

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:93CR-82-S

DONALD G. FORD and  
SANDRA HUTCHINS FORD

DEFENDANTS

**COURT'S INSTRUCTIONS TO THE JURY**

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your deliberations.

It will be your duty to decide whether the United States has proved beyond a reasonable doubt the specific facts necessary to find the defendants guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendants or the United States.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against any defendant is not evidence of guilt. Indeed, any defendant is presumed by the law to be innocent. The law does not require a defendant to prove innocence or produce any evidence at all. This means that a defendant has no obligation to testify. Therefore, if a defendant does not testify during a trial, you may not draw any inference or suggestion of guilt from that fact, nor may you consider this in any way in reaching your verdicts. The United States has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the defendant not guilty.

While the United States' burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the United States' proof exclude any "reasonable doubt" concerning a 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.

You must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses and the exhibits admitted in the record. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "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 that the defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Now, in saying that you must consider the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part.

In deciding how much of a witness' testimony to believe, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth or a personal interest in the outcome of the case? Did the witness have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony given before you during the trial.

However, a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that was simply an innocent lapse of memory or an intentional falsehood.

The testimony of some witnesses must be considered with more caution than the testimony of other witnesses.

For example, a paid informer, or a witness who has been promised that he or she will not be charged or prosecuted, or a witness who hopes to gain more favorable treatment in his or her own case, may have a reason to make a false statement because of a desire to strike a favorable bargain with the United States.

So, while such a witness may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses.

When knowledge of a technical subject matter might be helpful to the jury, a person having special training or experience in that technical field - - one who is called an expert witness - - is permitted to state an opinion concerning those technical matters.

Merely because an expert witness has expressed an opinion, however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.



A separate crime or offense is charged against one or both of the defendants in each count of the indictment. Each offense, and the evidence pertaining to it, should be considered separately. Also, the case of each defendant should be considered separately and individually. The fact that you may find one defendant guilty or not guilty of any offense charged should not affect your verdict as to the other defendant or any other of the offenses charged except as instructed on pages 22 and 24.

Each defendant is on trial only for the specific offenses alleged in the indictment against that particular defendant.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If any defendant is convicted the matter of punishment is for the Judge to determine.

**COUNTS 1 AND 2 - ILLEGAL GAMBLING BUSINESS**

Title 18, United States Code, Section 1955, makes it a federal crime or offense for anyone to conduct an “illegal gambling business.”

An “illegal gambling business” is a gambling business which (1) violates the law of the state in which it is conducted, and (2) involves five or more persons who conduct, finance, manage, supervise, direct or own all or part of such business, and (3) has been or remains in substantially continuous operation for a period in excess of thirty days, or has a gross revenue of \$2,000 in any single day.

A defendant can be found guilty of the offense charged in Counts 1 and 2 only if all of the following facts are proved beyond a reasonable doubt with respect to that defendant:

- First: That five or more persons, including the defendant, knowingly conducted, financed, managed, supervised, directed or owned all or part of a gambling business, as charged; and
- Second: That such gambling business violated the laws of the state of Kentucky as described in the next instruction; and
- Third: That such gambling business was in substantially continuous operation for thirty days or more, **or** alternatively, that the gambling business had a gross revenue of \$2,000 or more on any one day.

In addition to the elements I have just described, the United States must prove beyond a reasonable doubt either (1) that the bingo games at issue were not conducted by an organization with tax exempt status under § 501(c)(3) of the Internal Revenue Code, **or** (2) that part of the gross receipts, with the exception of actual expenses, derived from the bingo games was for the benefit of a private shareholder, member or employee of the organization.

The words “finances, manages, supervises, directs or owns” are all used in their ordinary sense and include those who finance or manage or supervise a business; but the word “conduct” is a broader term and would include anyone working in the business enterprise as an employee with or without a voice in management or a share in profits as well as anyone who performs any act,

function, or duty which is necessary or helpful in the operation of the business. A mere player or customer, however, would not be participating in the “conduct” of the business.

