

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Exculpatory Statements -- Later Shown False

Conduct of a defendant, including statements knowingly made and acts knowingly done upon being informed that a crime has been committed, may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence.

When a defendant voluntarily and intentionally offers an explanation, or makes some statement tending to show his innocence, and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily, it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement tending to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

A statement or an act is "knowingly" made or done, if made or done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The jury will always bear in mind that the law never imposes a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

On Or About

You will note the indictment charges that the offense was committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

In the indictment, the word "and" is synonymous with the word "or". That is to say that if the United States proved to your satisfaction beyond a reasonable doubt any of the acts connected by the word "and", it has proven satisfactorily its case on that particular element.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Under Title 18, United States Code, Section 495, a person is held to be charged with knowledge that the ultimate loss from uttering of a falsely endorsed Treasury check will be suffered by the United States.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Count Two of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly utter, pass, and publish a certain U.S. Treasury check, number 15,808,930, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$179.00, and drawn on the Treasury of the United States, knowing that the endorsement had been forged; all in violation of Title 18, United States Code, Section 495.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

ON OR ABOUT --KNOWINGLY -- WILLFULLY

YOU WILL NOTE THAT THE INDICTMENT CHARGES THAT THE OFFENSE WAS COMMITTED "ON OR ABOUT" A CERTAIN DATE. THE PROOF NEED NOT ESTABLISH WITH CERTAINTY THE EXACT DATE OF THE ALLEGED OFFENSE. IT IS SUFFICIENT IF THE EVIDENCE IN THE CASE ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE OFFENSE WAS COMMITTED ON A DATE REASONABLY NEAR THE DATE ALLEGED.

THE WORD "KNOWINGLY," AS THAT TERM HAS BEEN USED FROM TIME TO TIME IN THESE INSTRUCTIONS, MEANS THAT THE ACT WAS DONE VOLUNTARILY AND INTENTIONALLY AND NOT BECAUSE OF MISTAKE OR ACCIDENT.

THE WORD "WILLFULLY," AS THAT TERM HAS BEEN USED FROM TIME TO TIME IN THESE INSTRUCTIONS, MEANS THAT THE ACT WAS COMMITTED VOLUNTARILY AND PURPOSELY, WITH THE SPECIFIC INTENT TO DO SOMETHING THE LAW FORBIDS; THAT IS TO SAY, WITH BAD PURPOSE EITHER TO DISOBEY OR DISREGARD THE LAW.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Count Two of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly utter, pass, and publish a certain U.S. Treasury check, number 15,808,930, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$179.00, and drawn on the Treasury of the United States, knowing that the endorsement had been forged; all in violation of Title 18, United States Code, Section 495.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Under Title 18, United States Code, Section 495, a person is held to be charged with knowledge that the ultimate loss from uttering of a falsely endorsed Treasury check will be suffered by the United States.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Exculpatory Statements -- Later Shown False

Conduct of a defendant, including statements knowingly made and acts knowingly done upon being informed that a crime has been committed, may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence.

When a defendant voluntarily and intentionally offers an explanation, or makes some statement tending to show his innocence, and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily, it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement tending to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

A statement or an act is "knowingly" made or done, if made or done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The jury will always bear in mind that the law never imposes a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.



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Instruction During Trial  
Modified "Allen" Charge

Members of the Jury:

I am going to ask that you continue your deliberations in an effort to agree upon a verdict and dispose of this case; and I have a few additional comments I would like for you to consider as you do so.

This is an important case. The trial has been expensive in time, effort and money to both the defense and the prosecution. If you should fail to agree on a verdict the case is left open and must be tried again. Obviously, another trial would only serve to increase the cost to both sides, and there is no reason to believe that the case can be tried again by either side better or more exhaustively than it has been tried before you.

Any future jury must be selected in the same manner and from the same source as you were chosen, and there is no reason to believe that the case could ever be submitted to 12 men and women more conscientious, more impartial, or more competent to decide it, or that more or clearer evidence could be produced.

If a substantial majority of your number are for a conviction, each dissenting juror ought to consider whether a doubt in his or her own mind is a reasonable one since it appears to make no effective impression upon the minds of the others. On the other hand, if a majority or even a

lesser number of you are for acquittal, the other jurors ought seriously to ask themselves again, and most thoughtfully, whether they do not have a reason to doubt the correctness of a judgment which is not shared by several of their fellow jurors, and whether they should distrust the weight and sufficiency of evidence which fails to convince several of their fellow jurors beyond a reasonable doubt.

