US v. Eaton, Wilkins & Thomas

Part 3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

United States of America	No. 11736-N.
vs	
William Orville Eaton, Collie Leroy Wilkins, Jr., and Eugene Thomas	

Before Hon. Frank M. Johnson, Jr., Judge, and a jury, at Montgomery, Alabama, November 29-30, December 1-2-3, 1965.

A p p e a r a n c e s:

For the United States: John Doar, Asst. Attorney General, Ben Hardeman, U. S. Attorney, and J. O. Sentell, Asst. U. S. Attorney.

For the Defendants: Arthur J. Hanes.

(NOTE: This transcript is an excerpt transcript containing only the Charge of the Court and proceedings thereafter to conclusion of trial in this case.)

Charge of the Court

You jurors give me your attention for the next few minutes please. We have reached the point in the trial of this case of the United States against Wilkins, Eaton, and Thomas where it is appropriate that I charge you as to the law that we are controlled by and that we are bound by in this particular case.

Before I start, let me get this draft cut off here, because -- will you close this door in this jury room, please.

In the trial of criminal cases in our system, Judges have a very distinct function to perform, distinct and separate from that function and duty that the law imposes upon jurors. The attorneys that represent the parties in the case have distinct functions to perform; and you have watched the lawyers in this case perform their duties and their obligations, and they have performed them quite well, and with due respect to the legal principles involved and due respect to the jury and to the court. It is the Judge's duty and responsibility in the trial of cases like this to, through various pretrial procedures that you are not presently concerned with, to assist the lawyers in expediting the trial to the extent that it can be done without prejudicing the rights of either side, to determine exactly what evidence is admissible during the course of the trial for the jury's consideration -- that is done by ruling upon various objections and motions that are made during the course of the trial, referred to generally in this trial and in all trials as matters of law that the jury is not immediately

used as far as the admissibility and the receipt of evidence
the course of the trial, this evidence being received so that
jurors may and will, because the law says that you must, give
due and proper consideration in discharging your duty. Your
is to determine from the evidence in the case -- not from out
the case, but from the evidence that has been admitted during
course of the trial for your consideration -- exactly what th
facts are in this particular case; and then, when you do that,
law imposes the duty and obligation on you of applying these
principles that are controlling to those facts, and then, as
of these defendants, separately, determine their guilt or inn

I cannot be, as Judge of this court, and you cannot
jurors serving in this court on this case, if we discharge ou
and responsibility in the manner that our oath requires, be c
with the wisdom or the policy of the law. Because we are a g
ment of laws, we are required in matters involving the law an
application of the law to, whether we like it or whether we d
like it, accept the law and make a proper and an unbiased
application of it in any given instance. The defendants in t
case have a right to expect that, and they have a right to de
it; the Government in this case has a right to expect it, and
have a right to demand it -- and it is my duty as Judge, and
your duty as jurors in this case, to see that they get it; an
a fair verdict is rendered in the case, then you have dischar
your responsibility, and they have received what they are ent

to under our system of laws. And a fair verdict can only be rendered in the case by you fairly and impartially considering all of the evidence that has been admitted for your consideration; determine from that evidence exactly what the true facts are in this particular case, and then, after an application of this law to those facts, as to each of these defendants, separately, determine whether they are innocent or whether they are guilty.

The law doesn't impose any impossible burden upon jurors, when it imposes the responsibility upon you of considering all of the evidence that has been admitted during the course of any given trial -- and in this particular case we have had somewhere between forty and fifty witnesses who have testified from the witness stand; we have had approximately fifty exhibits that have been admitted for your consideration -- it says that you must give due consideration to all of that evidence. If you can accept all of it with the truth of the matter as you determine it to exist, then accept it, and from it find your facts, and to the facts apply the law, and then as to each defendant return a verdict. If you reach the point in the course of your deliberations that you find some of the evidence to be in conflict and cannot be reconciled with other evidence that you know in the exercise of your good judgment and common sense is the truth of the matter, then you must make a determination as to what evidence you as jurors in this case, as fact finders in this case, are willing to accept and what evidence you must, in the exercise of your good judgment, reject as not being

the truth of the matter. If you reach the point that you find some of the evidence in this case to be in irreconcilable conflict, and if you find that you must make that determination to which I just referred, the law says that jurors are the sole judges as to the credibility of the witnesses who have testified on the witness stand, and they are the sole judges as to the weight, if any, to be given to the various exhibits, documentary evidence, and real evidence that has been admitted during the course of the trial for your consideration. You jurors in this case should carefully scrutinize the testimony that has been given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief; consider each witness's intelligence and motive and state of mind and demeanor and conduct while on the witness stand; consider, also, any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict that is rendered in the case, and the extent to which, if at all, each witness is either supported or contradicted by other evidence that you accept as being true that has been admitted during the course of the trial for your consideration. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause a witness's testimony to be discredited. Two or more persons witnessing any incident or a transaction may see or hear it differently. Innocent misrecollection or failure of recollection is, as each of you well know, not an

uncommon experience in the lives of any of us. In weighing the effect of a discrepancy, if you find any discrepancies of that nature, consider whether it pertains to a matter of importance or to an unimportant detail.

This case comes to this court, as you were advised prior to the time you were selected as jurors, by an indictment. An indictment is not evidence. It has no evidentiary value in any criminal case. The indictment that was rendered in this case and returned by the Grand Jury that reported to this court in April has no probative value. An indictment in our system is merely the formal means through which defendants are put on notice as to exactly what they are charged with, as to exactly what they are called upon to defend, so that they will not, and it is a part of our system that they will not, be met with any surprises during the course of a criminal trial. This indictment has, when it was formally served upon each of these defendants, thereby formally apprising them as to the charge in this case, served its formal purpose. An indictment, however, in my judgment has some practical purpose; I permit juries to have the indictment, not because it has any probative or evidentiary value — and I reiterate that it does not -- but for whatever guide it may be or assistance it may be in guiding jurors to reach a fair and a true verdict in the case; and I am going to permit you to have this indictment while you are deliberating this case — for that purpose, and for that purpose only.

