

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

FINAL PRETRIAL  
CONFERENCE ORDER

JOHN A. RADERMACHER,  
PEDRO ZAMORA,  
ROBERT G. SMITH,  
GREGORIO M. ACOSTA, JR.,  
NICOLAS J. ACOSTA,  
JORGE N. BARRAGON,  
FLORENTINO CASTILLO and  
ERNESTO ESTRADA, III,

05-CR-39-C

Defendants.

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On November 16, 2005 this court held the final pretrial conference. Defendant John Radermacher was present in person and represented telephonically by attorney John Grindell. Defendant Pedro Zamora was present with attorney Pamela Moorshead. Defendant Robert Smith was present with attorney Ronald Benavides. Defendant Gregorio Acosta, Jr., was present with attorney Christopher Kelly. Defendant Nicolas Acosta was present with attorney Krista Ralston. Defendant Jorge Barragon was present with attorney John Birdsall. Defendant Florentino Castillo was present with attorney Michael Schnake. Defendant Ernest Estrada, III was present with attorney Sarah Schmeiser. The government was represented by Assistant United States Attorney Laura Przybylinski Finn.

First we discussed voir dire. Some of the parties proposed edits and additions to the court's packet of questions. For reasons stated on the record, I accepted some of the

proposals and rejected others. A final copy of the voir dire questions is attached to this order.

Next we discussed the universe of jury instructions. Some of the parties proposed minor changes and additions to the court's packet of instructions. I left for Judge Crabb's final determination whether to combine or separate the set of instructions regarding witnesses who must be considered with caution and great care, although I have combined them in the packet attached to this order. The government will edit the indictment so that the defendants and counts match the current status quo. A defendant may file a theory of defense instruction at the close of the government's case in chief.

Third, we discussed the in limine issues. Two unusual motions dominated the discussion: On November 10, 2005, Castillo filed a "Supplemental Memorandum in Support of Defendant's Motions on Bills of Particulars, Discovery and to Extend Time Limits" (dkt. 165) which he asked to convert to a motion in limine. On November 15, 2005 at 2:56 p.m. Barragon e-filed a "Motion for Discovery Relating to Specific Witnesses and Exclusion of any Newly-Adduced Evidence" accompanied by a 22-page brief, which he did not serve on the government or on most of his co-defendants. (*See* dkt. 186). All of the other defendants joined in these motions at the hearing, although I inferred that most of them did it to protect their record.

Because of the breathtaking scope of these eve-of-trial allegations and demands, and because the government had not even been served prior to the hearing, I set up a briefing

schedule. Not later than noon on November 23, 2005, the government may file whatever written response it deems appropriate. Not later than noon on November 28, 2005, any defendant may file a written reply. Same *hour* service is *required* on *all* parties. Having read the motions and heard counsel expound upon them, I am for the most part unmoved by defendants' arguments; but because briefing is not yet complete and because the final decision belongs to the trial judge, I will eschew further comment except to note that it is a virtual certainty that the defendants will not obtain yet another postponement of trial.

Notwithstanding my skepticism toward defendants' claims, I directed the United States Attorney's Office in this district to contact the United States Attorney's Office for the Eastern District of Wisconsin to determine whether any *Brady* or *Giglio* material has been identified and culled that applies both to the defendants in the instant prosecution and the instant charges against them. If so, then the government promptly must disclose this material to these defendants in this case. Also, I directed the government to contact the Dane County Jail to request a document review room for the defendants.<sup>1</sup> Finally in response to the myriad defense requests for witness lists or their equivalent, I gave the government a choice: either provide a list that contains any possible government trial witnesses (which would become the universe of witnesses available to the government in its case in chief); or, conversely, to provide to defendants a list of people for whom grand jury

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<sup>1</sup> I directed the government to inquire into this and report promptly to the court. I did not order the government to make it happen: the jail has a dog in this fight and is entitled to some input.

testimony or reports of interview have been disclosed but whom the government does *not* intend to call at trial. I do not predict that either choice will produce much useful information to defendants.

Dealing with some of the more concrete in limine motions, none of the defendants had any objection to the government's Rule 609 notice, nor could they offer any objection at this time to the government's general predictions regarding Rule 404(b) and Rule 801(d)(2)(E) evidence. *See* dkt. 170.

Going in docketing sequence, Estrada's request for witness list (dkt. 173) is dealt with above.