Remember at all times that no juror is expected to yield a conscientious conviction he or she may have as to the weight or effect of the evidence. But remember also that, after full deliberation and consideration of the evidence in the case, it is your duty to agree upon a verdict if you can do so without surrendering your conscientious conviction. You must also remember that if the evidence in the case fails to establish guilt beyond a reasonable doubt the accused should have your unanimous verdict of Not Guilty.

You may be as leisurely in your deliberations as the occasion may require and should take all the time which you may feel is necessary.

I will ask now that you retire once again and continue your deliberations with these additional comments in mind to be applied, of course, in conjunction with all of the instructions I have previously given to you.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

CRIMINAL NO. 85-15

UNITED STATES OF AMERICA

PLAINTIFF

VS. UNITED STATES' PROPOSED JURY INSTRUCTIONS

BEULAH MAE ESTEP

DEFENDANT

\* \* \* \* \*

The government respectfully requests the court to include the attached instructions in its charge to the jury.

Leave is respectfully requested to include such other and additional instructions as may become appropriate during the course of the trial.

Respectfully submitted,

LOUIS DEFALAISE  
UNITED STATES ATTORNEY

By: \_\_\_\_\_  
Thomas L. Self  
Assistant U.S. Attorney

CERTIFICATE

I hereby certify that a true copy of the foregoing was served by hand-delivering a copy to Honorable Bernard Pafunda, P.O. Drawer 1155, Pikeville, KY 41501 on this the \_\_\_\_\_ day of February, 1986.

\_\_\_\_\_  
Thomas L. Self  
Assistant U.S. Attorney

UNITED STATES' PROPOSED INSTRUCTION NO. 1

Count One of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly forge the endorsement of Grace Ryan, the true payee, to the back of a certain U.S. Treasury check, number 15,808,930, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$179.00, and drawn on the Treasury of the United States; all in violation of Title 18, United States Code, Section 495.

UNITED STATES' PROPOSED INSTRUCTION NO. 2

Count Two of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly utter, pass, and publish a certain U.S. Treasury check, number 15,808,930, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$179.00, and drawn on the Treasury of the United States, knowing that the endorsement had been forged; all in violation of Title 18, United States Code, Section 495.

UNITED STATES' PROPOSED INSTRUCTION NO. 3

Count Three of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly forged the signature of Grace Ryan, the true payee, to the back of a certain U.S. Treasury check, number 15, 808,929, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan for the Children of R. R. Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$537.00, and drawn on the Treasury of the United States; all in violation of Title 18, United States Code, Section 495.

UNITED STATES' PROPOSED INSTRUCTION NO. 4

Count Four of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly utter, pass, and publish a certain U.S. Treasury check, number 15,808,929, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan for the Children of R. R. Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$537.00, and drawn on the Treasury of the United States, knowing that the endorsement on the subject check had been forged; all in violation of Title 18, United States Code, Section 495.

UNITED STATES' PROPOSED INSTRUCTION NO. 5

Title 18, United States Code, Section 495, provides in paragraph one that:

"Whoever falsely makes, alters, forges, or counterfeits any . . . writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money [shall be guilty of an offense against the United States]."

The term "any writing" as used in that law includes a check drawn on the Treasurer of the United States.

The term "forges," as used in that law, includes the writing of a payee's endorsement or signature on a check without the payee's permission or authority, and doing so with intent to defraud.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to one's self.

Thus, in order to establish the offense of forgery as alleged in the indictment, there are two essential elements which must be proved beyond a reasonable doubt:

**First:** The act of forging the payee's endorsement on the United States Treasury check as charged;

**Second:** Doing such act willfully and with intent to defraud, that is, to obtain, or to enable some other person to obtain any sum of money directly or indirectly from the United States.



Since the gist of the offense is to willfully forge someone's endorsement with intent to defraud, it is not necessary to show that the Government was in fact defrauded or that anyone actually obtained money from the United States as a result of the alleged forgery.