The indictment charges William Orville Eaton, Collie Leroy Wilkins, Jr., and Eugene Thomas jointly with one offense, the offens of conspiracy — and I will go into that and charge you as to the technical elements of the law of conspiracy later during the course of this charge. Even though defendants are charged jointly, even though they are tried jointly in our courts, they stand guilty or innocent separate and apart from each other; so, when you make a determination in this case, you must make a separate determination of innocence or guilt as to each of these defendants, and you must return a verdict separately as to each of the defendants, the verdict that you return as to each of them representing the unanimous judgment of the jury, because a jury verdict in our system in cases like this must be a unanimous verdict. This indictment says that commencing on or about March 1, 1965 — on or about being indefinite terms within a reasonable time of that date — continuing to on or about March 26, 1965, that William Orville Eaton, Collie Leroy Wilkins, Jr., and Eugene Thomas, in this District, conspired together, with each other, and with other persons to the Grand Jury unknown, to injure, oppress, threaten, and intimidate citizens of the United States in the vicinity of Selma and Montgomery, Alabama, in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States, and because of their having exercised such rights as follows — and then there follows in the indictment an enumeration in five separate paragraphs. Under the evidence in this case you will not be

concerned with whether or not the conspiracy was successful -- if and when you find that a conspiracy existed, and if and when you find that one or more of the defendants became knowingly and willfully members thereof. You will only be concerned with the fourth paragraph, as numbered in this indictment -- because of their having exercised the right to participate in a protest march -- and I am going to, for your assistance, without obliterating, mark out the other four that are enumerated in the indictment, leaving only the fourth right that the Government in its indictment says the conspiracy was formed to oppress, threaten, and intimidate citizens in the exercise of, and this right is -- to participate in a protest march from Selma to Montgomery, to present a petition to the Governor in Montgomery, and to participate in the carrying out of a proposed plan for such march pursuant to an order that had been entered on March 17, 1965, by the United States District Court in the Middle District of Alabama. The indictment says, further, that it was a part of the plan and purpose of the conspiracy that the defendants would harass, threaten, pursue, and assault citizens of the United States in the area of Selma and Montgomery, Alabama, who were participating, or had participated in, or who were lending or had lent their support to a demonstration march from Selma to Montgomery pursuant to the plan that was just referred to, and which march had been approved by the court. Now, in determining the guilt or innocence of these defendants, there are several things that you jurors in this case and I, as Judge of the court, are not

concerned with. Judges aren't partisans, they aren't advocates in the trial of a case like this; they, under their oath and under their duty and obligation, act as impartially and as fairly as they can toward litigants on both sides, following and applying the law with impartiality. Jurors, likewise, are not advocates, and you are not partisans, because it was ascertained before you were tendered to the parties in this case that you were impartial as far as the guilt or innocence of these defendants were concerned, and it was ascertained that you would apply the law to the true facts in the case as those facts are reflected by the evidence, so neither of us are partisans -- and neither of us have any interest in the outcome of the case, other than to see that justice is done. So one of the things that we are not concerned with, as the Judge and as jurors, are whether one party wins a case or whether a party loses a case for winning or losing's sake. And then you are not concerned with any compulsion that may be upon upon you to render any verdict other than a fair verdict, except that compulsion that is imposed upon you by your oath as jurors, and my oath as the Judge of the court, and by our conscience in the clear and impartial exercise of the duty required of us by our oath. And you are not concerned in this case, and I am not concerned in this or any other case, with furthering or impeding any political or sociological cause or causes -- whether it be a political or sociological cause furthered or sponsored by the Southern Christian Leadership Conference is of no concern to me as Judge of this court; it is of no concern to you as

jurors in the case -- whether it be a political or a sociological cause that is furthered or sponsored by the United Klans of America or any of the other klan organizations to which this testimony has referred is of no concern of mine as the Judge of this court in any case, or yours as jurors on the trial of this case. So we are not concerned with the political or sociological causes in the case; we are not concerned with whether the verdict impedes their causes or whether it assists their causes; we are not concerned in this case with the right of American citizens to protest in a peaceful and orderly manner, whether it be a protest or a march or a demonstration or a caravan in furtherance of some cause sponsored by the Southern Christian Leadership Conference or whether it be a march or a protest or a caravan to further some cause sponsored by the United Klans of America or any of the other klan organizations, because it has been generally agreed by counsel, and properly so, during the course of this trial that those that were participating in this march from Selma to Montgomery and back and lending their aid to those that were participating in the march had a legal and a constitutional right under our American system to do that; it has been generally conceded, as long as it was done orderly and -- and peacefully and as the law permits such protests and demonstrations on the part of American citizens to take place; and likewise, it has been generally conceded during the course of this trial by the lawyers that represent the parties that the protest and the demonstration on March 21 sponsored by one or more of the klan

organizations, as that sponsorship was reflected by the evidence that you will recall, that those people that were engaged in that protest and in that demonstration, as long as it was done in an orderly and a legal manner, had a constitutional right and a right under the laws that we have that form the basis for our American system to do that -- so you are not concerned then with the legal right of these people to do what they were engaged in doing, whether it be on March 21 or whether it be on March 25, as long as it -- their participation was in a legal and in an orderly manner. You are concerned with many things as jurors in this case, some of which I have referred to, others that I will refer to.

The law of conspiracy, as far as this case is concerned, comes from a statute that was passed by the Congress of the United States many years ago. The pertinent portion of this law says that if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, are guilty of violating that law. Now, that is the statute that the indictment charges these defendants with having violated. To this charge, each of the defendants comes into this court and enters a plea of not guilty. In our system that places the burden of proof on the governmental agency that initiates the prosecution -- in the state system the burden in criminal cases is cast upon the state; in the federal system the burden of proof is cast upon the United

States. In this case, of course, the burden of proof is cast upon the United States.