It need not be shown that five or more people have been charged with an offense; nor that the same five people, including the defendant, owned, financed or conducted such gambling business throughout a thirty-day period; nor that the defendant even knew the names or identities of any given number of people who might have been so involved. Neither must it be proved that money was played every day over a thirty-day period, nor that such activity constituted the primary business or employment of the defendant.

The phrase “in substantially continuous operation for a period in excess of thirty days” means regularly in business or regularly open for customers for that period of time. The United States is not required to prove that money was played on each and every day for thirty days. The United States must prove beyond a reasonable doubt, however, that the gambling business was regularly operated for more than thirty days.

The term “gross revenue” of a gambling operation means the total amount of money received from customers or bettors to play games of chance, without any deductions for the expenses of the business and without regard for profit.

Where an element may be proven in the alternative, the jury, in order to return a verdict of guilty, must unanimously agree as to which alternative was proven beyond a reasonable doubt or that both were proven beyond a reasonable doubt.

## COUNTS 1 AND 2 - KENTUCKY GAMBLING LAW

The phrase “in violation of the law of a state in which it is conducted” simply means illegal when and where it is operated. For you to find that any of the defendants violated the gambling laws of the State of Kentucky, you must be convinced that the United States has proved at least one of the following beyond a reasonable doubt:

First: That the defendant knowingly advanced or profited from unlawful gambling activity by receiving in connection with a lottery or mutual scheme or enterprise more than \$500 in any one (1) day of money played in the scheme or enterprise.

**OR**

Second: That the defendant possessed any writing, paper, instrument or article commonly used in the operation, promotion or playing of a lottery or mutual scheme or enterprise representing more than 500 plays or chances with knowledge of the contents of the paper.

This second element does not apply to possession of a writing that was neither used nor intended to be used in the operation, promotion, or playing of a lottery scheme or enterprise.

In addition to one of the preceding elements, the United States must also prove beyond a reasonable doubt that such gambling activity was not “charitable gaming activity” as defined under Kentucky law. Status as a “charitable gaming activity” provides a defense to illegal gambling prosecutions **only** if the bingo activity was in compliance with **all** of the specific requirements under Kentucky law on pages 14 through 21.

Where an element may be proven in the alternative, the jury, in order to return a verdict of guilty, must unanimously agree as to which alternative was proven beyond a reasonable doubt or that both were proven beyond a reasonable doubt.

Under the laws of the Commonwealth of Kentucky, a person acts “knowingly” with respect to conduct or to circumstances described by a statute or offense when he or she is aware that his conduct is of that nature or that the circumstances exist.

“Gambling” means staking or risking something of value upon the outcome of a contest, game, gaming scheme, or gaming device which is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome.

“Lottery” means a gambling scheme in which:

1. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one (1) or more of which are to be designated the winning ones; and
2. The winning chances are to be determined by a drawing or by some other method based upon the element of chance; and
3. The holders of the winning chances are to receive something of value.

A person, other than a player, “advances gambling activity” by engaging in conduct that materially aids gambling activity. Such conduct includes establishing or conducting the gambling activity; acquiring or maintaining the premises for the activity or the equipment used in the activity; soliciting people to participate in the activity; or arranging any of the financial or record keeping phases of the operation.

A person, other than a player, “profits from gambling activity” by accepting, receiving or agreeing to accept or receive money or other property with an understanding that he will participate in the proceeds of gambling activity.

### **CHARITABLE GAMING**

Throughout the period at issue in the indictment, Kentucky law defined “charitable gaming” as games of chance, including bingo, which were operated by charitable, religious, or fraternal organizations that devoted their net earnings exclusively to religious, scientific, literary, educational or fraternal purposes.

Since the requirements of “charitable gaming” changed twice during the time period at issue in the indictment, I will provide you with instructions listing the requirements which were in effect during the time periods covered in the indictment.

## **CHARITABLE GAMING: PART I**

### **Requirements in effect throughout period under indictment**

For all time periods covered by the indictment, the gambling activity alleged in the indictment assumed the status of “charitable gaming” only if the organization and the gaming activity conducted conformed in full to the following requirements:

- First: The organization or institution conducting the gaming activity must maintain a charitable or religious or fraternal society tax exemption according to the Federal Internal Revenue Code;
- Second: The organization must maintain such federal tax exempt status for a period of five (5) years prior to conducting any gaming activity;
- Third: The gaming activity must be operated exclusively by volunteer personnel who received no payment whatsoever for their services; and
- Fourth: Any proceeds resulting from the charitable gaming activity must be utilized solely for purposes consistent with the charitable objectives for which the organization received and maintained its federal tax exempt status.

