UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 05 CR 727
	)	
CONRAD M. BLACK,	)	Hon. Amy J. St. Eve
JOHN A. BOULTBEE,	)	
PETER Y. ATKINSON, and	)	
MARK S. KIPNIS	)	

JURY INSTRUCTIONS

PRELIMINARY INSTRUCTIONS

CONCERNING ALL COUNTS

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 these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

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

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 the government and one or more of the Defendants that certain facts are true or that a person would have given certain testimony.

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 that 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 use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. 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 direct proof of a fact or an event, such as the testimony of an eyewitness. Circumstantial evidence is the proof of facts from which you may infer or conclude that other facts exist. 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. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

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

First, testimony that I struck from the record, or that I told you to disregard, is 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 your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys 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 memory is what counts.

It is proper for an attorney to interview any witness in preparation for trial.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The information in this case (the "information") is the formal method of accusing the Defendants of an offense and placing them on trial. It is not evidence against the Defendants and does not create any inference of guilt.

Defendant Conrad Black is charged with the offenses of mail and wire fraud in Counts One and Five through Twelve. He is charged with the offense of concealing documents from an official proceeding in Count Thirteen and the offense of racketeering in Count Fourteen. Defendant Black is also charged with the offense of aiding or assisting the preparation of a false corporate income tax return in Counts Fifteen and Sixteen. Defendant Black has pleaded not guilty to the charges.

Defendant John Boultbee is charged with the offenses of mail and wire fraud in Counts One and Five through Twelve. He is also charged with the offense of aiding or assisting the preparation of a false corporate income tax return in Counts Fifteen and Sixteen. Defendant Boultbee has pleaded not guilty to the charges.

Defendant Peter Atkinson is charged with the offenses of mail and wire fraud in Counts One and Five through Nine. He is also charged with the offense of aiding or assisting the preparation of a false corporate income tax return in Count Sixteen. Defendant Atkinson has pleaded not guilty to the charges.

Defendant Mark Kipnis is charged with the offenses of mail and wire fraud in Counts One through Nine. He is also charged with the offense of aiding or assisting the preparation of a false corporate income tax return in Counts Fifteen and Sixteen. Defendant Kipnis has pleaded not guilty to the charges.

The Defendants are presumed to be innocent of each of the charges. 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 the guilt of a Defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The Defendants are never required to prove their innocence or to produce any evidence at all.

A Defendant has an absolute right not to testify. The fact that a Defendant did not testify should not be considered by you in any way in arriving at your verdict.

You have received evidence of statements said to be made by Defendants Black, Boultbee, Atkinson, and Kipnis to various people. You must decide whether the Defendants did in fact make the statements. If you find that a Defendant did make the statement, then you must decide what weight, if any, you feel 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.

During the course of this trial, the Court has instructed you that certain statements may not be considered as evidence against any Defendant other than the one who made them and that other statements could be considered against other Defendants. You must only consider these statements consistent with the Court's instructions at trial.

You have heard evidence of acts of Defendant Black other than those charged in the information, specifically evidence regarding a message posted on a Yahoo! internet message board. You may consider this evidence only on the question of the intent, plan, knowledge, and absence of mistake of Defendant Black with respect to the offenses with which he is charged. You should consider this evidence only for this limited purpose.

You have heard witnesses give 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's qualifications, and all of the other evidence in the case.

You have heard testimony from Paul Healy, who received immunity; that is, a promise from the government that any testimony or other information he provided would not be used against him in a criminal case. His receipt of immunity is not to be considered as evidence against the Defendants.

You have also heard testimony from David Radler, who has pleaded guilty to an offense. Radler received benefits from the government, including a promise of a reduced sentence in return for his cooperation. His guilty plea is not to be considered as evidence against the Defendants.

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

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

Certain demonstrative exhibits have been shown to you. Those are used for convenience and to help explain the facts of the case or the testimony of a particular witness. They are not themselves evidence or proof of any facts.

The Court will not send the demonstrative exhibits back to the jury room during your deliberations because they are not evidence.

You have heard recorded conversations and have seen transcripts of those recordings. These recorded conversations and transcripts are in evidence and you may consider them, just as any other evidence.