UNITED STATES' PROPOSED INSTRUCTION NO. 6

Title 18, United States Code, Section 495, provides in paragraph two that:

"Whoever utters or publishes as true any . . . false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged or counterfeited [shall be guilty of an offense against the United States]."

The term "writing" as used in that law includes a check drawn on the Treasurer of the United States.

The term "forged" as used in that law includes the writing or signing of a payee's endorsement on a check without the payee's permission or authority.

To "utter or publish as true", as used in that law, means to exhibit and use or to attempt to use some writing, such as an attempt to cash a check or otherwise place it in circulation, and in so doing to state or imply, directly or indirectly, that the writing is genuine.

To act with "intent to defraud", as used in that law, means to act knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to one's self.

Thus, there are three essential elements which must be proved beyond a reasonable doubt in order to establish the offense of uttering a forged check as charged in the indictment:

**First:** The act of uttering or attempting to circulate as true and genuine the United States Treasury check described in the indictment;

**Second:** Doing such act with knowledge that the payee's endorsement on such check was a forgery; and

**Third:** Doing such act willfully with intent to defraud the United States.

Since the gist of the offense is willfully uttering or attempting to circulate the check as genuine with knowledge that the endorsement is forged and with intent to defraud, it is not necessary to show that anyone actually obtained money from the United States as a result of the alleged uttering.

UNITED STATES' PROPOSED INSTRUCTION NO. 7

Under Title 18, United States Code, Section 495, a person is held to be charged with knowledge that the ultimate loss from uttering of a falsely endorsed Treasury check will be suffered by the United States.

United States v. Indelicato,  
611 F.2d 376 (1st. Cir. 1979)

UNITED STATES' PROPOSED INSTRUCTION NO. 8

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

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UNITED STATES' PROPOSED INSTRUCTION NO. 10

On Or About

You will note the indictment charges that the offense was committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

In the indictment, the word "and" is synonymous with the word "or". That is to say that if the United States proved to your satisfaction beyond a reasonable doubt any of the acts connected by the word "and", it has proven satisfactorily its case on that particular element.

UNITED STATES' PROPOSED INSTRUCTION NO. 11

Exculpatory Statements -- Later Shown False

Conduct of a defendant, including statements knowingly made and acts knowingly done upon being informed that a crime has been committed, may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence.

When a defendant voluntarily and intentionally offers an explanation, or makes some statement tending to show his innocence, and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily, it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement tending to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

A statement or an act is "knowingly" made or done, if made or done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The jury will always bear in mind that the law never imposes a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

THE INDICTMENT OR FORMAL CHARGE AGAINST A DEFENDANT IS NOT EVIDENCE OF GUILT. INDEED, THE DEFENDANT IS PRESUMED BY THE LAW TO BE INNOCENT. THE LAW DOES NOT REQUIRE A DEFENDANT TO PROVE HIS INNOCENCE OR PRODUCE ANY EVIDENCE AT ALL, AND NO INFERENCE WHATEVER MAY BE DRAWN FROM THE ELECTION OF A DEFENDANT NOT TO TESTIFY.

THE COURT HAS ACCEPTED BY WAY OF JUDICIAL NOTICE THAT THE TOWNS OF FREEBURN, JAMBOREE, PAW PAW, STOPOVER AND PIKEVILLE ARE IN THE EASTERN DISTRICT OF KENTUCKY. YOU MAY THEREFORE TREAT THIS FACT IN THE SAME WAY THAT YOU WOULD TREAT ANY OTHER FACT SHOWN BY THE EVIDENCE.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

CRIMINAL NO. 85-15

UNITED STATES OF AMERICA

PLAINTIFF,

VS:

BEULAH ESTEP

DEFENDANT.

COURT'S INSTRUCTION TO THE JURY

MEMBERS OF THE JURY:

YOU HAVE NOW HEARD ALL OF THE EVIDENCE IN THE CASE AS WELL AS THE FINAL ARGUMENTS OF THE LAWYERS FOR THE PARTIES.

IT BECOMES MY DUTY, THEREFORE, TO INSTRUCT YOU ON THE RULES OF THE LAW THAT YOU MUST FOLLOW AND APPLY IN ARRIVING AT YOUR DECISION IN THE CASE.