## CHARITABLE GAMING: PART II

### Requirements in effect from July 13, 1990

Kentucky added a number of new requirements to “charitable gaming” on July 13, 1990. These new requirements, in addition to those in Part I, had to be conformed with before the gambling activity alleged in the indictment assumed the status of “charitable gaming.” These requirements governed charitable gaming from July 13, 1990 through the rest of the time period covered by Counts 1 and 2 of the indictment.

- First: Charitable gaming may not be conducted on or within any leased premises if the rental charge is to be paid, in whole or in part, on the basis of a percentage of the game receipts or proceeds or by reference to the number of people in attendance at the game.
- Second: The charitable gaming activities of any one (1) organization are limited to only one (1) location in any one (1) week for a period not to exceed ten (10) hours in any one (1) day.
- Third: The charitable organization conducting the gaming activity must keep accurate records and books showing:
- (a) the total number of persons who played;
  - (b) the total amount of moneys received from persons who played, attended or participated in the gaming activity;
  - (c) the expenses incurred;
  - (d) the name and address of each person to whom expenses were paid;  
and
  - (e) the amount of the net proceeds received by the organization from charitable gaming.
- Fourth: All proceeds from the gaming activity, except for prizes paid out, must be deposited into a checking account devoted exclusively to the gaming activity.
- Fifth: Money for expenses may be withdrawn from the checking account described above only by checks having preprinted consecutive numbers and made payable to specific persons or organizations. The net proceeds of the gaming activity may be removed from the checking account and placed into a separate depository account held by the organization conducting the gaming activity.



Sixth: All suborganizations which are authorized by the primary organization to conduct charitable gaming activity must comply with all provisions of this section, except that they shall make their financial reports to the primary organization. The primary organization must include the reports with its own reports and separately identify the earnings.

Seventh: An organization conducting a charitable gaming activity must have registered with the county clerk of the county in which the gaming activity will take place.

Eighth: The person responsible for registration shall be the same person maintaining the organization's federal tax exemption.

Ninth: In registering, the organization shall provide:

- (a) the name and address of the religious, charitable or fraternal organization;
- (b) proof of the organization's federal tax exemption for the last five (5) years; and
- (c) a quarterly accounting of all money received from the gaming activity, all prizes paid out, all expenses paid, and all moneys retained for charitable use.

### **CHARITABLE GAMING: PART III**

#### **Requirements in effect from July 13, 1990 through April 13, 1992**

A few more requirements were added to charitable gaming on July 13, 1990. These additional requirements governed charitable gaming until April 13, 1992, when the requirements for charitable gaming were changed again. For an organization to attain “charitable gaming” status during the period of July 13, 1990 through April 13, 1992, the organization and the gaming activity conducted had to conform in full with the following requirements:

- First: The volunteer personnel who conducted the organization’s gaming activity could accept tips from patrons of the gaming activity. These volunteers were still not allowed to receive payment for their services.
- Second: The organization’s gaming activities are limited to two (2) days in any one (1) week. No organization can conduct gaming activities for more than two (2) consecutive days.
- Third: The governing board of a primary organization could give written permission to its approved suborganizations allowing the suborganizations to conduct charitable gaming. These suborganizations had to comply with all of the requirements in effect for the primary organization.

