



## INSTRUCTION NO. 1

Now that you have heard all the evidence, it is my duty to inform you concerning the legal principles and considerations to be used by you in arriving at a proper verdict.

You must follow the law given in these instructions and apply these rules of law to the facts as you find them from the evidence. Do not single out one instruction as a statement of all the law. You must consider all the instructions collectively as a whole.

You are not to concern yourselves with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, basing a verdict on any view of the law other than that given in these instructions would be a violation of your sworn duty as a juror. Also, basing a verdict on anything but the evidence in this case and reasonable inferences arising from such evidence would be a violation of your sworn duty as judges of the facts.

Do not allow sympathy or prejudice to influence you. The law requires that you reach a just verdict, unaffected by anything except the evidence, your common sense and the law stated in these instructions given to you by me.

## INSTRUCTION NO. 2

The parties to this action are the plaintiff, the United States of America, and the defendant, Lemuel Hamilton. Throughout these instructions, the United States of America may be referred to as the plaintiff, the United States, or the government. The defendant may be referred to as the defendant or by his name.

### INSTRUCTION NO. 3

The word "evidence" is used in these instructions. "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; and any facts that have been stipulated, that is, formally agreed to by the parties.

Certain things are not evidence, namely:

1. Statements, arguments, questions and comments by lawyers 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 have 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 have stricken from the record, or told 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.

You must not speculate or form any opinion as to how a witness might have testified in answer to a question or questions which I have rejected during the trial. Further, you must not speculate on any subject or matter into which I have forbidden inquiry.

In arriving at any conclusion in this case, you must be governed by the evidence and by the evidence alone. You have no right to indulge in speculation, conjecture or inference unsupported by the evidence.

Finally, you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

While you must consider only the evidence received in this case, you are permitted

to draw any reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence in this case.

#### INSTRUCTION NO. 4

You have heard testimony that the defendant made a statements to FBI Special Agent Steven Harker and Officer Leander Saunsoci. It is for you to decide:

First, whether the defendant made those statements; and

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

In making these two decisions you should consider all of the evidence, including the circumstances under which the statements may have been made.

## INSTRUCTION NO. 5

Exhibits have been admitted into evidence and are to be considered, along with all the other evidence, to assist you in reaching a verdict. When you return your verdict to the court, please return all the exhibits in the same condition in which the exhibits were delivered to you.

## INSTRUCTION NO. 6

You, as jurors, are the sole judges of the facts, which means that after you have considered all the evidence, you alone must decide what is established, and what is not established, in this case. 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 a witness' testimony, part of a witness' testimony, or none of a witness' testimony.

In deciding what testimony to believe, you may consider the witness' intelligence, the opportunity the witness had to see or hear the things testified about, the witness' memory, any motive the witness may have for testifying a certain way, the manner of the witness while testifying, whether the 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.

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 opinions.

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 this case.



## INSTRUCTION NO. 7

Throughout the course of the trial, you have been allowed to take notes of the testimony. You may take your notes into the jury room for use in your deliberations. Remember, however, your notes are not evidence.

Your notes should be used only as aids to your memory. You should not give your notes precedence over your independent recollection of the evidence; you should rely on your own independent recollection of the proceedings; and you should not be influenced by the notes of other jurors. Your notes are not entitled to any greater weight than each juror's recollection or impression of the testimony given during this trial.

After you have reached a verdict, your notes may be destroyed, if you wish.

## INSTRUCTION NO. 8

An Indictment is a written accusation and is not evidence of anything. The Indictment in this case contains one charge or count.

Count I of the Indictment charges that on or about September 24, 2004, on and within the Omaha Indian Reservation, in Indian Country, Lemuel Hamilton, an Indian, did assault Jenny Dick, a female Indian, resulting in serious bodily injury to said female, in that Lemuel Hamilton did strike Jenny Dick in the face with his fists and thereafter forcibly pushed the female onto a staircase. As a result of the defendant's actions, the female suffered a broken jaw, all in violation of 18 U.S.C. Sections 1153 and 113(a)(6), which are laws of the United States.

The Indictment charges that the offense designated in the Indictment was committed on or about a certain date. However, it is not necessary that the proof establish with certainty the exact date of the alleged offense. It is sufficient if the evidence shows, beyond a reasonable doubt, that the offense charged against the defendant was committed on a date reasonably near the date alleged.