THE COURT'S INSTRUCTIONS ARE IN THREE SEPARATE PHASES:

FIRST, THE RULES OF LAW GOVERNING THE MANNER IN WHICH THE JURY CONSIDERS THE OFFENSE INSTRUCTIONS:

SECOND, THE OFFENSE INSTRUCTIONS, WHICH IS THE LAW GOVERNING THE OFFENSE CHARGED IN THE INDICTMENT;

THIRD, ARE THE DEFINITIONS OF PARTICULAR WORDS CONTAINED IN THE OFFENSE INSTRUCTIONS AND THE CONDUCT OF THE JURY AFTER THE CASE IS UNDER SUBMISSION TO THE JURY.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

DUTY TO FOLLOW INSTRUCTIONS

YOU, AS JURORS, ARE THE JUDGES OF THE FACTS. BUT IN DETERMINING WHAT ACTUALLY HAPPENED IN THIS CASE --- THAT IS, IN REACHING YOUR DECISION AS TO THE FACTS -- IT IS YOUR SWORN DUTY TO FOLLOW THE LAW I AM NOW IN THE PROCESS OF DEFINING FOR YOU.

AND YOU MUST FOLLOW ALL OF MY INSTRUCTIONS AS A WHOLE. YOU HAVE NO RIGHT TO DISREGARD OR GIVE SPECIAL ATTENTION TO ANY ONE INSTRUCTION, OR TO QUESTION THE WISDOM OR CORRECTNESS OF ANY RULE I MAY STATE TO YOU, THAT IS, YOU MUST NOT SUBSTITUTE OR FOLLOW YOUR OWN NOTION OR OPINION AS TO WHAT THE LAW IS OR OUGHT TO BE. IT IS YOUR DUTY TO APPLY THE LAW AS I GIVE IT TO YOU, REGARDLESS OF THE CONSEQUENCES.

BY THE SAME TOKEN IT IS ALSO YOUR DUTY TO BASE YOUR VERDICT SOLELY UPON THE TESTIMONY AND EVIDENCE IN THE CASE, WITHOUT PREJUDICE OR SYMPATHY. THAT WAS THE PROMISE YOU MADE AND THE OATH YOU TOOK BEFORE BEING ACCEPTED BY THE PARTIES AS JURORS IN THIS CASE, AND THEY HAVE THE RIGHT TO EXPECT NOTHING LESS.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

PRESUMPTION OF INNOCENCE, BURDEN OF  
PROOF, REASONABLE DOUBT

THE INDICTMENT OR FORMAL CHARGE AGAINST A DEFENDANT IS NOT EVIDENCE OF GUILT. INDEED, THE DEFENDANT IS PRESUMED BY THE LAW TO BE INNOCENT. THE LAW DOES NOT REQUIRE A DEFENDANT TO PROVE HIS INNOCENCE OR PRODUCE ANY EVIDENCE AT ALL. THE GOVERNMENT HAS THE BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE DOUBT, AND IF IT FAILS TO DO SO YOU MUST ACQUIT HIM.

THUS, WHILE THE GOVERNMENT'S BURDEN OF PROOF IS A STRICT OR HEAVY BURDEN, IT IS NOT NECESSARY THAT THE DEFENDANT'S GUILT BE PROVED BEYOND ALL POSSIBLE DOUBT. IT IS ONLY REQUIRED THAT THE GOVERNMENT'S PROOF EXCLUDE ANY "REASONABLE DOUBT" CONCERNING THE DEFENDANT'S GUILT.

A "REASONABLE DOUBT" IS A REAL DOUBT, BASED UPON REASON AND COMMON SENSE AFTER CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE IN THE CASE.

PROOF BEYOND A REASONABLE DOUBT, THEREFORE, IS PROOF OF SUCH A CONVINCING CHARACTER THAT YOU WOULD BE WILLING TO RELY AND ACT UPON IT WITHOUT HESITATION IN THE MOST IMPORTANT OF YOUR OWN AFFAIRS. IF YOU ARE CONVINCED THAT THE ACCUSED HAS BEEN PROVED GUILTY BEYOND REASONABLE DOUBT, SAY SO. IF YOU ARE NOT CONVINCED, SAY SO.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

EVIDENCE -- EXCLUDING ARGUMENT OF COUNSEL  
AND COMMENT OF COURT

AS STATED EARLIER IT IS YOUR DUTY TO DETERMINE THE FACTS, AND IN SO DOING YOU MUST CONSIDER ONLY THE EVIDENCE I HAVE ADMITTED IN THE CASE. THE TERM "EVIDENCE" INCLUDES THE SWORN TESTIMONY OF THE WITNESSES AND THE EXHIBITS ADMITTED IN THE RECORD.