## CHARITABLE GAMING: PART IV

### **Requirements in effect from April 13, 1992 through end of period covered in Count 2 of the indictment**

On April 13, 1992, Kentucky law changed the requirements of “charitable gaming.” These new requirements apply only to activity occurring after April 13, 1992, which covers part of Counts 2 of the indictment. For an organization to attain “charitable gaming” status after April 13, 1992, the organization and the gaming activity conducted had to conform in full with the following requirements:

- First: The organization conducting the gaming activity must have maintained a place of business or operations, other than for purposes of conducting charitable gaming, in Jefferson County for a period of one (1) year prior to engaging in charitable gaming in Jefferson County.
- Second: The letter from the IRS granting tax exempt status must be displayed prominently at the premises in which charitable gaming is conducted, at all times while gaming is conducted.
- Third: Volunteer personnel must no longer receive tips from patrons of the gaming activity.
- Fourth: The gaming activity must be conducted, promoted and administered only by the charitable organization under whose tax exempt status the charitable gaming is being conducted.
- Fifth: No charitable organization must contract with or use the services of any management company or other organization in conducting charitable gaming activities.
- Sixth: The owner, primary leaseholder or manager of property leased to a charitable organization and on which charitable gaming is conducted must not under any circumstances manage or operate the charitable gaming activities conducted on the property, unless the owner, primary leaseholder or manager of the property leased is also the charitable organization conducting the charitable gaming activity.
- Seventh: The organization must limit its charitable gaming activities to one (1) day in any one (1) week.
- Eighth: The organization must not award prizes for bingo which shall exceed five thousand dollars (\$5,000) cash value in any one (1) day of operations.

- Ninth: The primary organization must have only one (1) approved suborganization, and charitable gaming activities by the suborganization must not exceed one day per week.
- Tenth: All cash payments and receipts of any kind associated with the gaming activity may be handled only by actual officers or employees of the charitable organization.
- Eleventh: The application for registration and all documentation submitted as part of the registration process must be sworn and subscribed to in a notarized statement as to the truth and validity of the information by the person responsible for the registration.
- Twelfth: The registering organization must provide a letter from the IRS showing proof of the organization's federal tax exemption for the last five (5) years.

## CHARITABLE GAMING: APPLICATION

In these instructions, the law regarding “charitable gaming” has been organized into four parts. As you analyze the evidence in this case, you should apply these four parts in the following manner:

As to gaming activities conducted in Count 1 for the period between March 1, 1990 and July 13, 1990, apply Part I;

As to gaming activities conducted in Count 1 for the period between July 13, 1990 and November 1, 1990, apply Parts I, II and III;

As to gaming activities conducted in Count 2 for the period between December 1, 1991 and April 13, 1992, apply Parts I, II and III; and

As to gaming activities conducted in Count 2 for the period between April 13, 1992 and August 31, 1992, apply Parts I, II and IV.

**COUNTS 3 - 31 AND COUNTS 32 AND 33 - MONEY LAUNDERING**

Title 18, United States Code, Section 1957 makes it a federal crime or offense for anyone to knowingly engage in a monetary transaction in the United States in criminally derived property that is of a value greater than \$10,000, and is derived from specified unlawful activity. If you find one or both of the defendants not guilty on Count 2, you must find that defendant not guilty on these counts.

Counts 3 through 31 of the indictment charge the defendant, Donald G. Ford, with that offense. Counts 32 and 33 of the indictment charge the defendant, Sandra Hutchins Ford, with that offense. The defendants can be found guilty of any such offense only if all of the following facts are proved beyond a reasonable doubt with respect to each count in the indictment:

- First: The defendant knowingly engaged or attempted to engage in a monetary transaction; and
- Second: The defendant engaged in that transaction knowing that it involved criminally derived property; and
- Third: The criminally derived property was of a value greater than \$10,000; and
- Fourth: The criminally derived property was, in fact, derived from a specified unlawful activity; and
- Fifth: The monetary transaction took place within the United States.

The term “monetary transaction” includes any deposit, withdrawal, transfer or exchange, in or affecting interstate commerce, of funds or a monetary instrument such as personal checks or bank checks by, through, or to a financial institution. The term “monetary transaction” also includes a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate commerce in any way or degree.

You are instructed that the offense of conducting an illegal gambling business as charged in Count 2 of the indictment constitutes a “specified unlawful activity” for purposes of the instruction.

The term “criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense.

In order to prove the charge of attempting to commit the crime charged, it is necessary that the evidence established beyond a reasonable doubt,

- (1) that the defendant intended to commit the crime charged, and
- (2) that the defendant willfully took some action that was a substantial step in an effort to bring about or accomplish the crime.