## INSTRUCTION NO. 9

The defendant has entered a plea of not guilty to the charge stated in the Indictment. As the result of his plea of not guilty to the charge in the Indictment, the defendant is presumed to be innocent of the charge. Therefore, even though charged by the Indictment, this trial began with the presumption of the defendant's innocence as to the charge in the Indictment, and this presumption of innocence alone is sufficient to find the defendant not guilty of the charge in the Indictment. The defendant is not required to present any evidence or to prove his innocence.

## INSTRUCTION NO. 10

The presumption of innocence may be overcome only if the government proves, beyond a reasonable doubt, each element of the crime charged against the defendant. If you view the evidence as reasonably permitting either of two conclusions - one of innocence and the other of guilt - regarding the offense charged in the indictment, then you must adopt the conclusion of innocence.

## INSTRUCTION NO. 11

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. 12

The fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

### INSTRUCTION NO. 13

The defendant is charged in the Indictment with violating Title 18, United States Code, Section 1153. Title 18, United States Code, Section 1153, makes an assault within Indian country a federal crime.

In order for the defendant to be found guilty of the charge of assault as alleged in the Indictment, the government must prove each of the following elements beyond a reasonable doubt:

FIRST, that defendant, an Indian, assaulted Jenny Dick, an Indian, on and within the Omaha Indian Reservation; AND

SECOND, that, as a result of defendant's assault, Jenny Dick suffered serious bodily injury.

The parties have stipulated or agreed that both the defendant and Jenny Dick are Indians. Furthermore, the parties have stipulated or agreed that the incident occurred on and within the Omaha Indian Reservation.

An "assault" is any intentional and voluntary attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so, sufficient to put the person against whom the attempt is made in fear of immediate bodily harm.

For you to find the defendant guilty of this crime, the government must prove all of these essential elements, set out above, beyond a reasonable doubt; otherwise, you must find the defendant not guilty.

**INSTRUCTION NO. 14**

Neither these instructions nor any ruling, action, or remark by me in the course of this trial is intended, and shall not be taken by you, as my opinion or suggestion as to what your verdict should be. You must determine every fact essential to the outcome of this case.



## INSTRUCTION NO. 15

When you retire to the jury room, first select one of your number to be the foreperson who will preside over your discussions and who will eventually sign the form of the verdict after your deliberations. You will then begin your study of the evidence and deliberations toward your verdict.

It is your duty, as jurors, to discuss the case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because any verdict must be unanimous. Short of unanimity, you cannot consider that you have reached a verdict.

Your verdict must be based solely on the evidence and on the law which I have given to you in these instructions. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed all of the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should change your opinion. However, do not come to a decision simply because other jurors believe that their decision is correct, or simply to reach your verdict. When you have reached your verdict and when your foreperson has completed the form of the verdict, you will have concluded your task and you will notify me accordingly.

If it becomes necessary during your deliberations to communicate with me, use the intercom-telephone in the jury room to contact my courtroom deputy. Then your foreperson or any one of you may deliver a note to the courtroom deputy who will forward your note to me. I will respond as soon as possible. Bear in mind that you are not to reveal to me, or to anyone else, how the jury stands, numerically or otherwise, until you have reached a unanimous verdict.

A verdict form has been prepared and will be taken with you when you retire for your

deliberations. This form is adequate for the expression of any verdict on which you may properly agree. You will take the verdict form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the courtroom deputy that you are ready to return to the courtroom. I shall be available throughout the remainder of the day and during your deliberations until your verdict is returned. I shall receive your verdict promptly.

If you do not arrive at your verdict during the present court day, you will continue your deliberations until you arrive at your verdict. However, you will be allowed time for meals and an intermission or recess between 5:00 p.m. each day and 9:00 a.m. of the next morning of your deliberations.

During the time allowed for meals and a night's rest, you will be permitted to separate, but you should return promptly at the time set for continuation of your deliberations. During the period of your separation, and to insure fairness to the parties, you, as jurors, must obey the following rules:

- (1) Do not talk with anyone other than your fellow jurors about this case, or about anyone involved with it, until your deliberations are completed, your verdict has been accepted by me, and you have been discharged as jurors. Until you have been discharged as jurors, you should only discuss this case with your fellow jurors during deliberations within the confines of the jury room;
- (2) When you are outside the jury room, do not let anyone tell you anything about the case, until your verdict has been accepted by me;
- (3) Do not read any news stories or articles about the case, or about anyone involved with this case, or listen to any radio or television reports about this case, until your verdict has been accepted by me; and
- (4) Do not do any research or make any investigation about this case. Consequently, you shall not use, or make any reference to, a dictionary for the purpose of your deliberations.

Once again, your verdict must be unanimous.