Nicolas Acosta's four-part motion in limine (dkt. 175) is self-executing: the government is aware of its obligations under the various rules cited and it intends to meet those obligations.

Smith filed a four-part motion in limine (dkt. 178) and a codicil (dkt. 179). The court shall sequester witnesses, which means that any potential witness for any party who has not yet testified must stay out of the courtroom and must not communicate with any other witness, including witnesses who have completed their own testimony. The government does not intend to offer details of Smith's homicide conviction; the parties will fine tune this. There is no dispute over the remainder of Smith's motion.

Zamora filed a 13 paragraph motion in limine (dkt. 182). Paragraphs 1(c) and 1(d) are disputed: the government intends to offer evidence that Zamora possessed firearms and

engaged in alleged acts of “independent” drug trafficking. This needs to be explored at the final hearing. Paragraph 2 of Zamora’s motion is a corollary to this dispute. None of the remaining paragraphs of Zamora’s motion are disputed.

Nicolas Acosta filed a last-minute motion to dismiss (dkt. 187), claiming that the government has disclosed no evidence of his guilt and it has violated the parties’ signed pretrial discovery agreement. The government may respond to this motion in its November 23, 2005 brief; I note, however, that since summary judgment does not exist in criminal cases, pretrial dismissal based on an alleged lack of inculpatory evidence is not available.

Any party who wishes the court to disclose presentence investigation reports for any government trial witness must file with the court a written request naming all witnesses for whom PSRs are requested.

Any defendant who wishes to postpone must file a written motion forthwith in which he provides his reasons and the foundation for them.

Finally, we discussed trial mechanics. This trial might last ten days. Each defendant is responsible for obtaining street clothes to wear at trial. Smith wants permission to wear certain types of Native American garb at trial; this is an issue he must discuss with the marshals service. The court will support any reasonable decision the marshal makes in that regard.

As noted at our hearing, up until about noon on November 16, 2005, neither the marshals service nor the court intended to shackle the defendants during trial. However,

starting on November 15 and continuing through November 16, some of the defendants became disruptive and disobedient to the marshals and the jailers. This changed the marshal's security assessment and the court approved the marshal's request to shackle the defendants at trial. To prevent the jurors from seeing the shackles, the court will skirt all tables used by all parties as well as the witness stand. It is incumbent on the defendants to keep their shackled feet under the tables and out of sight.

The parties have been advised that they are to present all evidence on the court's ELMO. Any attorney who wishes to use a personal computer must assure its compatibility with the ELMO prior to trial.

The court explained the jury selection process to the parties: all of the 60-70 venire people shall be randomly pre-selected and numbered in the jury assembly room. Then the court will provide all parties with a printed list of the venire people arranged by number. The court will seat Nos. 1 - 45 in the center of the courtroom gallery, with Nos. 46 - 70 elsewhere in the gallery. If the court excuses for cause any of Nos. 1 - 45, then the court will replace those venire people starting with No. 46 and continuing sequentially as needed.

After the court has qualified 45 jurors, the parties shall exercise their peremptory strikes in one round. The government shall exercise six strikes against Nos. 1 - 34 and one strike against Nos. 35 - 45. Each defendant, in the order named in the case caption, shall exercise two peremptories against Nos. 1 - 34 and one peremptory against Nos. 35 - 45. The twelve venire people remaining from Nos. 1 - 34 shall be the jury. The two remaining from

Nos. 35 - 45 shall be the alternates (who shall not be advised of their status). If any party does not use all allotted peremptories, then the clerk randomly shall select names to be removed from the panel until the appropriate jury size is reached.

Entered this 18<sup>th</sup> day of November, 2005.

BY THE COURT:  
/s/  
STEPHEN L. CROCKER  
Magistrate Judge

Voir Dire: United States v. Radermacher, et al, 05-CR-39-C

Statement of the case: This is a criminal case, in which the defendants, John Radermacher, Pedro Zamora, Robert Smith, Gregorio Acosta, Jr., Nicolas Acosta, Jorge Barragon, Florentino Castillo and Ernesto Estrada III, are charged with conspiring to distribute cocaine and cocaine base (“crack cocaine”) on the Lac Courte Oreilles Indian Reservation in Sawyer County. Defendants Radermacher and Zamora are charged with maintaining a drug house. Defendant Gregorio Acosta, Jr., is charged with distributing cocaine and crack cocaine. Each defendant has entered a plea of not guilty to the charges against him.

