

FUNCTIONS OF THE COURT AND JURY

Ladies and gentlemen, now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you on the law that applies in this case. A copy of these instructions will be available to each of you in the jury room for you to consult if you find it necessary.

It is your duty to find the facts from all of the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, personal opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of this case.

WHAT IS EVIDENCE

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which the lawyers have agreed or stipulated.

WHAT IS NOT EVIDENCE

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses

CHARTS AND SUMMARIES RECEIVED IN EVIDENCE

_____ Certain charts and summaries have been received into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE

Certain charts and summaries that have not been received in evidence have been show to you in order to help explain the contents of books, records, documents or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

CREDIBILITY OF THE WITNESSES

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things: the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things that the witness testified about, the witness's memory; any interest, bias or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

OPINION EVIDENCE

EXPERT WITNESSES

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

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves.

USE OF NOTES

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

BURDENS OF PROOF

In any legal action, facts must be proved by a required weight of the evidence, known as the burden of proof. In a civil case such as this, there are two different burdens of proof that are used. The first is called preponderance of the evidence. The second is called clear and convincing evidence.

When a party has the burden of proof by a preponderance of the evidence, it means you must be persuaded that what the party seeks to prove is more probably true than not true. Put in another way, if you were to put the evidence for and against the party who must prove the fact on the opposite sides of a scale, a preponderance of the evidence requires that the scale tip in favor of the party who has the burden of proof.

The clear and convincing evidence burden is a heavier one. When a party has the burden of proof by clear and convincing evidence, it means you must be persuaded that it is highly probable that what the party seeks to prove is true. In other words, if you were to put the evidence for and against the party who must prove the fact on opposite sides of a scale, clear and convincing evidence requires that the scale tip heavily toward the party who has the burden of proof. In other words, if you were to put the evidence for and against the party who must prove the fact on opposite sides of a scale, clear and convincing evidence requires that the scale tip heavily toward the party who has the burden of proof.

INFRINGEMENT

GENERALLY

I now instruct you as to the rules you are to follow in arriving at your decision as to whether NDS has infringed the claim of the '851 patent.

The patent law gives the owner of a patent the right to exclude others from making, using, offering for sale, selling, or importing the patented invention during the term of the patent. The law requires that you compare NDS' diamonds to the claim of the '851 patent and not to Flanders' diamonds. Here, Flanders alleges that NDS' diamonds infringe the '851 patent.

NDS will be liable for infringing the '851 patent if you find Flanders has proven that it is more likely than not that NDS has made, used, offered for sale or sold in the United States or imported to the United States a diamond as defined by the Court's claim construction of the '851 patent.

A person can infringe a patent without knowing that what it is doing is an infringement of the patent. One may also infringe even though in good faith he or she believes that their actions are not an infringement of any patent.

CLAIM CONSTRUCTION

To decide the questions of infringement and validity, you must understand what the claim of the patent covers, that is, what the claim and the patent prevents anyone else from doing. You must use the same claim meaning for both your decision on infringement and your decision on validity. The claim has the following meaning:

“The design drawings that accompany the '851 patent show a gemstone with an octagonal girdle. Viewed from above, the gemstone is a square with the corners cut off, rather than a rectangle with the corners cut off. The gemstone incorporates 61 total facets as shown, including 33 facets on the crown and 28 facets on the pavilion. The facet edges are straight and not visibly curved or flared.”

TEST FOR DESIGN PATENT INFRINGEMENT

The test for infringement of a design patent has two parts. First, you must find deception of an ordinary observer. Second, you must also find that substantially the same points of novelty set forth in the patented design have been incorporated in the design of NDS' diamond. You need only find each part by a preponderance of the evidence.

In order to infringe the '851 patent, Flanders must prove, by a preponderance of the evidence, that in the eyes of an ordinary observer, giving such attention as a purchaser usually gives to the item bearing the design, NDS' diamonds are substantially the same as the patented design, and the resemblance is such as to deceive the observer, inducing him or her to purchase one supposing it to be the other. Differences in the design are relevant, as well as similarities, in determining whether such a person would be deceived.