Now, let's look to see what that burden of proof is: The burden in a criminal case, and the burden that is cast upon the United States in this case, is to prove the defendants' guilt, each of them separately, because, as I advised you, their guilt or innocence is to be determined separately, beyond a reasonable doubt. Now, that burden doesn't mean that you can convict on guesswork or speculation, nor does it mean that there is a burden of proof on the part of the United States to prove a defendant's guilt to a mathematical certainty. The yardstick, when you are concerned with this burden of proof, is the yardstick of reasonable doubt. A reasonable doubt is defined by the law as a doubt for which you jurors may find a reason growing out of the evidence in the case, or, because the burden is upon the United States, growing out of a lack of evidence in the case. It doesn't mean a fanciful doubt, it doesn't mean some doubt that you get outside the evidence in the cas it doesn't mean some doubt that may be generated in my mind as the Judge or your mind as jurors because of some unpleasant task to perform; it is a burden of reasonable doubt as I have defined it to you, and that is the burden that is cast upon the Government in this case.

Now, in our system of criminal laws in the United States, each defendant comes into court presumed by the law to be innocent of crime. All defendants in our system, in contrast to some other

systems, are presumed by the law to be innocent of crime as charged; this presumption attends each defendant in this case throughout the trial of this case. Each of these defendants have the benefit of this presumption of innocence throughout the trial of the case and on while you are deliberating the case in the jury room, until you reach a point during the course of your deliberations -- if you do reach such a point -- that you believe that the United States has sustained its burden of proof as I have outlined and defined that burden to you. Once you reach that point -- if you do -- during the course of your deliberations as to one or more of these defendants, then as to that or those defendants this presumption of innocence is cast aside, and it goes out of the case, and it serves no further purpose during the trial of the case.

Getting back then to the technical aspects of this law of conspiracy: A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose. Now, the gist, or the gravamen, of the offense of conspiracy is a combination or agreement to violate or disregard the law. Mere similarity of conduct among various persons and the fact that they may have associated with each other and may have assembled together and discussed common aims and interests does not, necessarily, establish proof of the existence of a conspiracy; however, the evidence need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be or the

details thereof, or the means by which the object or purpose was to be achieved. What the evidence must show in order to establish proof that a conspiracy existed is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and an unlawful plan. It is not necessary for the prosecution in a conspiracy case -- and this, of course, is applicable in this case -- to prove that all of the means or methods that is set forth in the indictment were agreed upon to carry out the conspiracy, or that all such means or methods were actually put into operation -- but it is necessary that the evidence establish to the satisfaction of the jury that one or more of the means or methods described in the indictment was agreed upon to be used in an effort to effect or accomplish some object or purpose of the conspiracy as charged in the indictment. And to review and to focus your attention, the indictment generally says that the object or purpose was to injure, oppress, threaten, and intimidate citizens of the United States in the vicinity of Selma and Montgomery in the free exercise and enjoyment of certain rights and privileges secured to them under the Constitution and laws of the United States; this right and privilege specifically referred to and remaining in the indictment being numbered for identification purposes as number four -- the only one in the indictment which I have not placed an X mark through -- is to participate in this protest march from Selma to Montgomery, Alabama. Now, a person may become a member of a conspiracy without full knowledge of all the

details of the conspiracy; on the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which further an object or purpose of the conspiracy, does not thereby become a conspirator. Before a jury may find a defendant has become a member of a conspiracy, or any other person for that matter, the evidence in the case must show that the conspiracy was formed and that the defendant knowingly and willfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy. Now, to participate knowingly and willfully means to participate voluntarily and understandingly and with a specific intent to do what the law forbids; that is to say, to participate with a motive or purpose to disregard the law. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, intentionally encourages, advises, or assists for the purpose of furthering the understanding or scheme, he thereby becomes a knowing and willful participant, referred to as a conspirator. One who knowingly and willfully joins an existing conspiracy is charged under the law with the same responsibility as if he had been one of the instigators or originators of the plan that is found to be a conspiracy.

Now, in determing in this case whether or not a defendant was a member of a conspiracy, you jurors are not to consider what others may have said or what others may have done; that is to say, the membership of a defendant in a conspiracy must be established by evidence as to his own conduct -- what he, himself, said, or what he, himself, did. Now, if and when it appears from the evidence

in the case that a conspiracy did exist, and that a defendant — one or more of them — were members, then the law says that thereafter acts knowingly done and the statements thereafter knowingly made by any person likewise found to be a member of the conspiracy, provided it was made during the course of the conspiracy and in furtherance thereof, may be considered by the jury as evidence in the case against any person likewise found to be a member of the conspiracy.

In your consideration of the evidence in this case as to the offense of conspiracy as it is charged in this indictment, you should first determine whether or not the conspiracy existed as it is alleged to exist. If you conclude that such conspiracy did exist then you should next determine whether or not, as to each of the defendants, they knowingly and willfully became a member of the conspiracy. If it appears from the evidence beyond a reasonable doubt that the conspiracy was knowingly and willfully formed as alleged in the indictment, and that either of the defendants or all of them knowingly and willfully became a member of the conspiracy, at its inception and/or during the course of it, and that thereafter one or more of the conspirators knowingly committed in furtherance of an object or purpose of the conspiracy any overt act, then the success or the failure of the conspiracy is immaterial.

Now, by this term, "Overt act," is meant any act committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, although it may be, if considered separate and

apart from the conspiracy.

Now, to review: In order to establish the offense of conspiracy as it is charged in this indictment, the evidence must show as to each of the defendants beyond a reasonable doubt -- first that the conspiracy described was formed and existing at or about the time it is alleged; second, that the defendants, one or more of them, knowingly and willfully became a member of the conspiracy; third, that one of the conspirators thereafter knowingly committed at least one overt act at or about the time, during the course of the conspiracy, and to further some object or purpose of it. Now, if you find from the evidence beyond a reasonable doubt that existence of the conspiracy charged in this indictment has been proved, and that during the existence of the conspiracy an overt act was knowingly done by one or more of the conspirators in furtherance of some object or purpose of the conspiracy, proof of the conspiracy offense charged is then, under the law, complete -- and it is complete as to every person found by you to have been knowingly and willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the act.