I am providing you with the recordings and a player. You are not required to play the recordings, in part or in whole. You may rely, instead, on your recollections of these recordings as you heard them at trial.

INSTRUCTIONS REGARDING

MAIL AND WIRE FRAUD (18 U.S.C. §§ 1341, 1343, and 1346)

FOR COUNTS ONE THROUGH TWELVE

All of the Defendants are charged with mail fraud in Counts One, Five, Six, Seven and Nine, and with wire fraud in Count Eight. Defendant Kipnis is charged individually with mail fraud in Count Two and wire fraud in Counts Three and Four. Defendants Black and Boultbee are charged with wire fraud in Counts Ten, Eleven and Twelve.

To sustain each charge of mail or wire fraud, the government must prove the following propositions:

First, that the Defendant knowingly devised or participated in a scheme to defraud, or to obtain money or property by means of materially false pretenses, representations, or promises, as described in the Information;

Second, that the Defendant did so knowingly and with the intent to defraud; and

Third, that for the purpose of carrying out the scheme or attempting to do so, the Defendants in the mail fraud counts used or caused the use of the United States mails, or a private or commercial interstate carrier in the manner charged in the particular count, and the Defendants in the wire fraud counts caused the use of an interstate wire communication in the manner charged in the particular count.

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

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt as to a particular Defendant and a particular count, then you should find that Defendant not guilty of that count.

The Information charges Defendants with committing mail and wire fraud in two different ways: First, Defendants are charged with mail and wire fraud for participating in a scheme to obtain money or property by means of materially false pretenses, representations, or promises. Second, Defendants are charged with mail and wire fraud for participating in a scheme to deprive Hollinger International and its public shareholders of their intangible right to the honest services of the corporation's officers, directors and/or controlling shareholders.

A scheme is a plan or course of action formed with the intent to accomplish a particular purpose. A scheme to defraud is a scheme that is intended to deceive or cheat a person or entity and to obtain money or property and cause the potential loss of money or property to a person or an entity, or to deprive Hollinger International and its shareholders of their intangible right to the honest services of the corporate officers, directors or controlling shareholders of Hollinger International. In order to deprive Hollinger International and its public shareholders of their intangible right to Defendants' honest services, the government must prove that the particular Defendant you are considering misused his position for private gain for himself and/or a co-schemer. "Private gain" does not include job security or compensation in the regular course of employment through above-board channels.

In considering whether a Defendant has engaged in a scheme to defraud another of a right to the Defendant's honest services, you must first find that the Defendant owed that other person or entity a fiduciary duty. "Honest services" include those fiduciary duties owed under Delaware law by an officer, director or controlling shareholder to a corporation and its public shareholders. A controlling shareholder is an entity or individual shareholder who, directly or indirectly, either owns a majority interest in the corporation or who exercises control over the business affairs of the corporation.

Under Delaware law, a corporation's officers, directors and controlling shareholders owe a fiduciary duty of loyalty to the corporation and its public shareholders. The duty of loyalty requires that the directors, officers and controlling shareholders of a corporation act in the corporation's best interests and that they refrain from taking actions that either conflict with the corporation's interests or that harm the corporation.

Before you can find that a Defendant has deprived Hollinger International and its public shareholders of his honest services, you must find that the Defendant knowingly and intentionally breached his duty of loyalty.

If the transaction at issue is "entirely fair" to the corporation, then the government has not proven a breach of the duty of loyalty. In considering whether a particular transaction is "entirely fair" to the corporation, you should consider two basic aspects: fair dealing and fair price.

Fair dealing requires a fair process. Fair dealing considers when the transaction was timed, how it was initiated, structured, and negotiated, whether or how the transaction was disclosed to the directors, and whether or how the approvals of the directors were obtained.

Fair price requires that the transaction was substantively fair by examining the economic and financial considerations of it.

You must consider both aspects of "entire fairness."

If the material facts concerning a director's, officer's or controlling shareholder's interest in a particular transaction were disclosed to or known by the independent directors on the Board of Directors or the Audit Committee when the Board or Committee approved or ratified the transaction, or the transaction was "entirely fair" to the corporation and its public shareholders, then that director, officer or controlling shareholder has not breached his duty of loyalty to the corporation.

