

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

UNITED STATES)

GENERAL COURT-MARTIAL

v.)

GOVERNMENT REQUESTED
INSTRUCTIONS
(Findings and Sentencing)

WUTERICH, Frank D.)

XXX XX 3221)

Staff Sergeant)

U.S. Marine Corps)

19 July 2010

The Government respectfully requests that the military judge consider the following instructions (derived from the Military Judge's Benchbook, DPAM 27-9, unless otherwise specified):

1. 2-5-10 Lesser Included Offenses
2. 3-4-1 Attempts Other Than Murder and Voluntary Manslaughter
3. 3-16-4 Derelict in Duty
4. 3-44-1 Voluntary Manslaughter
5. 3-44-2 Involuntary Manslaughter
6. 3-54-1 Simple Assault
7. 3-54-2 Assault Consummated by Battery
8. 3-54-8 Aggravated Assault – Dangerous Weapon, Means, or Force
9. 3-64-1 Assault with Intent to Commit Voluntary Manslaughter
10. 3-85-1 Negligent Homicide
11. 3-96-1 Obstructing Justice
12. 3-100A-1 Reckless Endangerment
13. 7-1 Vicarious Liability – Principals
14. 7-1-1 Aider and Abettor
15. 7-1-2 Principals – Counseling, Commanding, or Procuring
16. 7-1-3 Principals – Causing an Act to be Done
17. 7-3 Circumstantial Evidence, and Notes 1,2, and 3
18. 7-5 Depositions
19. 7-6 Judicial Notice
20. 7-7-1 Credibility of Witnesses
21. 7-9-1 Expert Testimony
22. 7-11-1 Prior Inconsistent Statement
23. 7-11-2 Prior Consistent Statement
24. 7-13-1 Uncharged Misconduct – Accused
25. 7-15 Variance- Findings by Exceptions and Substitutions
26. 7-17 “Spill-Over” Facts
27. 7-18 “Have You Heard” Questions to Impeach Opinion
28. 7-19 Witness Testifying Under Grant of Immunity or Promise of Leniency
29. 7-22 False Exculpatory Statements
30. Topic: Verdict limited to the Accused only (see attachment)

The government further requests leave to add instructions in the future, based on testimony and other evidence presented at trial.

N. L. Gannon 19 JULY 2010

N. L. GANNON
Major, USMC
Trial Counsel

**GOVERNMENT'S PROPOSED INSTRUCTION
(Verdict Limited to Accused Only)**

You are here to determine whether the Government has proven the guilt of the Accused for the Charges and specifications beyond a reasonable doubt. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. Whether anyone else should be prosecuted or convicted is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the Government has proved this Accused guilty for the crimes charged. Do not let the possible guilt of others influence your decision in any way.

The basis for this instruction is Rule 8.08, Pattern Criminal Jury Instructions, Sixth Circuit (see attached)

PATTERN CRIMINAL JURY INSTRUCTIONS

**Prepared by
Committee on Pattern Criminal
Jury Instructions
District Judges Association
Sixth Circuit**

**2005 Edition
with
March 30, 2007 Updates**

Chapter 8.00

DELIBERATIONS AND VERDICT

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- 8.08 Verdict Limited to Charges Against This Defendant
- 8.09 Court Has No Opinion
- 8.10 Juror Notes

8.08 VERDICT LIMITED TO CHARGES AGAINST THIS DEFENDANT

(1) Remember that the defendant is only on trial for the particular crime charged in the indictment [and the lesser charges which I described]. Your job is limited to deciding whether the government has proved the crime charged [or one of those lesser charges].

[(2) Also remember that whether anyone else should be prosecuted and convicted for this crime is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved this defendant guilty. Do not let the possible guilt of others influence your decision in any way.]

Use Note

Any changes made in paragraphs (1) and (2) should be made in paragraphs (2) and (3) of Instruction 2.01 as well.

Bracketed paragraph (2) should be included if the possible guilt of others has been raised as an issue during the trial. Modifications of this paragraph may be necessary in conspiracy, aiding and abetting, alibi or mistaken identification cases, where the possible guilt of others may be a legitimate issue.

Committee Commentary 8.08

2005 Edition

The Committee made no change in the instruction. The Committee also decided that no change in or addition to the 1991 Committee Commentary is warranted.

1991 Edition

The purpose of this instruction is twofold. First, to remind the jurors that their verdict is limited to the particular charge made against the defendant. And second, to remind them that their verdict is limited to the particular defendant who has been charged. It is a plain English restatement of various concepts found in comparable instructions. See Fifth Circuit Instruction 1.20, Ninth Circuit Instruction 3.12, Eleventh Circuit Basic Instruction 10.1, Federal Judicial Center Instruction 20, Devitt and Blackmar Instructions 11.04 and 11.06, and Sand and Siffert Instructions 2-18 and 3-3.

Paragraph (2) should not be given in every case. If the possible guilt of others has not been raised during trial, this paragraph is unnecessary and should be omitted to avoid confusion. Note also that this paragraph may require modification in cases where vicarious criminal liability is alleged, such as conspiracy or aiding and abetting cases. In such cases the jury may be required to decide the guilt of other persons not charged in the indictment. Paragraph (2) may also require modification in cases in which the defendant has raised an alibi defense or has

argued mistaken identification. Where the defendant claims that someone else committed crime, it may be confusing to instruct the jurors that they should not be concerned with anyone else's guilt.

The concepts covered in paragraphs (1) and (2) are also covered in Instruction 2.01. Corresponding deletions or modifications should be made there as well.