During the course of this trial I have admitted some testimony concerning certain statements that were attributed to one or more of the defendants. If these statements were made during the course of the conspiracy -- if you find that they were made and if you find that they were made during the course of the conspiracy to further -- if you find the conspiracy existed -- to further some

object or purpose of the conspiracy, then those statements are admissible as to each of the defendants who were likewise knowingly and willfully members of the conspiracy; on the other hand, if the evidence reflects that the statements were made by defendants after the conspiracy came to an end, and after it was terminated, those statements are admitted only as to the defendant or defendants making them. Any statement made by a defendant -- under our system, outside of court -- if considered to be of an incriminatory nature, or considered to be against the interest of the defendant, are, when admitted during the course of the trial, properly considered; but the law says the jury is to accept them with caution and weigh them with care.

You have heard some testimony during the course of this trial from one or more expert witnesses; I recall the State Toxicologist, Dr. Shoffeitt, testified as an expert in the case; I recall Marion Williams testified as an expert from the Federal Bureau of Investigation laboratory; there may have been others. The testimony from expert witnesses, the law says, is to be considered along with the other evidence in the case. An individual becomes an expert in any given field -- and there are experts in this jury box in certain fields -- that you become an expert in a given field by knowledge and training, whether it comes from technical training or from experience, that is greater than that that a lay individual has in that particular field. The qualification of expert witnesses is a matter for the court to decide. That was determined in the

case of two or more of these witnesses whose testimony was admitted during this trial. The weight to be given the testimony of expert witnesses is a matter for the jury to determine; it cannot, of course, be arbitrarily or capriciously disregarded.

If you believe that any witness during the course of this trial has willfully sworn falsely to any material fact, then the law says that you as jurors may, in the exercise of your discretion, disregard all of the testimony of that or those witnesses that you so find.

During this trial I have admitted for your consideration some evidence that may have proved on the part of one or more of these defendants criminal offenses other than the one that they are being charged with -- and I have in mind in making this statement particularly the admissibility for your consideration of a sawed off shotgun that was found during the course of a search of the defendant, Thomas's, home. That was not admitted and is not to be considered by you jurors for the purpose of proving that the defendant, Thomas, may have been guilty of some criminal offense other than the one that he is charged with in the case; it was admitted for the purpose, or for whatever purpose, it might shed on that defendant's intent and purpose as the other evidence may reflect in the case, for whatever light it might shed on that question of intent.

Getting now to this question of intent: Intent in a case may be, as all other matters may be in our system, proved by

circumstantial evidence. Circumstantial evidence is not anything except proof of facts which have a natural tendency in the minds of reasonable individuals to lead to the conclusion that other facts exist. The most simple example -- and one I heard when I first started practicing law by another judge -- of circumstantial evidence is one that says if you go to bed at night and it snows during the night and you get up the next morning and you see rabbit tracks going by your door, you know that a rabbit went by, even though you didn't see him. Now, that is all circumstantial evidence is, and that is the simplest example that I can give you of it. It rarely can be established by -- intent can rarely be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eye witness account of the state of mind with which the acts were done or omitted; but what a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged. Now, the law says that it is reasonable to infer that a person ordinarily intends the natural and probable consequence of his acts knowingly done or knowingly omitted. So, unless the contrary appears from the evidence in this case, you jurors may draw an inference that the accused, either or all of the intended all of the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly done by the defendant. In determining the issue as to intent, you jurors are entitled to

consider any statements made and acts done or omitted by one or more of the accused, but as restricted by my charge formerly to you that if the statement was made during the course of the conspiracy and in furtherance of some object or purpose thereof, then, by either of the defendants, it can be considered as to all who were likewise knowingly and willfully members of the conspiracy; however, if the statement was made after the termination of the conspiracy, then it can only be admitted and considered against that individual or those individuals that you find from the evidence in the case that made the statements.

I have a practice that I have followed through the more than ten years that I have been on the bench of never directly or indirectly commenting upon the failure of a defendant to testify. However, where the defendants' lawyers request it, I do charge you on the law as to the effect of the failure on the part of defendants to testify, and this charge is at the request of the defendants' lawyers; otherwise, I would not have mentioned it or commented upon it. The defendants have not testified in their own behalf. They don't have to do that. There is no way to -- and I am reading it as requested by the defendants' lawyers -- there is no way to force them to testify in their own behalf. The court charges the jury that the fact that the defendants did not testify in this case cannot be considered in determining defendants' guilt or innocence. No inference or conclusion should be drawn by the jury from the fact that the defendants were not sworn and put on the stand as witnesses

in their own behalf, nor should this fact have any weight with the jury in reaching a verdict.

At the request of the Government, to be taken and considered along with what else that I have charged you, all else that I have charged you that is the controlling law in this case, I charge you that although evidence has been offered by the Government and has been admitted by the court to the effect that Mrs. Viola Liuzzo was killed while she was traveling on the highway between Selma and Montgomery, Alabama, I instruct you that it is not necessary to establish the offense here charged to prove that the defendants intended to kill or did kill Mrs. Liuzzo. It is sufficient for the charge here involved if the other elements of the offense are established as I have outlined and defined those elements to you beyond a reasonable doubt that the defendants, one or more of them, had as their purpose to injure, oppress, threaten, or intimidate the class of persons or any member of the class of persons described in the indictment; namely, citizens of the United States in the area of Selma and Montgomery, Alabama, who were participating in or had participated in or who were lending or had lent their support to a demonstration march.