A Board of Directors or Audit Committee can ratify a prior unauthorized transaction. Ratification has the same effect as approval. In order for such ratification to be valid, the Board of Directors or Audit Committee must have acted on complete disclosure of the material facts and circumstances surrounding the transaction. A subsequent ratification relates back to the transaction as of the date when the transaction occurred.

Materiality is an element of the offense of mail or wire fraud. A misrepresentation or omission is material if it has a natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to which it was addressed.

A breach of a fiduciary duty owed by an officer, director or controlling shareholder under Delaware law does not in and of itself amount to a violation of the mail or wire fraud statute. That is to say, even if you find beyond a reasonable doubt that an officer, director or controlling shareholder knowingly breached or knowingly schemed to breach his or her fiduciary duty, you must still determine whether the government has proven all of the elements of the crime charged beyond a reasonable doubt.

You have heard evidence in this case regarding the disclosures of non-competition payments in Hollinger International's quarterly and annual reports and proxy statements in 2001 and 2002. The defendants in this case are not charged with securities fraud.

The phrase "intent to defraud" means that the acts charged were done knowingly with the intent to deceive or cheat Hollinger International and its public shareholders in order to cause a gain of money or property to the Defendants or others, and the potential loss of money or property to another, or to deprive the corporation and its public shareholders of their right to the honest services of their corporate officers.

Good faith on the part of a defendant is inconsistent with an intent to defraud, an essential element of the charge. The burden is not on the defendant to prove his good faith; rather, the government must prove beyond a reasonable doubt that the defendant acted with intent to defraud.

The mail or wire fraud statute can be violated whether or not there is any monetary loss or financial damage to the victim of the crime. The scheme to defraud need not have succeeded for the mail or wire fraud statute to be violated.

A participant in a scheme to defraud may be guilty even if all the benefits of the fraud accrued to his co-schemers, as long as the government has proved the other elements of mail or wire fraud beyond a reasonable doubt.

A Defendant's association with alleged co-schemers or persons alleged to be members of an enterprise is not by itself sufficient to prove his participation or membership in a scheme or enterprise.

If a Defendant performed acts that advanced or assisted 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 a Defendant's guilt.

As to the mail fraud counts, the government must prove that the United States mails or a private or commercial interstate carrier were used to carry out the scheme, or were incidental to an essential part of the scheme.

In order to use or cause the use of the United States mails or a private or commercial interstate carrier, a Defendant need not actually intend that use to take place. You must find that the Defendant knew this use would actually occur, or that the Defendant knew that it would occur in the ordinary course of business, or that the Defendant knew facts from which that use could reasonably have been foreseen. However, the government does not have to prove that a Defendant knew that the carrier was an interstate carrier.

The Defendant need not actually or personally use the mail or an interstate carrier.

Although an item mailed or sent by interstate carrier need not by itself contain a fraudulent representation or promise or request for money, it must further or attempt to further the scheme.

Each separate use of the mail or an interstate carrier in furtherance of the scheme to defraud constitutes a separate offense.

As to the wire fraud counts, the government must prove that interstate communication facilities were used to carry out the scheme, or were incidental to an essential part of the scheme.

In order to cause interstate wire communications to take place, a Defendant need not actually intend that use to take place. You must find that the Defendant knew this use would actually occur, or that the Defendant knew that it would occur in the ordinary course of business, or that the Defendant knew facts from which that use could reasonably have been foreseen. However, the government does not have to prove that a Defendant knew that the wire communication was of an interstate nature.

The Defendant need not actually or personally use the interstate communication facilities.

Although an item communicated interstate need not by itself contain a fraudulent representation or promise or request for money, it must further or attempt to further the scheme.

Each separate use of interstate communication facilities in furtherance of the scheme to defraud constitutes a separate offense.

The following types of transmissions constitute transmissions by means of wire communication in interstate commerce within the meaning of the wire fraud statute: e-mails, faxes, filing of public documents by wire, and electronic money transfers.

This instruction applies to your consideration of Counts Ten and Eleven.

Regulations in effect between 2000 and 2002 regarding disclosures in proxy statements filed with the SEC from 2000 to 2002 required disclosure of perquisites, other personal benefits, securities, or property not categorized as salary or bonus, unless the aggregate amount of the perquisites, personal benefits, securities, or property is less than the lesser of either $50,000 or 10% of the total of annual salary and bonus reported for the named executive officer.