Have any of you heard of this case, or heard of other cases from the Lac Courte Oreilles Indian Reservation before today? Would this affect your ability to serve impartially as a juror in this case?

1. Scheduling: this case will begin today and could last as long as two weeks, through next Friday, December 16. Are any of you actually unable to sit as jurors because of this schedule?

2. Is there anything about the nature of the charges in this case that might affect your ability to be impartial in this case?

3. The court reads Pattern Jury Instructions of the Seventh Circuit:

Presumption of Innocence. Each defendant is presumed to be innocent of the charges. This presumption remains with each defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that a defendant is guilty.

Burden of Proof. The government has the burden of proving the guilt of each defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. A defendant is not required to prove his innocence or to produce any evidence.

Each defendant has an absolute right not to testify. The fact that a defendant does not testify cannot be considered by you in any way in arriving at your verdict.



Even though the defendants are being tried together, you must give each of them separate consideration. In doing this, you must analyze separately what the evidence shows about each defendant. Each defendant is entitled to have his case decided on the evidence and the law that applies to that defendant.

Would any of you be unable or unwilling to follow these instructions?

4. Ask counsel to introduce themselves, the defendants and the case agent. Ask whether jurors know them.

5. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you ever have lived, owned property, or vacationed regularly in Sawyer County or nearby counties.

6. Do any of you in the jury box know each other from before today?

7. How many of you have ever been to, or otherwise are familiar with the Lac Courte Oreilles Reservation?

8. Do any of you feel that there is a more serious alcohol or other drug problem on Indian reservations than in the rest of the state?

9. The indictment charges that the defendants were members of, or associated with, a branch of an organization called "The Almighty Latin King Nation," which sometimes is described as a street gang. Would any of you find it difficult to serve as an impartial juror in a case in which it is alleged that the defendants are gang members who traffic in cocaine and crack cocaine?

10. Have any of you, your relatives, or close friends ever had any dealings or encounters with any members of the Latin Kings? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

11. Do any of you believe that membership in an organization like the Latin Kings automatically implies that a member is engaged in criminal activity?

12. Do any of you have a pre-formed belief that all chapters of an organization such as the Latin Kings are in contact and work in concert with one another?

13. Some of the defendants in this case are Native American and others are Latino. Would any of you find it difficult to serve as an impartial juror in a case in which young Native American men and young Hispanic men are charged with trafficking cocaine and cocaine base?

14. Do any of you believe that Native Americans or Latino men are more inclined to commit crimes than men from other races or ethnic groups?

15. Have any of you had any negative dealings with Native Americans or Latinos? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

16. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

17. Have any of you, your relatives or close friends ever needed, sought, or obtained any sort of counseling or treatment for a problem related to alcohol or any other drug? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

18. Have any of you, your relatives or any close friends ever belonged to any group that is concerned in any way with marijuana, alcohol, or other drugs, either for or against them? What is the name of that group, and what is your involvement in it? Would this affect your ability to be impartial in this case?

19. Do any of you think that the drug laws in this country or the enforcement of the drug laws are either too harsh or too lenient?

20. Do any of you believe that a person charged with drug crimes is probably a dangerous person simply because he is charged with a drug crime?

21. Do any of you, your family or close friends work in a health related field which treats or counsels people who have problems related to alcohol or other drugs? Would this affect your ability to be impartial in this case?

22. Do any of you, by virtue of past dealings with the United States government, the Wisconsin state government, the Sawyer County government or any tribal government, have any bias for or against the government in a criminal case?

23. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?

24. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, or any prison? Would this affect your ability to be impartial in this case?

25. Have any of you ever belonged to any organization or group that excluded people because of their race, gender, or religion?

26. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?

27. Would any of you judge the testimony of a witness who is of a race or ethnicity other than your own differently from other witnesses solely because of the witness's race or ethnicity?

28. If a defendant were to choose to testify, would any of you judge his credibility differently from other witnesses solely because it was the defendant who was testifying?

29. Have any of you, your relatives, or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

30. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

31. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case?

32. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts. To your recollection did the case(s) involve any allegations regarding drugs, gangs or conspiracy? Did any informants testify? Would any of this affect your ability to be fair and impartial in this case?

33. If at the conclusion of the trial you were to be convinced of a particular defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty as to that defendant?

34. If at the conclusion of the trial you were not to be convinced of a particular defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty as to that defendant?

35. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

36. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

## JUROR BACKGROUND INFORMATION

When asked to do so by the court, please stand and provide the following information about yourself:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you ever have lived, owned property, or vacationed regularly in Sawyer County or nearby counties.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JURY INSTRUCTIONS

05-CR-39-C

JOHN A. RADERMACHER,  
PEDRO ZAMORA,  
ROBERT G. SMITH,  
GREGORIO M. ACOSTA, JR.,  
NICOLAS J. ACOSTA,  
JORGE N. BARRAGON,  
FLORENTINO CASTILLO and  
ERNESTO ESTRADA, III,

Defendants.

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

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

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

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

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

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

A stipulation is an agreement between both sides that certain facts are true.

I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness. In evaluating the testimony of any witness, you may consider among other things: the witness's age; the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things the witness testified about; the witness's memory; any interest, bias, or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

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

You should use common sense in weighing the evidence. Consider the evidence in light of your own observations in life. You are allowed to draw reasonable inferences from facts. In other words, you may look at one fact and conclude from it that another fact exists. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the

commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts that tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. You should consider all the evidence in the case, including the circumstantial evidence, in reaching your verdict.

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

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

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and must not influence your verdict.

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

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

It is proper for a lawyer to interview any witness in preparation for trial.

You have received evidence of a statement said to be made by defendant \_\_\_\_\_ to \_\_\_\_\_. You must decide whether the defendant did make the statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you believe the statement deserves. In making this



decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself, and the circumstances under which the statement was made.

Each defendant has an absolute right not to testify. In arriving at your verdict, you must not consider the fact that the defendant did not testify.

You have heard evidence of acts of defendant \_\_\_\_\_ other than those charged in the indictment. Specifically, \_\_\_\_\_. You may consider this evidence only on the questions of \_\_\_\_\_. You should consider this evidence only for this limited purpose.

You have heard evidence that \_\_\_\_\_ have been convicted of crimes. You may consider this evidence only in deciding whether the testimony of any of these witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You have heard evidence that defendant \_\_\_\_\_ has been convicted of crimes. You may consider this evidence only in deciding whether the defendant's testimony is truthful in whole, in part, or not at all. You may not consider it for any other purpose. A conviction of another crime is not evidence of the defendant's guilt of any other crime for which the defendant is now charged.

You have heard [reputation/opinion] evidence about the character trait of \_\_\_\_\_ for truthfulness [or untruthfulness]. You should consider this evidence in deciding the weight that you will give to \_\_\_\_\_'s testimony.

You have heard [reputation and/or opinion] evidence about defendant \_\_\_\_\_'s character trait for [truthfulness, peacefulness, etc]. You should consider character evidence together with all the other evidence in the case and in the same way.

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

A statement made by a defendant before trial that is inconsistent with that defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of that defendant's testimony in this trial.

Some of the witnesses who testified must be considered with special caution and great care. Specifically:

You have heard testimony that \_\_\_\_\_  
have received benefits from the government in connection with this case.  
Specifically, \_\_\_\_\_ .

You have heard testimony from \_\_\_\_\_  
who each stated that he or she was involved in the commission of the alleged  
crime charged against the defendants.

The witnesses \_\_\_\_\_  
have received immunity; that is, a promise from the government that any  
testimony or other information he or she provided would not be used against  
him in a criminal case.

The witnesses \_\_\_\_\_  
have pleaded guilty to a crime arising out of the same allegations for which the  
defendants are now on trial.

You may give the testimony of these witnesses such weight as you believe it deserves,  
keeping in mind that it must be considered with caution and great care.

Moreover, the guilty plea of any witness who pled guilty to the conspiracy charged  
against the defendants now on trial cannot to be considered as evidence against the  
defendants now on trial.

You must consider with caution and great care the testimony of any witness who is  
currently addicted to drugs. It is up to you to determine whether the testimony of a drug  
addict has been affect by drug use or the need for drugs.

\_\_\_\_\_ has admitted lying under oath. You may  
give his testimony such weight as you believe it deserves, keeping in mind that it must be  
considered with caution and great care.

The witnesses \_\_\_\_\_  
gave opinions about matters requiring special knowledge or skill. You should judge this  
testimony in the same way that you judge the testimony of any other witness. The fact that  
such a person has given an opinion does not mean that you are required to accept it. Give

the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications and all of the other evidence in the case.