Now, in concluding my remarks, and in outlining and apprising you jurors as to the law that we are controlled by in this case, let me state that in returning your verdict in this case you must not, you cannot, be swayed by sympathy, prejudice, or passion for or against any defendant in this case, or for or against the

Government, or for or against any citizen against whom the defendants are alleged to have conspired. Your duty in this case is to determine from the evidence that has been admitted for your consideration exactly what the facts were and to apply this law as I advised you at the outset to those facts, regardless of the results which may follow.

Now, as I have previously instructed you, those engaged in the Selma march were, it is acknowledged by the lawyers on both sides of this case, and likewise, those engaged in the klan protest, it is acknowledged by the lawyers in this case, as long as it was done peacefully and orderly, were exercising a right secured to them by our laws and under our Constitution, and any person in the exercise of those rights had a right to be free from harassment, intimidation, and oppressment, whether or not I as the Judge of the court or you as jurors agree with the ends for which these rights were exercised; that must not enter into the verdict in the case; nor should you be swayed by prejudice against the ends sought by the defendants, if the testimony in the case reflects that they were members of a klan organization. If you otherwise determine that they are not guilty of the offense charged in the indictment, then your verdict in this case should not be affected by any opinion that you may have with regard to their views or the views of the organization to which they belong.

We who are here in this court of justice -- you who are successful in the field of education, as homemaker, in the field of

farming, in the field of contracting, as oil jobbers, real estate, or whatever your field may be in -- are in this jury box by virtue of your citizenship in the United States, and you are here in this court to do justice; all of us, including myself, have taken a solemn oath to decide the matters that are required of us to be decided in this particular case. I feel it appropriate in this particular case to emphasize to some extent the duty that has been cast upon each of us. This duty arises by -- as I stated before -- reason of your oath and the obligations imposed thereby. The duty is not only to these individual defendants, in any criminal case thi is true; it is not only to the agency that prosecutes, and in any criminal case this is true -- those who are active partisan participants in the case; but the duty is to our judicial system. We have in our American judicial system inherited the legal traditions and principles that have been -- that have given rise to the proposition in this country that the law is supreme. Necessaril included in this philosophy of our American system is the recognitic on the part of all responsible citizens that we must have a free and an independent court system in order to perpetuate and preserve thi system that we have. During the growth of this country, during the growth of America, our free and independent court system has constantly served as a beacon of hope and as a last resort for the protection of individual citizens, and that is the reason we have legal principles for the protection of those citizens, whether they be defendants in the court room or whether they be individuals upon

the highways protesting against what they consider to be grievances. Now, our courts in cases like this, composed of judges and jurors, have served and continue to serve as the light of justice toward which all eyes of free people throughout the world are turned. The people of America have learned to have faith in our courts and in our jury system. Many lay citizens cannot understand jurisdictional problems or legal procedures, nor are they expected to; nevertheless they, in America, repose with a confident feeling, with a knowledge that there is a limit which oppression cannot transcend, that no agency or power can go upon them but by a judgment of a duly constituted court acting in cases like this through judges on the court and jurors in the jury box, applying the law of our country. Now, judges will be appointed and pass away; jurors will serve in cases and be forgotten; one generation in the history of our jurisprudence in America rapidly succeeds another -- it has, and it will; whoever comes and whoever goes, whether he be a judge or whether he be a juror, our courts in America and the law that they dispense must remain supreme if our system is to prevail. Strong in its traditions, with the fidelity of the jurors and judges who serve upon them, the courts of our country and our judicial system are above and beyond the men and women who at any time serve upon them, either as judges or as jurors. It necessarily follows that the principles of justice and supremacy of the law override any political or sociological causes or movements -- and the verdict which is rendered in this case must be a verdict insofar as each of

these defendants is concerned and insofar as the Government is concerned that rests completely upon the proposition of justice rendered by an impartial court and rendered by twelve impartial jurors.

If, after you consider all of the evidence in this case, you believe that the United States has sustained its burden of proof as I have outlined and defined that burden to you during the course of this charge, then without regard to the consequences as to that or those defendants that you so find, return a verdict of guilt If, on the other hand, you believe, after considering all of the evidence in the case, that the United States has failed to sustain its burden as to one or more of the defendants, then as to that or those defendants return a verdict of not guilty.

Now, before I finally submit this case to you, so that I can give the lawyers an opportunity to object or except to anything that I may have said or failed to say that they think is applicable and controlling law, if you will, step into this jury room on my left, but do not yet commence your deliberations.

(At which time, 9:58 a.m., the jury left the court room)

THE COURT: I am filing at this time with the Clerk of this court Government's requested charges one through fifteen, a few of which I referred to and paraphrased to fit the case as I determined they should be, most of which I did not give nor refer to. I am filing with the Clerk of the court at this time an

envelope that has forty or fifty requested charges on behalf of the defendants; all of them were refused. That doesn't mean that they did not state correct propositions of law in some instances; it mean that they were otherwise adequately and fully and completely covered in the court's oral charge.

MR. HAINES: All right, sir.

THE COURT: Those that do state the correct propositions of law were refused for that reason; those that did not were refused for that reason. Defendants' requested charge D-5, D-26, and D-27 were given and read to the jury.

MR. HAINES: All right, sir.

THE COURT: Now, state your exceptions and objections for the defendants.

MR. HAINES: Defendants entirely satisfied, your honor, if I may say so.

THE COURT: For the Government?

MR. DOAR: United States is satisfied, your honor.

THE COURT: Bring the jury back in.

(At which time, 10:01 a.m., the jury returned to the court room)

THE COURT: They need not get back in the box; let them line up across there. You need not get back in the jury box; if you will, just across and behind the lawyers. I am going to send you to a larger jury room. All right, jurors Heilpern and Lacey, the first and second alternates, should have seats in the

court room at this time. You other twelve jurors retire to the jury room on my right. The Bailiff will bring the exhibits that have been admitted to the jury room for you. Let the verdicts that reflect the unanimous verdict of the jury be returned with one of your number that you have selected signing each of them as foreman of the jury. Retire and let me know when you reach a verdict.