For purposes of disclosures in a proxy statement, perquisites and other personal benefits are valued on the basis of the "aggregate incremental cost" to the reporting corporation and its subsidiaries during the one-year period. This means that the value of a perquisite or other personal benefit is computed solely on the basis of the actual additional cost to the corporation.

This instruction relates to your consideration of Counts Ten and Eleven.

A fact or omission is "material" if there is a substantial likelihood that a reasonable investor would consider the fact or omission significant or important in deciding whether to buy, sell, or hold securities. In other words, there must be a substantial likelihood that the fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.

INSTRUCTIONS REGARDING

CONCEALING DOCUMENTS FROM

AN OFFICIAL PROCEEDING (18 U.S.C. § 1512)

FOR COUNT THIRTEEN

Defendant Black is charged individually with concealing documents from an official proceeding in Count Thirteen. To sustain the charge of concealing documents from an official proceeding as charged in Count Thirteen of the information, the government must prove the following propositions:

First, on or about May 20, 2005, the Defendant corruptly concealed, or attempted to conceal, records, documents, or other objects; and

Second, the Defendant did so with the intent to impair the availability of the records, documents, or other objects in an official proceeding.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find Defendant Black guilty as to Count Thirteen.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find Defendant Black not guilty of Count Thirteen.

The term "corruptly" means having an improper purpose. An intent to subvert or undermine the fact finding ability of an official proceeding is an improper purpose.

The term "official proceeding" includes a proceeding before a judge or court of the United States, a proceeding before a Federal grand jury, and a proceeding before a Federal Government agency which is authorized by law. The United States Securities and Exchange Commission (the "SEC") is a Federal Government agency which is authorized by law.

Neither an investigation by the United States Attorneys Office, nor any Canadian court proceeding, nor any internal corporate document retention policy constitutes an "official proceeding."

An official proceeding need not be pending or about to be instituted at the time of the offense. An official proceeding, however, must have been reasonably foreseeable to the Defendant. The government bears the burden of proving beyond a reasonable doubt that the official proceeding was reasonably foreseeable to the Defendant.

There are three official proceedings identified in Count Thirteen – (1) an SEC proceeding against Defendant Black; (2) a criminal investigation of Defendant Black by a federal grand jury; and (3) a pending criminal proceeding against Defendant Black before the United States district court. To find Defendant Black guilty of Count Thirteen, the government does not need to prove beyond a reasonable doubt that Black intended to impair the availability of the records, documents, or other objects in all three official proceedings. Instead, the government must prove beyond a reasonable doubt that Black intended to impair the availability of the records, documents, or other objects in at least one of those official proceedings. However, you must unanimously agree on which of the official proceedings, if any, Black intended to obstruct.

INSTRUCTIONS REGARDING

RACKETEERING (18 U.S.C. § 1962)

FOR COUNT FOURTEEN

Defendant Black is charged individually with racketeering in Count Fourteen. To prove Defendant Black guilty of racketeering, as charged in Count Fourteen, the government must prove the following propositions:

First, that there was an association-in-fact enterprise, the "Hollinger Enterprise," comprised of Conrad Black, David Radler, John Boultbee, Peter Atkinson, Mark Kipnis, and The Ravelston Group, Inc.;

Second, that Defendant Black was associated with the Hollinger Enterprise;

Third, that Defendant Black knowingly conducted or participated in the conduct of the affairs of the Hollinger Enterprise through a pattern of racketeering activity as described in Count Fourteen;

Fourth, that the activities of the Hollinger Enterprise affected interstate commerce; and

Fifth, that the commission of at least one of the racketeering acts described in Count Fourteen occurred on or after November 17, 2000.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find Defendant Black guilty as to Count Fourteen.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find Defendant Black not guilty of Count Fourteen.

In order to find a "pattern of racketeering activity" for purposes of Count Fourteen, you must find beyond a reasonable doubt that Defendant Black committed or caused another person to commit at least two racketeering acts described in Count Fourteen, and that those acts were in some way related to each other and that there was continuity between them, and that they were separate acts. Although a pattern of racketeering activity must consist of two or more acts, deciding that two such acts were committed, by itself, may not be enough for you to find that a pattern exists.