Mere intention to commit a specific crime does not amount to an attempt. In order to convict the defendant of an attempt, you must find beyond a reasonable doubt that the defendant intended to commit the crime charged, and that he took some action which was a substantial step toward the commission of that crime.

Where an element may be proven in the alternative, the jury, in order to return a verdict of guilty, must unanimously agree as to which alternative was proven beyond a reasonable doubt or that both were proven beyond a reasonable doubt.

### COUNTS 34 - 37 - MONEY LAUNDERING

Title 18, United States Code, Section 1956 makes it a federal crime or offense for anyone to conduct a financial transaction involving proceeds from specified unlawful activity, knowing that the property represents proceeds of some form of unlawful activity, with the purpose, in whole or in part, of concealing or disguising the nature, location, source, ownership or control of the proceeds. If you find the defendant, Donald G. Ford, not guilty on Count 2, you must find him not guilty on these counts.

The defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt with respect to each count charging that offense in the indictment:

- First: The defendant conducted a financial transaction involving property that represents the proceeds from the operation of an illegal gambling business as charged; and
- Second: The defendant knew that the property represented the proceeds from the operation of the illegal gambling business; and
- Third: The defendant engaged in the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds and specifically intending that the transaction conceal or disguise the nature, location, source, ownership, or control of the proceeds.

The term “conducts” includes initiating, concluding, or participating in initiating or concluding a transaction.

The term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property. A “disposition” of property occurs when a person gives the property into the care or possession of another.

With respect to a financial institution, the term “transaction” also includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, or any other payment, transfer, or delivery by through, or to a financial institution, by whatever means effected.



The term “financial transaction” means any “transaction,” as that term has just been defined, which in any way affects interstate commerce **and** either involves the movement of funds by wire or other means **or** involves one or more monetary instruments. The term “financial transaction” also means any transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate commerce.

The term “monetary instrument” includes coin or currency of the United States, personal checks, traveler’s checks, bank checks, and money orders.

The term “financial institution” includes an insured bank, a commercial bank or trust company, a private banker and an insured institution.

The United States need not prove that all of the property involved in the transaction was the proceeds of specified unlawful activity. It is sufficient if the United States proves that at least part of the property represents such proceeds.

Where an element may be proven in the alternative, the jury, in order to return a verdict of guilty, must unanimously agree as to which alternative was proven beyond a reasonable doubt or that both were proven beyond a reasonable doubt.

**COUNTS 3 - 31, 32 AND 33, AND 34 - 37 -**  
**AIDING AND ABETTING MONEY LAUNDERING**

The guilt of a defendant in a criminal case may be proved without evidence that the defendant personally did every act involved in the commission of the crime charged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished through direction of another person as an agent, or by acting together with, or under the direction of, another person or persons in a joint effort.

So, if a defendant aids and abets another person by intentionally joining together with that person in the commission of a crime, then the law holds the defendant responsible for the conduct of that other person just as though the defendant had engaged in such conduct.

Notice, however, that before any defendant can be held criminally responsible for the conduct of others it is necessary that the defendant associate himself in some way with the crime, and intentionally participate in it. Mere presence at the scene of a crime and even knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime. You must find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

You will note that the indictment charges that offenses were committed "on or about" a certain date. The United States does not have to prove with certainty the exact date of the alleged offense. It is sufficient if the United States proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

The word "knowingly", as that term is used in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

As these terms have been used in the instructions, they mean the following:

The term "interstate commerce" means commerce or transportation of persons or property between one state and another state.

The term "commerce" includes travel, trade, transportation and communication.

The United States must prove only a minimal effect on interstate commerce to satisfy its burden on this point. You may infer an effect on interstate commerce for a particular transaction if you find that the transaction involved the use of a financial institution which was insured by the Federal Deposit Insurance Corporation (FDIC). To say that you may draw this inference does not mean that you are compelled to do so. You are the sole judges of the facts in this case.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, you are judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A forms of verdicts have been prepared for your convenience.

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict forms, date and sign them, and then return to the courtroom.