(At which time, 10:03 a.m., the jury left the court room. At 12:45 p.m. the following proceedings were had in this case:)

THE COURT: Lawyers and the defendants in the Thomas, Wilkins, Eaton case. Anyone who wants to can leave at this time; if you want to leave, you can go ahead and leave. All right, this case is recessed until two o'clock. Clear the counsel table for me, please. All right, leave space for the jury to get through; bring the jury in. All right, someone from the Marshal's office, as Bailiff, take charge of the exhibits as the jury leaves the room; you can lock them up in the jury room or handle it however you want to.

(At 12:47 p.m. the jury entered the court room)

MARSHAL: Right around this way, please.

THE COURT: They need not get back in the jury box. That is all right. I am going to recess you now as far as your deliberations in this case are concerned for the noon period. The Marshal will, of course, escort you to an appropriate place where you are to eat. During this recess, while you are out of the jury

room, you are instructed not to discuss the case between yourselves; do not permit anyone to talk with you about it, or in your presence, or in your hearing. When you get back in the jury room, then you recommence your deliberations. If court is recessed, or we are running court when you bring this jury back -- give them whatever time they feel necessary, but if we are running court, take them back through my library on into the -- on into the jury room. All right, gentlemen.

DEPUTY MARSHAL: Jury will come this way.

(At which time, 12:48 p.m., the jury left the court room)

THE COURT: All right, is the jury room locked?

COURT CRIER: Yes, sir.

THE COURT: All right, any matter in this case?

MR. HANES: None, your honor.

THE COURT: All right, let's give the jury time to get on down, and then we will recess. Two o'clock.

(At which time, 12:48 p.m., a recess was had as far as this case was concerned until 2:23 p.m., at which time the following proceedings were had:)

THE COURT: Well, I believe I have received a communication from the jury in the -- in the Wilkins and Eaton, Thomas case that I feel it appropriate to respond to, so I will have that jury brought in for the purpose of responding to that, and I will just recess this case for a few minutes; you jurors just keep your seats. Let the record reflect that counsel for the defendants,

together with the defendants, are in the court room. Come around where you can hear better, if you want to, Mr. Hanes.

MR. HANES: This is all right, your honor.

THE COURT: All right, bring the jury in. (to attorney in another case) No, you keep your seats.

(At 2:25 p.m. the jury entered the court room)

THE COURT: I received your communication through the Bailiff where you request that I make available to you a dictionary. The only time a Judge can talk to a jury that is deliberating the case is in the court room, and so I had to bring you in the court room to tell you that I cannot respond to your request for a dictionary, because it hasn't been identified and admitted as part of the evidence in the case. Dictionaries sometime define words in various meanings -- I assume that is the purpose that you wanted it, the purpose for which you wanted it -- that when those same words have in the system of law that are applicable different meanings to some extent. So if you will, or if you consider it appropriate and make a request, I will define for you any words that you may have in mind that you feel the definition to will assist you in your deliberation.

JUROR THOMAS: Your honor, the question arises around the word, "Conspiracy," as opposed to such words as "Agree," "Premeditated," and the difference therein.

THE COURT: Yes, sir; well, you will recall that I defined the term, "Conspiracy," to you. If you feel it appropriate,

I will go back over that and define "Conspiracy" for you again.

JUROR THOMAS: I think it would be helpful, Judge.

THE COURT: Just that part of the conspiracy law --

JUROR THOMAS: Yes, sir.

THE COURT: -- relating to definition of "Conspiracy' is that what you are interested in?

JUROR THOMAS: Yes, sir.

THE COURT: All right. A conspiracy, gentlemen, is a combination of two or more persons by concerted action to accomplish some unlawful purpose or to accomplish a lawful purpose by unlawful means. The gist of the offense of conspiracy is a combination or an agreement to violate the law. Now, the evidence need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be achieved. What the evidence must show is -- in order to establish proof that a conspiracy existed is that the members in some way or in some manner or through some contrivance, either positively or tacitly, either explicitly or impliedly, came to a mutual understanding to try to accomplish a common and unlawful plan Does that answer your question?

(Various jurors nodded heads to indicate affirmative replies)

THE COURT: Anything else, gentlemen?

JUROR: Thank you, sir.

(At which time, 2:26 p.m., the jury left the court room)

THE COURT: All right, make your exceptions, if you have any.

MR. HANES: None for the defendants, your honor.

MR. DOAR: No exceptions, your honor.

(At which time a recess as far as this case was concerned was had until 3:40 p.m., at which time the following proceedings were had:)

THE COURT: We return again to the case of the United States against Thomas, Wilkins, and Eaton. I received a communication from the jury through the Bailiff that they have a question that they would like to ask. Bring them in for that purpose.

(At 3:41 p.m. the jury entered the court room)

THE COURT: All right, who is the spokesman?

JUROR KIRBY: Your honor, is it permissible for us to ask the source of some evidence that has been presented in this case, exhibit?

THE COURT: No, sir; I cannot answer that question for you. Any of the evidence that I admitted for your consideration whether it was offered by the defendant or offered by the -- defendants or offered by the Government, and I don't know to what you have reference, and it is not proper at this time for me to know but whether it was offered by the defendants and admitted by the

court or offered by the Government and admitted by the court, it was admitted for your consideration as being valid and legal evidence in the case. Now, if there was any evidence in the case concerning the source of the exhibit, you will have to recall that from your own recollections; I cannot recall it for you, so there is no need for me to ask you to which exhibit you refer, because I couldn't answer it, if it were a defendants' exhibit or if it were a Government's exhibit. Your recollections are to be as to what the evidence was; there may be no evidence as to source; if there is no evidence as to source, and it was admitted for your consideration, it can be assumed by you that it is from a valid source and it is legal and competent evidence or I wouldn't have admitted it. Does that help you any?

JUROR KIRBY: No, sir; that is all right, though; thank you, sir.

(At 3:44 p.m. the jury started to leave the court room)

THE COURT: Just a minute; bring the jury back in. Let me see if I can help them. What piece of evidence are you referring to?