Acts are related to each other if they are not isolated events, that is, if they have similar purposes, or results, or participants, or victims, or are committed a similar way, or have other similar distinguishing characteristics or are part of the affairs of the same enterprise.

There is continuity between acts if, for example, they are ongoing over a substantial period, or if they are part of the regular way some entity does business or conducts its affairs.

The government need not prove that all the acts described in Count Fourteen were committed, but you must unanimously agree as to which two or more racketeering acts Defendant Black committed or caused to be committed in order to find the Defendant guilty of that count.

The term "enterprise" can include a group of people or legal entities associated together for a common purpose of engaging in a course of conduct. This group may be associated together for purposes that are both legal and illegal.

In considering whether a group is an "enterprise," you should consider whether it has an ongoing organization or structure, either formal or informal, and whether the various members of the group functioned as a continuing unit. A group may continue to be an "enterprise" even if it changes membership by gaining or losing members over time.

The government must prove that the group described in the information was the "enterprise" charged, but need not prove each and every allegation in the information about the enterprise or the manner in which the enterprise operated. The government must prove the association had some form or structure beyond the minimum necessary to conduct the charged pattern of racketeering.

A person conducts or participates in the conduct of the affairs of an enterprise if that person uses his position in, or association with, the enterprise to perform acts which are involved in some way in the operation or management of the enterprise, directly or indirectly, or if the person causes another to do so.

In order to have conducted or participated in the conduct of the affairs of an enterprise, a person need not have participated in all the activity alleged in Count Fourteen.

To be associated with an enterprise, a person or entity must be involved with the enterprise in a way that is related to its affairs or common purpose, although the person or entity need not have a stake in the goals of the enterprise and may even act in a way that subverts those goals. A person or entity may be associated with an enterprise without being so throughout its existence.

Each of the racketeering acts described in Count Fourteen is numbered, and some consist of multiple offenses set out in separate, lettered sub-paragraphs (a), (b) and (c). To prove that a Defendant committed a particular "racketeering act" that is made up of multiple offenses, it is sufficient if the government proves beyond a reasonable doubt that the Defendant committed at least one of the offenses identified in the sub-paragraphs of that racketeering act. However, you must unanimously agree upon which of the different offenses alleged within a racketeering act the Defendant committed.

Racketeering Acts 5-7, described in the Information, refer to mail and wire fraud allegations under 18 U.S.C. §§ 1341, 1343 and 1346. The instructions I gave you regarding the mail and wire fraud charges in Counts 1 through 12 also apply to your consideration of these racketeering acts in that they explain the nature of mail and wire fraud.

Racketeering Acts 1-4, described in the Information, involve allegations of interstate transportation of money obtained by fraud in violation of 18 U.S.C. § 2314. In considering these racketeering acts, you are instructed that to sustain the charges of interstate transportation of money obtained by fraud, the government must prove the following propositions:

First, the money identified in the particular racketeering act had been obtained by fraud; and

Second, the money identified in that racketeering act had a value of at least $5,000;

Third, the Defendant transported or caused to be transported those funds in interstate or foreign commerce;

Fourth, at the time the Defendant transported or caused to be transported the funds, he knew they had been obtained by fraud.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the Defendant guilty of that particular racketeering act.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the Defendant not guilty of that particular racketeering act.

With respect to Count Fourteen, interstate commerce includes the movement of money, goods, services or persons from one state to another or between another country and the United States. This would include the use of interstate mail or wire facilities, or the causing of such use. If you find beyond a reasonable doubt that the actions of the Hollinger Enterprise affected in any degree the movement of money, goods or services across state lines or between another country and the United States, then interstate commerce was engaged in or affected.

The government need only prove that the Hollinger Enterprise as a whole engaged in interstate commerce or that its activity affected interstate commerce to any degree, although proof that racketeering acts did affect interstate commerce meets that requirement. The government need not prove that a Defendant engaged in interstate commerce, or that the acts of a Defendant affected interstate commerce.