Certain summaries are in evidence. They truly and accurately summarize the contents of voluminous books, records or documents, and should be considered together with and in the same way as all other evidence in the case.

Certain summaries are in evidence. Their accuracy has been challenged by the defendant. Thus, the original materials upon which the exhibits are based have also been admitted into evidence so that you may determine whether the summaries are accurate.

You have heard recorded conversations. These recorded conversations are proper evidence and you may consider them, just as any other evidence. When the recordings were played during the trial, you were furnished transcripts of the recorded conversations prepared by government agents. The recordings are the evidence, and the transcripts were provided to you only as a guide to help you follow as you listen to the recordings. The transcripts are not evidence of what was actually said or who said it. It is up to you to decide whether the transcripts correctly reflect what was said and who said it. If you noticed any difference between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if after careful listening, you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

## THE INDICTMENT

The defendants are charged in the indictment as follows:

*[court reads the indictment]*

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

The defendants are not on trial for any act or any conduct not charged in the indictment.

Each defendant is presumed to be innocent of the charge or charges against him. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged.

The government has the burden of proving a defendant's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case. A defendant is never required to prove his innocence or to produce any evidence at all.

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

#### ELEMENTS OF THE CHARGE: COUNT 1

Count 1 charges all of the defendants with conspiracy. A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. To sustain this charge against a particular defendant, the government must prove these elements:

- 1) That the conspiracy charged in Count 1 existed, and
- 2) That the defendant whom you are considering knowingly became a member of this conspiracy with an intention to further the conspiracy.

If you find from your consideration of all the evidence that both of these propositions have been proved beyond a reasonable doubt as to the defendant whom you are considering, then you should find that defendant guilty of Count 1.

If, on the other hand, you find from your consideration of all of the evidence that either of these propositions has not been proved beyond a reasonable doubt as to the defendant whom you are considering, then you must find that defendant not guilty of Count 1.

A conspiracy may be established even if its purpose was not accomplished.

To be a member of the conspiracy, a defendant need not join at the beginning or know all the other members or the means by which its purpose was to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the common purpose and was a willing participant.

As to the first element of Count 1, in deciding whether the charged conspiracy existed, you may consider the actions and statements of every one of the alleged participants. An agreement may be proved from all the circumstances and the words and conduct of all of the alleged participants which are shown by the evidence.

As to the second element of Count 1, in deciding whether a particular defendant joined the charged conspiracy, you must base your decision solely on what that defendant personally did or said. In determining what that defendant personally did or said, you may consider that defendant's own words and acts. You also may consider the words and acts of other people to help you determine what the defendant you are considering personally did or said, and you may use the words and acts of other people to help you understand and

interpret the defendant's own words and acts. Keep in mind, however, that a defendant's membership in the charged conspiracy can only be proved by his own words or acts.

In connection with the first element of the offense charged in Count 1, the government must prove the existence of at least one of the charged objectives of the conspiracy. The government has charged that this conspiracy had two objectives: to possess one or more of the two charged controlled substances (cocaine and cocaine base) with the intent to distribute it; and actually to distribute one or more of these controlled substances. Before you may find that the government has met its burden on this point, you must unanimously agree on at least one of the charged objectives of the conspiracy and one of the charged controlled substances. It is not enough for some of you to find that the government has proved a conspiracy to distribute cocaine and the rest of you to find that the government has proved a conspiracy to possess cocaine with the intent to distribute it, or for some of you to find that the government has proved a conspiracy to distribute cocaine and the rest of you to find that the government has proved a conspiracy to distribute cocaine base. All twelve of you must agree on at least one objective of the conspiracy and on one controlled substance in order to find that the government has proved the first element of Count 1.

By themselves, a defendant's presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish the defendant's guilt.

A defendant's association with conspirators is not by itself sufficient to prove his or her participation or membership in a conspiracy.

If a defendant performed acts that advanced a criminal activity but had no knowledge that a crime was being committed or was about to be committed, those acts alone are not sufficient to establish the defendant's guilt.

The government must prove that a defendant knowingly and intentionally joined the charged conspiracy, knowing the conspiracy's aim and intending to achieve it.