JUROR KIRBY: It is the U. S. District Court evidence Exhibit number 36.

THE COURT: Just a minute. All right, 36, 37, and 38, Government's Exhibits, were admitted at the same time; the thirty-eight caliber ammunition, according to my recollection, was

found as result of a search on or about March 26, 1965, in the home of the defendant, Thomas. That is my recollection; you are not bound by my recollection; you can recall and use your own recollection for it. Does that help you?

JUROR KIRBY: Yes, sir.

JUROR THOMAS: Yes, sir.

JUROR KIRBY: That does; thank you.

THE COURT: All right, go back in the jury room.

(At which time the jury left the court room)

THE COURT: Make your exceptions and objections.

MR. HANES: None for the defendants, your honor; no, nothing.

MR. DOAR: No exceptions.

MR. HARDEMAN: No exceptions.

THE COURT: All right, we will take a ten minute recess.

(At which time, 3:45 p.m., a recess as far as this case was concerned was had until 5:30 p.m., at which time the following proceedings were had:)

THE COURT: All right, I am going to let this jury retire for the night, unless you gentlemen know of some reason why I should not.

MR. HANES: No reasons, your honor.

THE COURT: Do you?

MR. DOAR: No reason.

THE COURT: All right, bring them in. The Bailiff will take the exhibits for the night.

(At which time, 5:32 p.m., the jury entered the court room)

THE COURT: Come on around, if you will, gentlemen. All right, gentlemen, I am going to let you retire for the day. The Deputy Marshal that has been with you tells me that you have been ready to start working in the mornings earlier than I have been starting court, so any time between eight and eight thirty that you all want to recommence your deliberations, it will be all right with me. The exhibits will be back in the jury room for you. Between now until then, do not deliberate the case; do not recommence your deliberations or engage in or participate in any deliberations concerning this case until all twelve of you get back in the jury room in the morning. You are recessed for the night.

(At which time, 5:33 p.m., the jury left the court room)

THE COURT: Turn the exhibits over to the Clerk.

COURT CRIER: All right.

THE COURT: You usually keep the exhibits during the night?

THE CLERK: Yes, sir.

THE COURT: I don't care which one of you keeps these, just so you keep them locked up --

THE CLERK: Okay.

THE COURT: -- in the same condition that they are in. Any matter for the Government?

MR. DOAR: Nothing, your honor.

THE COURT: For the defendants?

MR. HAINES: Nothing, your honor.

THE COURT: All right, recess court until -- recess until further order.

(At which time, 5:35 p.m., a recess was had as far as this case was concerned until 10:00 a.m., December 3, 1965, at which time the following proceedings were had:)

THE COURT: Defendants in the Thomas, Eaton, Wilkins case, and their counsel, if you will, come around to counsel table. Make a place available for that jury to pass through, please. All right, let the record reflect that the defendants and their counsel are in court in that Thomas, Wilkins, Eaton case. I have received a communication from the jury; I feel it necessary to bring them in court at this time.

(At which time, 10:09 a.m., the jury entered the court room)

THE COURT: All right, I have received a communicatic -- Mr. Kirby, are you spokesman for the jury?

JUROR KIRBY: Yes, sir. Your honor, we find that we are unable to reach a verdict and seem to be hopelessly deadlocked.

THE COURT: All right. That is the message that I received from you through the Bailiff. I had you brought back in

court to respond to that message. If you will, so I can see all of you, will you -- will you get six on the row, please; this lamp bothers me with the juror on the end. Anything that I say to you at this time is to be taken and considered along with what I charged you was the law of the case when I charged you on the law at the conclusion of the trial before the case was submitted to you yesterday. As I reminded you then, we had somewhere between forty and fifty witnesses in the case, and we had somewhere -- approximately fifty exhibits. So you haven't commenced to deliberate the case long enough to reach the conclusion that you are hopelessly deadlocked, so I brought you back in court for the purpose of advising you to that effect -- and for the purpose of advising you to this effect: That this is an important case. This trial has been long, and the trial has been expensive. Your failure to agree upon a verdict will necessitate another trial equally as expensive; that is, expensive as far as the Government is concerned, it is expensive as far as the defendant is concerned. This court is of the opinion that the case cannot again be tried better or more exhaustively than it has been on either side. It is therefore very desirable that you jurors should agree upon a verdict in this case. This court does not desire that any juror should surrender his conscientious convictions; on the other hand, each juror should perform his duty conscientiously and honestly according to the law and according to the evidence -- because I know, since you responded prior to the time you got in this jury box, that you had

no preconceived notions, and that you swore under oath that you would render a verdict in the case according to the law and according to the evidence, without regard to any other factors — and although the verdict to which a juror agrees must be his own verdict, the result of his own convictions, and not a mere acquiescence in the conclusions of his fellow jurors, yet in order to bring twelve minds to a unanimous result, you must examine the questions submitted to you in this case with candor, with a proper regard and deference to the opinions of each other. You should consider that this case must at some time be decided, that you are selected in the same manner and from the same source from which any future jury must be, and there is no reason to suppose that the case will ever be submitted to twelve more intelligent, more impartial, or more competent to decide it, or that more or clearer evidence will be produced on one side or the other. In conferring together you ought to pay proper respect to each other's opinions, with a disposition to be convinced by each other's arguments; on the one hand, if much the larger number of your panel are for a conviction, a dissenting juror should consider whether a doubt in his own mind is a reasonable one which makes no impression upon the minds of so many equally honest, equally intelligent with himself who have heard the same evidence with the same attention, with an equal desire to arrive at the truth and under the sanction of the same oath; and, on the other hand, if a majority are for acquittal, the minority ought seriously to ask themselves whether they may not

reasonably and ought not to doubt the correctness of a judgment which is not concurred in by most of those with whom they are associated and distrust the weight or sufficiency of that evidence which fails to carry conviction to the minds of their fellow jurors. With that additional instruction, and with the offer on the part of the court to clarify any legal points that I failed to make clear, if the jury conscientiously needs the assistance of the court for any clarification of the law, you may retire and resume your deliberation.