REMEMBER THAT ANY STATEMENTS, OBJECTIONS OR ARGUMENTS MADE BY THE LAWYERS ARE NOT EVIDENCE IN THE CASE. THE FUNCTION OF THE LAWYERS IS TO POINT OUT THOSE THINGS THAT ARE MOST SIGNIFICANT OR MOST HELPFUL TO THEIR SIDE OF THE CASE, AND IN SO DOING TO CALL YOUR ATTENTION TO CERTAIN FACTS OR INFERENCES THAT MIGHT OTHERWISE ESCAPE YOUR NOTICE. IN THE FINAL ANALYSIS, HOWEVER, IT IS YOUR OWN RECOLLECTION AND INTERPRETATION OF THE EVIDENCE THAT CONTROLS IN THE CASE. WHAT THE LAWYERS SAY IS NOT BINDING UPON YOU. ALSO, DURING THE COURSE OF A TRIAL I OCCASIONALLY MAKE COMMENTS TO THE LAWYERS, OR ASK QUESTIONS OF A WITNESS, OR ADMONISH A WITNESS CONCERNING THE MANNER IN WHICH HE SHOULD RESPOND TO THE QUESTIONS OF COUNSEL. DO NOT ASSUME FROM ANYTHING I MAY HAVE SAID THAT I HAVE ANY OPINION CONCERNING ANY OF THE ISSUES IN THIS

CASE. EXCEPT FOR MY INSTRUCTIONS TO YOU ON THE LAW, YOU SHOULD  
DISREGARD ANYTHING I MAY HAVE SAID DURING THE TRIAL IN ARRIVING AT YOUR  
OWN FINDINGS AS TO THE FACTS.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

EVIDENCE -- INFERENCES -- DIRECT  
AND CIRCUMSTANTIAL

SO, WHILE YOU SHOULD CONSIDER ONLY THE EVIDENCE IN THE CASE, YOU ARE PERMITTED TO DRAW SUCH 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 WHICH REASON AND COMMON SENSE LEAD YOU TO DRAW FROM THE FACTS WHICH HAVE BEEN ESTABLISHED BY THE TESTIMONY AND EVIDENCE IN THE CASE.

YOU MAY ALSO CONSIDER EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. "DIRECT EVIDENCE" IS THE TESTIMONY OF ONE WHO ASSERTS ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYE WITNESS. "CIRCUMSTANTIAL EVIDENCE" IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING EITHER THE GUILT OR INNOCENCE OF THE DEFENDANT. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT REQUIRES ONLY THAT YOU WEIGH ALL OF THE EVIDENCE AND BE CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT BEFORE HE CAN BE CONVICTED.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

CREDIBILITY OF WITNESSES

NOW, I HAVE SAID THAT YOU MUST CONSIDER ALL OF THE EVIDENCE. THIS DOES NOT MEAN, HOWEVER, THAT YOU MUST ACCEPT ALL OF THE EVIDENCE AS TRUE OR ACCURATE.

YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OR "BELIEVABILITY" OF EACH WITNESS AND THE WEIGHT TO BE GIVEN TO HIS TESTIMONY. IN WEIGHING THE TESTIMONY OF A WITNESS YOU SHOULD CONSIDER HIS RELATIONSHIP TO THE GOVERNMENT OR THE DEFENDANT; HIS INTEREST, IF ANY, IN THE OUTCOME OF THE CASE; HIS MANNER OF TESTIFYING; HIS OPPORTUNITY TO OBSERVE OR ACQUIRE KNOWLEDGE CONCERNING THE FACTS ABOUT WHICH HE TESTIFIED; HIS CANDOR, FAIRNESS AND INTELLIGENCE; AND THE EXTENT TO WHICH HE HAS BEEN SUPPORTED OR CONTRADICTED BY OTHER CREDIBLE EVIDENCE. YOU MAY, IN SHORT, ACCEPT OR REJECT THE TESTIMONY OF ANY WITNESS IN WHOLE OR IN PART.

