, CREG WILLIAMS DANCE not guilty of the count under consideration. For you to find the defendant, LIBERATO ALLESSANDRO IANNONE guilty of the crimes charged under Counts Eighteen through Twenty-Eight, the government must prove each of these essential elements beyond a reasonable doubt as to each count, otherwise you must find the defendant, LIBERATO ALLESSANDRO IANNONE not guilty of the count under consideration.

INSTRUCTION NO. 25

GOOD FAITH

Fraudulent intent is one of the essential elements of the offenses with which the defendants are charged. Fraudulent intent is not presumed or assumed; it is personal and not imputed. One is chargeable with his own personal intent, not the intent of some other person. Bad faith is an essential element of fraudulent intent. Good faith constitutes a complete defense to one charged with an offense of which fraudulent intent is an essential element. One who acts with honest intention is not chargeable with fraudulent intent. One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though such opinion is erroneous and such belief is a mistaken belief. Evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent. In order to establish fraudulent intent on the part of a person, it must be established that such person knowingly and intentionally attempted to deceive another. One who knowingly and intentionally deceives another is chargeable with fraudulent intent notwithstanding the manner and form in which the deception was attempted.

In this case, it is not a willful, deceptive device for a person to use his superior financial or expert analysis, or his educated guesses of predictions, or his past practices or experiences, to determine what stocks or other investments (such as options) to purchase or sell. Nor is it a deceptive device for a person to buy or sell stocks or other instruments based on rumors, gossip, stories, or any other source consisting of unverified, unsubstantial information--as opposed to the specific inside information that the Government alleges was used in this case. Evidence that a defendant acted in good faith may be considered by you, together with all the other evidence, in determining whether or not he acted willfully.

INSTRUCTION NO. 26

DEMONSTRATIVE SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records or other underlying evidence.

INSTRUCTION NO. 27

CHARACTER EVIDENCE

You have heard testimony about the character and reputation of Defendants Dance and Iannone for truthfulness. You may consider this evidence in deciding whether or not the Defendants Dance and Iannone committed any of the crimes charged.

INSTRUCTION NO. 28

STATEMENT OF ONE DEFENDANT IN MULTI-DEFENDANT TRIAL

You may consider the testimony of Mr. Steven Goorvitch regarding the statements of Defendant Dance only in the case against him, and not in the case against Defendant Iannone. What that means is that you may consider defendant Dance's statement in the case against him and for that purpose rely on it as much or as little as you think proper, but you may not consider or discuss that prior deposition testimony in any way when you are deciding if the Government has proved, beyond a reasonable doubt, its case against Defendant Iannone. You may, however, consider the other aspects of Mr. Goorvitch's testimony in the cases of both defendants, and rely upon those aspects of his testimony as much or as little as you think proper.

INSTRUCTION NO. 29

PROOF OF INTENT OR KNOWLEDGE

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

INSTRUCTION NO. 30

AIDING & ABETTING

A person may be found guilty of illegal insider trading or wire fraud even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of that offense.

In order to have aided and abetted the commission of a crime a person must, before or at the time the crime was committed:

(1) have known illegal insider trading or wire fraud was being committed or going to be committed;

(2) have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of that offense; and

(3a) have acted with willfully and knowingly as explained in Instruction Nos. 15 & 16, if the aiding and abetting related to illegal insider trading; or

(3b) have acted with intent to defraud, as explained in Instruction No. 24, if the aiding and assisting related to wire fraud.

For you to find the defendant guilty of illegal insider trading or wire fraud by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the essential elements of the offense under consideration 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 associating 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.

INSTRUCTION NO. 31

REASONABLE DOUBT

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.

INSTRUCTION NO.32

DELIBERATE IGNORANCE

You may find that a defendant acted knowingly if you find beyond a reasonable doubt that the defendant was aware of a high probability of the fact in question and that he deliberately avoided learning the truth. The element of knowledge may be inferred if a defendant deliberately closed his eyes to what would otherwise have been obvious to him.

You may not find that a defendant acted knowingly, however, if you find that a defendant was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding of knowledge.

INSTRUCTION NO. 33

ELECTION OF A FOREPERSON/DUTY TO DELIBERATE

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.

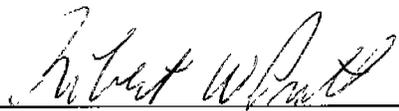
Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the Government has proved its case beyond a reasonable doubt.

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. 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 court security officer that you are ready to return to the courtroom.

Dated this 5th day of March, 2003.



ROBERT W. PRATT
U.S. DISTRICT JUDGE