INSTRUCTIONS REGARDING

FALSE TAX RETURNS (26 U.S.C. § 7206)

FOR COUNTS FIFTEEN AND SIXTEEN

Defendants Black, Boultbee, and Kipnis are charged in Counts Fifteen and Sixteen, and Defendant Atkinson is charged in Count Sixteen, with causing Hollinger International to file false corporate income tax returns. To sustain the charge that the Defendant willfully made and caused to be made a false corporate income tax return, the government must prove the following propositions:

First, the Defendant made or caused to be made the income tax return;

Second, the Defendant signed the income tax return or caused the income tax return to be signed, which contained a written declaration that it was made under penalties of perjury;

Third, the Defendant filed the income tax return or caused the income tax return to be filed with the Internal Revenue Service;

Fourth, the income tax return was false as to a material matter, as charged in the count; and

Fifth, when the Defendant made and signed the tax return, or caused the tax return to be made and signed, the Defendant did so willfully and did not believe that the tax return was true, correct and complete as to every material matter.

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

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as a particular Defendant and a particular count, then you should find that Defendant not guilty as to that particular count.

For purposes of Counts Fifteen and Sixteen, the word "willfully" means the voluntary and intentional violation of a known legal duty or the purposeful omission to do what the law requires. A Defendant acted willfully if he knew it was his legal duty to file truthful corporate tax returns, and intentionally filed or caused to be filed a false return.

A line on a tax return is a material matter if the information required to be reported on that line is capable of influencing the correct computation of the amount of tax liability of the corporation or the verification of the accuracy of the return.

For purposes of Counts Fifteen and Sixteen, a Defendant does not act willfully if he believes in good faith that he is acting within the law, or that his actions comply with the law. Therefore, if the Defendant actually believed that what he was doing was in accord with the tax statutes, he cannot be said to have had the criminal intent to willfully file, or willfully assist others in filing, a false tax return. This is so even if the Defendant's belief was not objectively reasonable, as long as he held the belief in good faith. However, you may consider the reasonableness of the Defendant's belief together with all the other evidence in the case in determining whether the Defendant held the belief in good faith.

ADDITIONAL INSTRUCTIONS

CONCERNING ALL COUNTS

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

You have heard evidence that before the trial witnesses made statements that may be inconsistent with the witness's testimony here in court. If you find that it is inconsistent, you may consider the earlier statement in deciding the truthfulness and accuracy of that witness's testimony in this trial. If the statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

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 to that Defendant.

When the word "knowingly" or the phrase "the Defendant knew" is used in these instructions, it means that the Defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident. Knowledge may be proved by the Defendant's conduct, and by all the facts and circumstances surrounding the case.

You may infer knowledge from a combination of suspicion and deliberate indifference to the truth. If you find that a Defendant had a strong suspicion that criminal conduct was occurring, yet intentionally shut his eyes for fear of what he would learn, you may conclude that he acted knowingly, as I have used that word. You may not conclude that a defendant had knowledge if he was merely negligent in not discovering the truth.

To "attempt" means that the Defendant knowingly took a substantial step toward the commission of the offense with the intent to commit the offense.

A person is responsible for conduct that he performs or causes to be performed in behalf of a corporation just as though the conduct were performed in his own behalf. However, a person is not responsible for the conduct of others performed in behalf of a corporation merely because that person is an officer, employee, or other agent of a corporation.

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.

The defendants are charged with violations of various federal laws, including alleged violations of the mail and wire fraud statutes. The defendants are not charged with violations of the law of the State of Delaware or any other state. Although law of the State of Delaware is mentioned in these instructions, your job is to determine whether or not the government has proved, beyond a reasonable doubt, each element of the charged federal offenses.

Any person who knowingly aids, counsels, commands, induces, or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

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

To establish that a defendant knowingly associated himself with the crime, the government must prove that the defendant shared the specific intent of the principal. To establish a defendant's participation as an aider and abettor in the crime, the government must prove that the defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about that crime.

If you find any of the Defendants guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that have been given during the trial, you should not guess about the punishment. It should not enter into your consideration or discussions at any time.

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

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

Each count of the information charges each Defendant named in that count with having committed a separate offense.

You must give separate consideration both to each count and to each Defendant. 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.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the foreperson, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the Court Security Officer, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

You should make a determined effort to answer any question by referring to the jury instructions before you submit a question to me. If you do submit a question, I must show it to the lawyers for each side and consult with them before responding. I will either answer your question, or explain why I cannot answer your question.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, 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 you should 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 which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.