The existence of a simple buyer-seller relationship between a defendant and another person is not sufficient to establish a conspiracy, without more, even where the buyer intends to resell controlled substances. By itself, the fact that a defendant may have bought controlled substances from another person or sold controlled substances to another person is not sufficient to establish that the defendant was a member of the charged conspiracy. In considering whether a conspiracy or a simple buyer-seller relationship existed, you should consider all of the evidence, including the following factors:

- (1) Whether the transaction involved large quantities of controlled substances;
- (2) Whether the parties had a standardized way of doing business over time;
- (3) Whether the sales were on credit or on consignment;
- (4) Whether the parties had a continuing relationship;
- (5) Whether the seller had a financial stake in a resale by the buyer;
- (6) Whether the parties had an understanding that the controlled substances would be resold.

No single factor necessarily indicates by itself that a defendant was or was not engaged in a simple buyer-seller relationship.

Although Count 1 charges a single conspiracy, it might be possible to find additional, separate conspiracies regarding distinct parts of this case.

Whether there was one conspiracy, two conspiracies, multiple conspiracies or no conspiracy at all is a fact for you to determine in accordance with these instructions.

If you do not find beyond a reasonable doubt that the defendant you are considering was a member of any conspiracy, you must find that defendant not guilty of Count 1.

If you find beyond a reasonable doubt that there was one overall conspiracy as alleged in Count 1 and that the defendant you are considering was a member of that conspiracy, you should find that defendant guilty of Count 1.



If you find that there was more than one conspiracy and also find that the defendant you are considering was a member of one or more of these additional conspiracies, then you may find that defendant guilty of Count 1 only if you further find beyond a reasonable doubt that the proven conspiracy of which the defendant was a member is included within the conspiracy charged in the count that you are considering.

On the other hand, if you find that the proven conspiracy of which the defendant was a member is not included within the conspiracy alleged in Count 1, then you must find the defendant not guilty of this count.

Count 1 charges that the alleged conspiracy involved 50 grams or more of cocaine base (crack cocaine). If you find any defendant guilty of Count 1, then you must determine whether the government also has proved that the amount of crack cocaine involved in the conspiracy was 50 grams or more. There is a special verdict question addressing this issue for Count 1 for each defendant. You are to answer this special verdict question for a defendant only if you find that defendant guilty of Count 1. Bear in mind, however, that your answer to this question must be based on the total amount of crack cocaine you find to have been involved in the entire conspiracy, not on the amount with which a particular defendant was involved.

The government must establish the amount of crack cocaine involved in Count 1 by proof beyond a reasonable doubt. If you find from your consideration of all the evidence that there is proof beyond a reasonable doubt that the amount of cocaine base involved was 50 grams or more, then you should answer the special verdict question “Yes.” If you do not find from your consideration of all the evidence that there is proof beyond a reasonable doubt as to the amount of crack cocaine specified in Count 1, then you must answer the special verdict question “No.”

## ELEMENTS OF THE CHARGE: COUNT 2

Defendants Radermacher and Zamora are charged in Count 2 with maintaining a drug house. To sustain this charge against either of these defendants,, the government must prove these elements:

1. That the defendant whom you are considering maintained a place, namely 12849 W Neezh Street as identified in Count 2;
2. That this defendant maintained this place for the purpose of manufacturing or distributing cocaine base (crack cocaine); and
- 3) That the defendant acted knowingly.

If you find from your consideration of all of the evidence that each of these elements has been proved beyond a reasonable doubt as to the defendant whom you are considering, then you should find that defendant guilty of Count 2.

If, on the other hand, you find from your consideration of all the evidence that any of these elements has not been proved beyond a reasonable doubt as to the defendant whom you are considering, then you must find that defendant not guilty of Count 2.

As for the second element of Count 2, the government has charged two purposes for maintaining this place. Before you may find that the government has met its burden on this point as to a particular defendant, you must unanimously agree on at least one of the charged purposes for that defendant. It is not enough for some of you to find that a defendant maintained the place to manufacture crack cocaine and the rest of you to find that he maintained the place for the purpose of distributing crack cocaine. All twelve of you must agree on at least one purpose for a defendant in order to find that the government has proved the second element of Count 2 as to that defendant.

In proving Count 2, the government is not required to prove that a defendant maintained the named place for the sole purpose of manufacturing or distributing crack

cocaine. Rather, the government must prove that manufacturing or distributing crack cocaine was *a* purpose for the defendant maintaining that place.

In proving Count 2, the government need not prove that a defendant actually manufactured crack cocaine on the premises. What the government must prove is that that defendant had the purpose to do this.