ALSO, THE WEIGHT OF THE EVIDENCE IS NOT NECESSARILY DETERMINED BY THE NUMBER OF WITNESSES TESTIFYING AS TO THE EXISTENCE OR NON-EXISTENCE OF ANY FACT. YOU MAY FIND THAT THE TESTIMONY OF A SMALLER NUMBER OF WITNESSES AS TO ANY FACT IS MORE CREDIBLE THAN THE TESTIMONY OF A LARGER NUMBER OF WITNESSES TO THE CONTRARY.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

IMPEACHMENT

INCONSISTENT STATEMENT ONLY

A WITNESS MAY BE DISCREDITED OR "IMPEACHED" BY CONTRADICTORY EVIDENCE, BY A SHOWING THAT HE TESTIFIED FALSELY CONCERNING A MATERIAL MATTER, OR BY EVIDENCE THAT AT SOME OTHER TIME THE WITNESS HAS SAID OR DONE SOMETHING, OR HAS FAILED TO SAY OR DO SOMETHING, WHICH IS INCONSISTENT WITH THE WITNESS' PRESENT TESTIMONY.

IF YOU BELIEVE THAT ANY WITNESS HAS BEEN SO IMPEACHED, THEN IT IS YOUR EXCLUSIVE PROVINCE TO GIVE THE TESTIMONY OF THAT WITNESS SUCH CREDIBILITY OR WEIGHT, IF ANY, AS YOU MAY THINK IT DESERVES.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

EXPERT WITNESSES

THE RULES OF EVIDENCE PROVIDE THAT IF SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE MIGHT ASSIST THE JURY IN UNDERSTANDING THE EVIDENCE OR IN DETERMINING A FACT IN ISSUE, A WITNESS QUALIFIED AS AN EXPERT BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION, MAY TESTIFY AND STATE HIS OPINION CONCERNING SUCH MATTERS.

YOU SHOULD CONSIDER EACH EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS YOU MAY THINK IT DESERVES. IF YOU SHOULD DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU SHOULD CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, THEN YOU MAY DISREGARD THE OPINION ENTIRELY.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

CAUTION -- PUNISHMENT

A SEPARATE CRIME OR OFFENSE IS CHARGED IN EACH COUNT OF THE INDICTMENT. EACH CHARGE AND THE EVIDENCE PERTAINING TO IT SHOULD BE CONSIDERED SEPARATELY. THE FACT THAT YOU MAY FIND THE DEFENDANT GUILTY OR NOT GUILTY AS TO ONE OF THE OFFENSES CHARGED SHOULD NOT CONTROL YOUR VERDICT AS TO ANY OTHER OFFENSE CHARGED.

I CAUTION YOU, MEMBERS OF THE JURY, THAT YOU ARE HERE TO DETERMINE THE GUILT OR INNOCENCE OF THE ACCUSED FROM THE EVIDENCE IN THIS CASE. THE DEFENDANT IS NOT ON TRIAL FOR ANY ACT OR CONDUCT OR OFFENSE NOT ALLEGED IN THE INDICTMENT. NEITHER ARE YOU CALLED UPON TO RETURN A VERDICT AS TO THE GUILT OR INNOCENCE OF ANY OTHER PERSON OR PERSONS NOT ON TRIAL AS A DEFENDANT IN THIS CASE.

ALSO, THE PUNISHMENT PROVIDED BY LAW FOR THE OFFENSE CHARGED IN THE INDICTMENT IS A MATTER EXCLUSIVELY WITHIN THE PROVINCE OF THE COURT OR JUDGE, AND SHOULD NEVER BE CONSIDERED BY THE JURY IN ANY WAY, IN ARRIVING AT AN IMPARTIAL VERDICT AS TO THE GUILT OR INNOCENCE OF THE ACCUSED.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Count One of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly forge the endorsement of Grace Ryan, the true payee, to the back of a certain U.S. Treasury check, number 15,808,930, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$179.00, and drawn on the Treasury of the United States; all in violation of Title 18, United States Code, Section 495.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Count Two of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly utter, pass, and publish a certain U.S. Treasury check, number 15,808,930, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$179.00, and drawn on the Treasury of the United States, knowing that the endorsement had been forged; all in violation of Title 18, United States Code, Section 495.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Count Three of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly forged the signature of Grace Ryan, the true payee, to the back of a certain U.S. Treasury check, number 15, 808,929, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan for the Children of R. R. Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$537.00, and drawn on the Treasury of the United States; all in violation of Title 18, United States Code, Section 495.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Count Four of the indictment charges . . .

