



## INSTRUCTION NO. 2

This is a criminal case brought by the United States government. The Defendant, John Thomas Harpole, is charged in a twelve count indictment with Attempted Tax Evasion and Failure to File Income Tax Returns. The indictment is simply the description of the charges made by the Government against the Defendant; it is not evidence of anything.

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes that the Government must prove to make its case.

The Defendant is charged in Counts 1-6 of the indictment with Attempted Tax Evasion for the years 1997, 1998, 1999, 2000, 2001, and 2002 in violation of 26 U.S.C. § 7201. In order for the Defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

1. First, John Harpole owed federal income tax for the years in question;
2. Second, the Defendant knew that he owed federal income tax;
3. Third, the Defendant made an affirmative attempt to evade or defeat an income tax; and
4. Fourth, in attempting to evade or defeat such additional tax, the Defendant acted willfully.

Failing to file tax returns, failing to keep records, failing to report, and failing to pay income taxes standing alone do not constitute an affirmative attempt to evade or defeat an income tax.

The Defendant is charged in Counts 7-12 of the indictment with Failure to File Income Tax Returns for the years 1997, 1998, 1999, 2000, 2001, and 2002 in violation of 26 U.S.C. § 7203. In order for the Defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

1. First, the Defendant was required to file an income tax return for the years in question;
2. Second, the Defendant did not file a tax return by the due date required by law; and
3. Third, the Defendant acted willfully for the purpose of evading his duty under the tax laws and not as a result of accident or negligence.

### **INSTRUCTION NO. 3**

I shall discuss with you briefly the law relating to each of these elements.

An act is done knowingly if the Defendant is aware of the act and does not act or fail to act through ignorance, mistake, or accident.

You may consider evidence of the Defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the Defendant acted knowingly.

## INSTRUCTION NO. 4

Willfulness requires the Government to prove that the law imposed a duty on the Defendant, that the Defendant knew of this duty, and that he voluntarily and intentionally violated that duty.

Prior and subsequent acts of the Defendant filing tax returns may be considered by you to show that the Defendant knew that the law required him to file federal income tax returns and that he voluntarily and intentionally violated that legal requirement. You may similarly consider a pattern of failing to file returns for several years as evidence that the Defendant willfully failed to file his or her income tax returns. Other conduct you may consider in determining whether the Defendant acted willfully includes:

1. whether an accountant gave reminders or suggestions to the Defendant to file tax returns;
2. whether the Defendant was aware of any court decisions rejecting his interpretation of the law;
3. whether the Defendant participated in tax protest activities;
4. whether the Defendant received warning letters from the IRS; and
5. whether the Defendant received a large amount of gross income.

## INSTRUCTION NO. 5

A Defendant does not act willfully if he (1) fails to file federal income tax returns or (2) evades his taxes if he believes in good faith that he is acting within the law, or that his actions comply with the law. Therefore, it is the Government's burden to prove beyond a reasonable doubt that the Defendant did not act as a result of a good faith belief that his actions complied with the law.

A good faith belief is one that is honestly and genuinely held. Therefore, if the Defendant actually believed that what he was doing was in accord with the tax statutes, he cannot be said to have the criminal intent to willfully evade taxes or to willfully fail to file tax returns.

A good faith belief need not be objectively reasonable to be held in good faith. Therefore, a good faith belief can be based upon a misunderstanding or a mistaken view of the tax laws. However, you are permitted to consider whether the Defendant's stated belief about the tax statutes was reasonable in deciding whether the belief was honestly or genuinely held.

A person who knows the requirements of the tax laws and simply disagrees with those requirements cannot be said to have acted in good faith. Likewise, the generalized belief that tax laws are unconstitutional — no matter how earnestly asserted — is not a good faith belief that can constitute a defense to any charge in the indictment. It is the duty of all citizens to obey the law whether they agree with the law or not.

## INSTRUCTION NO. 6

In order for a document to qualify as an income tax return: (1) it must be timely filed; (2) it must purport to be a return; (3) it must be executed under penalty of perjury; (4) it must contain sufficient data to allow calculation of tax; and (5) it must represent an honest and reasonable attempt to satisfy the requirements of the tax laws.

**INSTRUCTION NO. 7**

A separate crime is charged against the Defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

## INSTRUCTION NO. 8

The Defendant has plead not guilty to the charges and is presumed innocent unless and until proved guilty beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the Defendant is guilty. It is not required that the Government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the Defendant is guilty, it is your duty to find the Defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the Defendant is guilty, it is your duty to find the Defendant guilty.

## INSTRUCTION NO. 9

You are here only to determine whether the Defendant is guilty or not guilty of the charges in the indictment. Your determination must be made only from the evidence in the case. The Defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the Defendant only as they relate to these charges against this Defendant.

## **INSTRUCTION NO. 10**

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which all the lawyers stipulate.

## INSTRUCTION NO. 11

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the Court's ruling on it.
3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, some evidence is admitted for a limited purpose only. When I have instructed you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.
4. Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

## INSTRUCTION NO. 12

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

**INSTRUCTION NO. 13**

Certain charts and summaries have been received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

**INSTRUCTION NO. 14**

The Defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

## INSTRUCTION NO. 15

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

1. the witness' opportunity and ability to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

**INSTRUCTION NO. 16**

You have heard testimony that the Defendant made a statement. It is for you to decide

1. whether the Defendant made the statement; and
2. if so, how much weight to give to it.

In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the Defendant may have made it.

## INSTRUCTION NO. 17

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

**INSTRUCTION NO. 18**

The punishment provided by law for this crime is for the Court to decide. You may not consider punishment in deciding whether the Government has proved its case against the Defendant beyond a reasonable doubt.

**INSTRUCTION NO. 19**

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be — that is entirely for you to decide.

## INSTRUCTION NO. 20

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in the courtroom.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right. It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

**INSTRUCTION NO. 21**

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

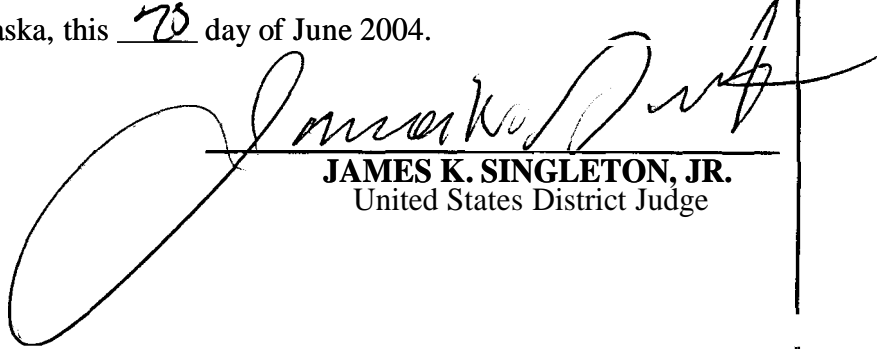
**INSTRUCTION NO. 22**

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and give a note to the bailiff outside your door that you have reached a verdict.

**INSTRUCTION NO. 23**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the 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 me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone — including me — how the jury stands, numerically or otherwise, on the question of the guilt of the Defendant, until after you have reached a unanimous verdict or have been discharged.

Dated at Anchorage, Alaska, this 20 day of June 2004.



**JAMES K. SINGLETON, JR.**  
United States District Judge