The “purpose” that the government must prove is that of the particular defendant you are considering. It is not enough for a defendant to maintain a place that is used by others for unlawful purposes; the defendant himself must have maintained the place for his own goal of manufacturing or distributing crack cocaine. Therefore, mere association with persons committing a crime, or knowledge of another person's criminal acts, or both, are not sufficient, without more, to establish a defendant's guilt of Count 2. Similarly, presence at the scene of a crime by virtue of living at the residence and knowledge that a crime is being committed are not sufficient by themselves to establish a defendant’s guilt.

#### ELEMENTS OF THE CHARGES: COUNTS 3-7

Defendant Gregorio M. Acosta, Jr., is charged in Counts 3 through 7 with distributing cocaine and crack. To sustain any of these charges, the government must prove these elements:

1. The defendant distributed the controlled substance as charged in the count that you are considering;
2. The defendant did so knowingly or intentionally; and,
3. The defendant knew the substance was a controlled substance.

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

On the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to the count that you are considering, then you must find the defendant not guilty of that count.

You are instructed that cocaine and cocaine base (crack cocaine) both are Schedule II controlled substances.

Distribution is the transfer of possession from one person to another.

The term “knowingly” means that a defendant realized what he was doing and was aware of the nature of his or her conduct and did not act through ignorance, mistake or accident. Knowledge may be proved by a defendant's conduct and by all the facts and circumstances surrounding the case.

Count 6 charges that defendant Gregorio M. Acosta, Jr. distributed five grams or more of cocaine base. If you find defendant Gregorio Acosta guilty of Count 6, then you must determine whether the government also has proved that the amount of cocaine base distributed in that count equaled or exceeded five grams. There is a special verdict question addressing this issue for Count 6 on the verdict form for defendant Gregorio M. Acosta, Jr. You are to answer this special verdict question only if you find this defendant guilty of Count 6.

By themselves, a defendant's presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish a defendant's guilt.

If a defendant performed acts that advanced a criminal activity but had no knowledge that a crime was being committed or was about to be committed, those acts alone are not sufficient to establish the defendant's guilt.

An offense may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

If a defendant knowingly caused the acts of another, then the defendant is responsible for those acts as though he personally committed them.

A defendant need not personally perform every act constituting the crime charged. Every person who willfully participates in the commission of a crime may be found guilty.

Whatever a person is legally capable of doing he can do through another person by causing that person to perform the act. If the defendant willfully ordered, directed or authorized the acts of another, he is responsible for such acts as though he personally committed them.

Any person who knowingly aids, abets, counsels, commands, induces or procures the commission of a crime is guilty of that crime. However, that person must knowingly associate himself or herself with the criminal venture, participate in it and try to make it succeed.

Upon retiring to the jury room, select one of your number as your presiding juror. This person will preside over your deliberations and will be your representative here in court.

Verdict forms have been prepared for you. [Court reads each verdict form.] Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date and sign the form.

Even though the defendants are being tried together, you must give each of them separate consideration. In doing this, you must analyze what the evidence shows about each defendant, leaving out of consideration any evidence that was admitted solely against some other defendant or defendants. Each defendant is entitled to have his case decided on the evidence and the law that applies him. Your verdict of guilty or not guilty for one defendant must not control your decision as to any other defendant on any count.

Similarly, each count of the indictment charges each defendant named in that count with having committed a separate offense. You must consider each count and the evidence relating to it separate and apart from every other count. You should return a separate verdict as to each defendant and as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to that defendant under any other count.

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

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement consistent with the individual judgment of each juror. You are impartial judges of the facts. Your only interest is to determine whether the government has proved its case beyond a reasonable doubt.

If it becomes necessary during your deliberations to communicate with the court, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court. You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case. You must not reveal to any person, including the court, your numerical split on any verdict question until you have reached a unanimous verdict on every defendant and every count.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

VERDICT

05-CR-39-C

GREGORIO M. ACOSTA, JR.

Defendant.

---

**COUNT 1**

We, the Jury in the above-entitled cause, find the defendant, Gregorio M. Acosta, Jr.,

---

("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

**Special Verdict Question for Count 1**

Answer this special verdict question only if you found the defendant guilty of Count 1:

Did the conspiracy involve 50 grams or more of cocaine base (crack cocaine)?

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("Yes" or "No")





**COUNT 3**

We, the Jury in the above-entitled cause, find the defendant, Gregorio M. Acosta, Jr.,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 3 of the indictment.