JUROR KIRBY: Thank you, sir.

(At which time, 10:15 a.m., the jury left the court room)

THE COURT: Make your exceptions and objections.

MR. DOAR: No exceptions, your honor.

MR. HANES: Your honor, I object to the charge on — on behalf of the defendants.

THE COURT: State your basis.

MR. HANES: Well, your honor, I think it was prejudicial to the — to the interest of the defendants.

THE COURT: Is that the only basis?

MR. HANES: Yes, sir.

THE COURT: All right, you have that objection and exception.

MR. HANES: All right, sir.

THE COURT: All right, you can be excused then, and

we will get back to the case —

MR. HANES: All right, sir.

THE COURT: — when it becomes appropriate.

(At which time, 10:16 a.m., a recess was had as far as this case was concerned until 12:22 p.m., at which time the following proceedings were had:)

THE COURT: All right, I believe I will send the jury in the Wilkins, Eaton, Thomas case to lunch. If you will, bring them in. Defendants and counsel are in court.

(At which time, 12:23 p.m., the jury entered the court room)

THE COURT: All right, gentlemen, if you will, the Marshal will escort you to lunch; do not deliberate the case while you are at lunch. Resume your deliberations when you get back to the jury room.

DEPUTY MARSHAL: Jury will please come this way.

(At which time, 12:23 p.m., the jury left the court room)

THE COURT: Defendant Banks in court?

MR. RICHARD JORDAN: No, sir; I believe the Marshal carried him to the rear, Judge.

THE COURT: You all are recessed for lunch, if you wish to go.

MR. HANES: All right; thank you, your honor.

THE COURT: Give the jury time to get down, if you

will, please.

MR. HAINES: All right, sir.

THE COURT: (to press) You gentlemen can go if you want to.

(At which time, 12:24 p.m., a recess was had as far as this case was concerned until 2:08 p.m., at which time the following proceedings were had:)

THE COURT: Verdict in both cases?

MARSHAL: Yes, sir.

THE COURT: Well, let's take the one that has been out the longest. You just tell them to -- I will get to them in a few minutes. Regardless of what the verdict is in this Eaton, Wilkins, Thomas case, whether it is an acquittal or whether it is conviction, there should be no demonstrations in this court or immediately outside the court of any nature; they are uncalled fo it doesn't make any difference what the verdict is. Bring the ju in.

(At which time, 2:08 p.m., the jury entered the court room)

THE COURT: All right, Mr. Kirby, are you foreman this jury?

JUROR KIRBY: Yes, sir.

THE COURT: Have you reached verdicts in the case

JUROR KIRBY: We have, sir.

THE COURT: Will you file them, please, with the

Clerk.

COURT CRIER: Defendants stand, please.

THE COURT: Mr. Clerk, you read the verdicts.

THE CLERK: (reading) We the jury find the defendan Collie Leroy Wilkins, Jr., guilty as charged in the indictment. This the 3rd day of December, 1965. T. H. Kirby, foreman. We the jury find the defendant, Eugene Thomas, guilty as charged in the indictment. This the 3rd day of December, 1965. T. H. Kirby, foreman. We the jury find the defendant, William Orville Eaton, guilty as charged in the indictment. This the 3rd day of December, 1965. T. H. Kirby, foreman.

THE COURT: All right, gentlemen, if it is worth anything to you, in my opinion that was the only verdict that you could possibly reach in this case and still reach a fair and hones and just verdict. Of course, I couldn't tell you that beforehand; it wasn't any of my business, because it was your duty and your responsibility to determine the guilt or innocence of these men. The Marshal will escort you back to your quarters, so that you can make arrangements to leave, and the Clerk and the Marshal will tak care of your mileage and your attendance. Do not discuss the case with anyone or permit anyone to discuss it with you, as to how you voted -- and the reason I mention this, I read in the paper this morning where some jurors discussed with news men the various ballots that were taken in a case, and that is -- that is not anybody's business. You are excused.

DEPUTY MARSHAL: Jury please come this way.

(At which time the jury left the court room)

THE COURT: Let me see the court file in this case. All right, defendants can have a seat.

MR. HAINES: All right, sir; thank you, your honor.

THE COURT: Mr. Haines, do you want to talk with me in this case before sentence?

MR. HAINES: Yes, sir; your honor.

THE COURT: I always afford defendants, together with my probation officers, an opportunity to discuss sentence —

MR. HAINES: All right, sir.

THE COURT: — before I impose sentence in any case.

MR. HAINES: Yes, your honor.

THE COURT: And that same — is no reason why the same procedure shouldn't be followed in this case.

MR. HAINES: All right, sir.

THE COURT: Recess court for that purpose.

MR. HAINES: All right, sir.

THE COURT: Let me take the verdict from my other jury.

MR. HAINES: Your honor, I might add, sir, may it please the court; we would like to file an appeal in this case and

THE COURT: Well, you certainly have that right.

MR. HAINES: It is our intention; all right, sir.

THE COURT: You have a right to file appeal after

sentence. It would be improper for me to set appeal bond until after sentence —

MR. HAINES: All right, sir.

THE COURT: — but I will set a reasonable appeal bond in each of these cases after sentence.

MR. HAINES: All right.

THE COURT: All right, you are recessed for the time being in this case.

MR. HAINES: All right; all right, sir.

(FOR SENTENCE PROCEEDINGS SEE SEPARATE TRANSCRIPT FILED DECEMBER 3, 1965)

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

I, Glynn Henderson, Official Court Reporter of the United States District Court for the Middle District of Alabama, do hereby certify that the foregoing 45 pages contain a true and correct transcript of proceedings had before the said court held in the City of Montgomery, Alabama, in the matter therein stated, or that portion thereof indicated in note on page one of this transcript. In testimony whereof I hereunto set my hand on this the 28TH day of December, 1965.

Glynn Henderson
Official Court Reporter.