That on or about December 3, 1982, in Pike County, Kentucky, in the Eastern District of Kentucky, Beulah Mae Estep did, for the purpose of obtaining from the United States, a sum of money, knowingly utter, pass, and publish a certain U.S. Treasury check, number 15,808,929, bearing Symbol 2082, dated December 3, 1982, made payable to Grace Ryan for the Children of R. R. Ryan, General Delivery, Matewan, West Virginia, 25678, being in the amount of \$537.00, and drawn on the Treasury of the United States, knowing that the endorsement on the subject check had been forged; all in violation of Title 18, United States Code, Section 495.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Title 18, United States Code, Section 495, provides in paragraph one that:

"Whoever falsely makes, alters, forges, or counterfeits any . . . writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money [shall be guilty of an offense against the United States]."

The term "any writing" as used in that law includes a check drawn on the Treasurer of the United States.

The term "forges," as used in that law, includes the writing of a payee's endorsement or signature on a check without the payee's permission or authority, and doing so with intent to defraud.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to one's self.

Thus, in order to establish the offense of forgery as alleged in the indictment, there are two essential elements which must be proved beyond a reasonable doubt:

**First:** The act of forging the payee's endorsement on the United States Treasury check as charged;

**Second:** Doing such act willfully and with intent to defraud, that is, to obtain, or to enable some other person to obtain any sum of money directly or indirectly from the United States.

Since the gist of the offense is to willfully forge someone's endorsement with intent to defraud, it is not necessary to show that the Government was in fact defrauded or that anyone actually obtained money from the United States as a result of the alleged forgery.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Title 18, United States Code, Section 495, provides in paragraph two that:

"Whoever utters or publishes as true any . . . false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged or counterfeited [shall be guilty of an offense against the United States]."

The term "writing" as used in that law includes a check drawn on the Treasurer of the United States.

The term "forged" as used in that law includes the writing or signing of a payee's endorsement on a check without the payee's permission or authority.

To "utter or publish as true", as used in that law, means to exhibit and use or to attempt to use some writing, such as an attempt to cash a check or otherwise place it in circulation, and in so doing to state or imply, directly or indirectly, that the writing is genuine.

To act with "intent to defraud", as used in that law, means to act knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to one's self.

Thus, there are three essential elements which must be proved beyond a reasonable doubt in order to establish the offense of uttering a forged check as charged in the indictment:

**First:** The act of uttering or attempting to circulate as true and genuine the United States Treasury check described in the indictment;

**Second:** Doing such act with knowledge that the payee's endorsement on such check was a forgery; and

**Third:** Doing such act willfully with intent to defraud the United States.

Since the gist of the offense is willfully uttering or attempting to circulate the check as genuine with knowledge that the endorsement is forged and with intent to defraud, it is not necessary to show that anyone actually obtained money from the United States as a result of the alleged uttering.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Under Title 18, United States Code, Section 495, a person is held to be charged with knowledge that the ultimate loss from uttering of a falsely endorsed Treasury check will be suffered by the United States.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

ON OR ABOUT --KNOWINGLY -- WILLFULLY

YOU WILL NOTE THAT THE INDICTMENT CHARGES THAT THE OFFENSE WAS COMMITTED "ON OR ABOUT" A CERTAIN DATE. THE PROOF NEED NOT ESTABLISH WITH CERTAINTY THE EXACT DATE OF THE ALLEGED OFFENSE. IT IS SUFFICIENT IF THE EVIDENCE IN THE CASE ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE OFFENSE WAS COMMITTED ON A DATE REASONABLY NEAR THE DATE ALLEGED.

THE WORD "KNOWINGLY," AS THAT TERM HAS BEEN USED FROM TIME TO TIME IN THESE INSTRUCTIONS, MEANS THAT THE ACT WAS DONE VOLUNTARILY AND INTENTIONALLY AND NOT BECAUSE OF MISTAKE OR ACCIDENT.