In addition, Flanders must prove that the accused diamonds contain substantially the same points of novelty of the patented design that distinguish it from the prior art, and that the similarity between the accused diamonds and the '851 patent design is attributed to those same novel elements. Similarity of overall appearance is an insufficient basis for a finding of infringement, unless the similarity embraces substantially the same points of novelty of the patented design.

WILFUL INFRINGEMENT

GENERALLY

You are instructed that where a potential infringer has actual notice of another's patent rights, he has an affirmative duty of care to investigate whether his activities infringe. Thus, if you find that it is more likely than not that NDS infringed Flanders' patent, then you must further determine if this infringement was willful. Willfulness must be proven by clear and convincing evidence showing that: NDS had actual knowledge of Flanders' patent, and NDS had no reasonable basis for believing: (a) that NDS' diamonds and design did not infringe Flanders' patent, or (b) that Flanders' patent was invalid and/or unenforceable.

In making the determination as to willfulness, you must consider the totality of the circumstances. The totality of the circumstances comprises a number of factors, which include, but are not limited to whether NDS intentionally copied the diamond covered by Flanders' patent, whether NDS exercised due care to avoid infringing the patents, whether NDS relied on competent legal advice, and NDS' behavior as parties to this litigation.

WILFUL INFRINGEMENT

EXERCISE OF DUE CARE

If you find that Flanders has shown that NDS knew about the '851 patent and did not exercise due care to determine whether the '851 patent was either invalid, unenforceable and/or not infringed, but rather began or continued to infringe the '851 patent by making, using selling or offering for sale its diamonds, you may find that the infringement of NDS was willful.

RELIANCE UPON ATTORNEY AS A DEFENSE

One factor to consider with respect to good faith and due care with regard to willful infringement is whether NDS relied on a legal opinion that appeared to NDS to be well-supported and believable and that advised NDS (1) that the diamonds NDS was selling did not infringe the '851 patent or (2) that the '851 patent was invalid or unenforceable.

DAMAGES

GENERALLY

I will instruct you about the measure of damages. By instructing you on damages, I am not suggesting which party should win on any issue. If you decide that the claim of the '851 patent has been infringed and is not invalid, you must then determine the amount of any money damages to be awarded to Flanders to compensate it for the infringement.

The amount of those damages must be adequate to compensate Flanders for the infringement. A damages award should put Flanders in approximately the financial position it would have been in had the infringement not occurred, but in no event may the damages award be less than a reasonable royalty.

Flanders has the burden to persuade you that it is more likely than not that it suffered the damages it seeks. While Flanders is not required to prove damages with mathematical precision, it must prove its damages with reasonable certainty. Flanders is not entitled to damages that are remote or speculative.

DATE DAMAGES BEGIN

The date that Flanders gave notice to NDS of its claim of patent infringement is the date at which patent damages begin to be calculated. That date is in dispute here, and it is up to you to determine what that date is. The date notice was given is the earlier of the filing date of this action or the date on which Flanders communicated to NDS a specific charge that the accused diamonds infringed the '851 design patent. In no event can damages be recovered for any purported infringement committed before November 15, 1994.

PROFITS

LOST PROFITS

In this case, Flanders seeks to recover lost profits for some of NDS' sales of the Flanders diamond, and a reasonable royalty on the rest of NDS' sales.

To recover lost profits for infringing sales, Flanders must show that but for the infringement there is a reasonable probability that it would have made sales that NDS made of the infringing diamonds. Flanders must show the share of NDS' sales that it would have made if the infringing product had not been on the market.

PROFITS

FACTORS TO CONSIDER

One way Flanders may be entitled to lost profits is by proof of all of the following:

- (1) that there was a demand for the patented product;
- (2) that there were no non-infringing substitutes, or, if there were, the number of the sales made by NDS that Flanders would have made despite the availability of other acceptable non-infringing substitutes;
- (3) that Flanders had the manufacturing and marketing capacity to make the infringing sales or a portion thereof actually made by NDS; and
- (4) the amount of profit that Flanders would have made had NDS not infringed.