**COUNT 4**

We, the Jury in the above-entitled cause, find the defendant, Gregorio M. Acosta, Jr.,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 4 of the indictment.

**COUNT 5**

We, the Jury in the above-entitled cause, find the defendant, Gregorio M. Acosta, Jr.,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 5 of the indictment.

**COUNT 6**

We, the Jury in the above-entitled cause, find the defendant, Gregorio M. Acosta, Jr.,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 6 of the indictment.

**Special Verdict Question for Count 6**

Answer this special verdict question only if you found the defendant guilty of Count 6:

Did this charge involve 5 grams or more of cocaine base (crack cocaine)?

\_\_\_\_\_  
("Yes" or "No")

**COUNT 7**

We, the Jury in the above-entitled cause, find the defendant, Gregorio M. Acosta, Jr.,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 7 of the indictment.

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date:\_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

NICOLAS J. ACOSTA,

Defendant.

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VERDICT

05-CR-39-C

**COUNT 1**

We, the Jury in the above-entitled cause, find the defendant, Nicolas J. Acosta,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

**Special Verdict Question for Count 1**

Answer this special verdict question only if you found the defendant guilty of Count 1:

Did the conspiracy involve 50 grams or more of cocaine base (crack cocaine)?

\_\_\_\_\_  
("Yes" or "No")

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date:\_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

JORGE N. BARRAGON,

Defendant.

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VERDICT

05-CR-39-C

**COUNT 1**

We, the Jury in the above-entitled cause, find the defendant, Jorge N. Barragon,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

**Special Verdict Question for Count 1**

Answer this special verdict question only if you found the defendant guilty of Count 1:

Did the conspiracy involve 50 grams or more of cocaine base (crack cocaine)?

\_\_\_\_\_  
("Yes" or "No")

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date:\_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLORENTINO CASTILLO,

Defendant.

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VERDICT

05-CR-39-C

**COUNT 1**

We, the Jury in the above-entitled cause, find the defendant, florentino Castillo,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

**Special Verdict Question for Count 1**

Answer this special verdict question only if you found the defendant guilty of Count 1:

Did the conspiracy involve 50 grams or more of cocaine base (crack cocaine)?

\_\_\_\_\_  
("Yes" or "No")

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date:\_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNESTO ESTRADA, III,

Defendant.

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VERDICT

05-CR-39-C

**COUNT 1**

We, the Jury in the above-entitled cause, find the defendant, Ernesto Estrada, III,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

**Special Verdict Question for Count 1**

Answer this special verdict question only if you found the defendant guilty of Count 1:

Did the conspiracy involve 50 grams or more of cocaine base (crack cocaine)?

\_\_\_\_\_  
("Yes" or "No")

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date:\_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN A. RADERMACHER,

Defendant.

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VERDICT

05-CR-39-C

**COUNT 1**

We, the Jury in the above-entitled cause, find the defendant, John A. Radermacher,

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("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

**Special Verdict Question for Count 1**

Answer this special verdict question only if you found the defendant guilty of Count 1:

Did the conspiracy involve 50 grams or more of cocaine base (crack cocaine)?

---

("Yes" or "No")



COUNT 2

We, the Jury in the above-entitled cause, find the defendant, John A. Radermacher,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 2 of the indictment.

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date: \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT G. SMITH,

Defendant.

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VERDICT

05-CR-39-C

**COUNT 1**

We, the Jury in the above-entitled cause, find the defendant, Robert G. Smith,

---

("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

**Special Verdict Question for Count 1**

Answer this special verdict question only if you found the defendant guilty of Count 1:

Did the conspiracy involve 50 grams or more of cocaine base (crack cocaine)?

---

("Yes" or "No")

---

Presiding Juror

Madison, Wisconsin

Date: \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

PEDRO ZAMORA,

Defendant.

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VERDICT

05-CR-39-C

**COUNT 1**

We, the Jury in the above-entitled cause, find the defendant, Pedro Zamora,

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("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

**Special Verdict Question for Count 1**

Answer this special verdict question only if you found the defendant guilty of Count 1:

Did the conspiracy involve 50 grams or more of cocaine base (crack cocaine)?

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("Yes" or "No")

COUNT 2

We, the Jury in the above-entitled cause, find the defendant, Pedro Zamora,

\_\_\_\_\_  
("Guilty" or "Not Guilty")

of the offense charged in Count 2 of the indictment.

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date: \_\_\_\_\_