THE WORD "WILLFULLY," AS THAT TERM HAS BEEN USED FROM TIME TO TIME IN THESE INSTRUCTIONS, MEANS THAT THE ACT WAS COMMITTED VOLUNTARILY AND PURPOSELY, WITH THE SPECIFIC INTENT TO DO SOMETHING THE LAW FORBIDS; THAT IS TO SAY, WITH BAD PURPOSE EITHER TO DISOBEY OR DISREGARD THE LAW.

IN THE INDICTMENT, THE WORD "AND" IS SYNONYMOUS WITH THE WORD "OR". THAT IS TO SAY THAT IF THE UNITED STATES PROVED TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT ANY OF THE ACTS CONNECTED BY THE WORD "AND", IT HAS PROVEN SATISFACTORILY ITS CASE ON THAT PARTICULAR ELEMENT.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Exculpatory Statements -- Later Shown False

Conduct of a defendant, including statements knowingly made and acts knowingly done upon being informed that a crime has been committed, may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence.

When a defendant voluntarily and intentionally offers an explanation, or makes some statement tending to show his innocence, and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily, it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement tending to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

A statement or an act is "knowingly" made or done, if made or done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The jury will always bear in mind that the law never imposes a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

DUTY TO DELIBERATE

ANY VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. IN ORDER RETURN A VERDICT, IT IS NECESSARY THAT EACH JUROR AGREE THERE-TO. IN OTHER WORDS, YOUR VERDICT MUST BE UNANIMOUS.

IT IS YOUR DUTY AS JURORS, TO CONSULT WITH ONE ANOTHER, AND TO DELIBERATE IN AN EFFORT TO REACH AGREEMENT IF YOU CAN DO SO WITHOUT VIOLENCE TO INDIVIDUAL JUDGMENT. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER AN IMPARTIAL CONSIDERATION OF THE EVIDENCE IN THE CASE WITH YOUR FELLOW JURORS. IN THE COURSE OF YOUR DELIBERATIONS, DO NOT HESITATE TO RE-EXAMINE YOUR OWN VIEWS AND CHANGE YOUR OPINION IF CONVINCED IT IS ERRONEOUS. BUT DO NOT SURRENDER YOUR HONEST CONVICTION AS TO THE WEIGHT OR EFFECT OF THE EVIDENCE SOLELY BECAUSE OF THE OPINION OF YOUR FELLOW JURORS, OR FOR THE MERE PURPOSE OF RETURNING A VERDICT.

REMEMBER AT ALL TIMES, YOU ARE NOT PARTISANS. YOU ARE JUDGES--JUDGES OF THE FACTS. YOUR SOLE INTEREST IS TO SEEK THE TRUTH FROM THE EVIDENCE IN THE CASE.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

VERDICT

UPON RETIRING TO THE JURY ROOM YOU SHOULD FIRST SELECT ONE OF YOUR NUMBER TO ACT AS YOUR FOREPERSON WHO WILL PRESIDE OVER YOUR DELIBERATIONS AND WILL BE YOUR SPOKESMAN HERE IN COURT. A FORM OF VERDICT HAS BEEN PREPARED FOR YOUR CONVENIENCE.

[EXPLAIN VERDICT]

YOU WILL TAKE THE VERDICT FORM TO THE JURY ROOM AND WHEN YOU HAVE REACHED UNANIMOUS AGREEMENT AS TO YOUR VERDICT, YOU WILL HAVE YOUR FOREPERSON FILL IT IN, DATE AND SIGN IT, AND THEN RETURN TO THE COURTROOM.

IF, DURING YOUR DELIBERATIONS, YOU SHOULD DESIRE TO COMMUNICATE WITH THE COURT, PLEASE REDUCE YOUR MESSAGE OR QUESTION TO WRITING SIGNED BY THE FOREPERSON, AND PASS THE NOTE TO THE MARSHAL WHO WILL BRING IT TO MY ATTENTION. I WILL THEN RESPOND AS PROMPTLY AS POSSIBLE, EITHER IN WRITING OR BY HAVING YOU RETURNED TO THE COURTROOM SO THAT I CAN ADDRESS YOU ORALLY. I CAUTION YOU, HOWEVER, WITH REGARD TO ANY MESSAGE OR QUESTION YOU MIGHT SEND, THAT YOU SHOULD NEVER STATE OR SPECIFY YOUR NUMERICAL DIVISION AT THE TIME.