LOST PROFITS DEMAND

Demand for the patented product can be proven by significant sales of Flanders' patented product or by significant sales of NDS' purportedly infringing product.

ACCEPTABLE SUBSTITUTES

In order to be an acceptable substitute, the proposed substitute must have the advantages of the patented invention that were important to customers. A product that does not have those advantages would not be an acceptable substitute. If, however, the realities of the marketplace are that competitors other than the patentee would likely have captured the sales made by the infringer, despite a difference in the products, then Flanders is not entitled to lost profits. If the realities of the marketplace are such that non-infringing substitutes were available from suppliers who would have made only some of the sales that were made by NDS, then Flanders may be entitled to a percentage of the infringing sales.

ACCEPTABLE SUBSTITUTES

MARKET

It is not necessary for Flanders to prove that Flanders and NDS were the only two suppliers in the market in order for Flanders to demonstrate entitlement to lost profits. If the realities of the marketplace are such that "non-infringing substitutes" were available from suppliers who would have made only some, but not all, of the sales that were made by NDS, then Flanders may be entitled to lost profits on a percentage of the infringing sales. The burden is on Flanders, however, to show to a reasonable probability that it would have sold that percentage if the NDS diamonds had never existed. If Flanders and NDS were the only two suppliers in the market, it is reasonable to assume that Flanders would have made the sales, provided that it had the manufacturing and marketing capacity to do so. The burden is on Flanders to show that its product competed in the same market with the NDS diamonds and that it would have made those sales if the infringement had not occurred.

LOST PROFITS

CAPACITY

Flanders is only entitled to lost profits for sales it potentially could have made. Flanders must prove that it had the ability to manufacture or otherwise obtain its product and the capacity to sell the amount of product for which Flanders is now claiming lost profits.

ACCEPTABLE SUBSTITUTES

INCREMENTAL INCOME

Flanders may calculate its lost profits on lost sales by computing the lost net sales for its patented product and deducting from that figure the amount of additional costs that it would have incurred in making those sales. Certain fixed costs such as property taxes, insurance, rent and administrative overhead, may not vary with increases in production or sale. Any such costs which do not vary with increased production or sale should not be considered when determining damages. Thus, in determining Flanders' lost profits, you are not to subtract from its damages the amount of such fixed costs.

COMPUTATION OF LOST PROFITS

Calculation of lost profits is, by its very nature, imprecise. Doubts concerning the computation of Flanders' lost profits should be construed against NDS, which bears the risk of uncertainty.

REASONABLE ROYALTY

GENERALLY

The patent law specifically provides that the amount of damages that NDS must pay Flanders for infringing Flanders' patent may not be less than a reasonable royalty for the use that NDS made of Flanders' design.

DEFINITION OF REASONABLE ROYALTY

A royalty is a payment made to the owner of a patent by a non-owner in exchange for rights to make, use or sell the claimed invention. A reasonable royalty is a royalty that would have resulted from a hypothetical negotiation between Flanders and a company in the position of NDS taking place at the time that the infringement began. You should also assume that both parties to that negotiation understood the patent to be valid and infringed and that the licensee would respect the patent.

REASONABLE ROYALTY

If you find that Flanders has not proved its claim for lost profits or if you find that Flanders has proved its claim for lost profits for only a portion of the infringing sales, you must then determine what reasonable royalty would be for that portion of NDS' sales for which you have not awarded lost profit damages. Flanders is entitled to a reasonable royalty for all infringing sales for which it is not entitled to lost profits.

REASONABLE ROYALTY

RELEVANT FACTORS

In determining the value of a reasonable royalty, you may consider evidence on any of the following factors:

1. Any royalties actually received, if any, by Flanders for the licensing of the '851 patent, proving or tending to prove an established royalty.
2. Flanders' established policy and marketing program, if any, to maintain its right to exclude others from using the patented invention by not licensing others to use the invention, or by granting licenses under special conditions designed to preserve that exclusivity.
3. The commercial relationship between Flanders and NDS, such as whether or not they are competitors in the same territory in the same line of business.
4. The duration of the patent.
5. The established profitability of the product made under the patent; its commercial success; and its current popularity.
6. The extent to which the accused infringer has made use of the design; and any evidence that shows the value of that use.

This list of factors is not meant to be exhaustive.

REASONABLE ROYALTY

TIMING

You may consider in your determination of reasonable royalty damages any actual profits by NDS and any commercial success of the patented design in the form of sales of the patented or infringed products.

PROFITS

NDS' PROFITS

If you find that without a license NDS sold or exposed for sale any diamonds infringing the claim as framed in the Court's instruction on claim construction or any colorable imitation thereof, NDS shall be liable to the owner to the extent of his total profit. Colorable imitation is defined as minor changes in a design that do not change its overall appearance from that described in the Court's instruction on claim construction. However, if you award damages to Flanders based on NDS' total profits from sales of the accused diamond, you may not award any additional damages to Flanders based on either lost profits or a reasonable royalty.

DAMAGES

NO DOUBLE RECOVERY

It is important to note that Flanders' damages, if any, must be limited to only one instance of infringement per diamond. In other words, in arriving at a figure for damages, you may not find that NDS owes damages for making diamonds, and then find that Friedrich owes damages for selling those same diamonds. For purposes of determining damages, you are to assume that NDS and Friedrich are the same party and that there can only be one infringement per diamond, if infringement is found.

DAMAGES GENERALLY

When two parties share the property rights represented by a patent, both parties are entitled to damages.

PRESUMPTION OF VALIDITY

The claim of a design patent is presumed valid. NDS has the burden of proving the invalidity of the patented claim by clear and convincing evidence, and the burden never shifts.

NDS has asserted that the '851 is valid on the following grounds:

1. Johan d'Haene did not himself invent the claimed design of the '851 patent;
2. The claimed design of the '851 patent was patented or described in a printed publication anywhere in the world before Mr. D'Haene conceived of that design;
3. The patented design of the '851 patent was patented or described in a printed publication anywhere in the world prior to March 28th, 1989;
4. The patented design of the '851 patent was in public use or on sale in the United States prior to March 28th, 1989; and
5. The claimed design of the '851 patent would have been obvious to a person of ordinary skill in the field of gemstone design at the time Mr. D'Haene filed an application for patent on that design.

I will now explain to you the law that you must follow in deciding these defenses.

ANTICIPATING DEFENSE

A patented claim is invalid if the claimed invention is not new. For a claimed invention to be invalid as not new, all of its requirements must have been present in one prior art reference.

Here is a list of ways that NDS can show that the claimed invention was not new:

If the claimed invention was already publicly known or publicly used by others in the United States before the dates of invention;

If the claimed invention was already patented or described in a printed publication anywhere in the world before the date of invention; and

If Johan d'Haene did not invent the claimed invention but instead learned of the claimed invention from someone else.

As I told you, for the claim to be invalid because it is not new, all of the requirements must be in a single previous design or described in a single previous publication or patent. We call these things prior art references. The description in a reference does not have to be in the same words as in the claim, but all the requirements must be there either stated or necessarily implied, so that someone of ordinary skill in the field looking at that one reference would have anything necessary to make the claimed - - everything necessary - - to make the claimed invention.

PRIOR ART

DATE OF INVENTION

Many of the different categories of prior art refer to the date at which the inventor made the invention. This is called the date of invention. For purposes of considering whether something constitutes prior art to the '851 patent, you should consider the date of invention to be the date on which Mr. D'Haene first filed an application for protection of his design which in this case was on September 28th, 1989.

I will now describe the specific requirement for the prior art categories at issue in this case.

SCOPE AND CONTENT OF PRIOR ART

In arriving at your decision of whether the claimed invention would have been obvious, you must first determine the scope and content of the prior art. The prior art includes the following items, some of which were received into evidence during trial and some of which were not:

1. Patents that issued more than one year before the filing date of the patent or before the date of invention;
2. Publications having a date more than one year before the filing date of the patent or before the date of invention;
3. U.S. patents that have a filing date prior to the date of invention of the claimed subject matter in the '851 patent;
4. Anything in public use or on sale in the U.S. more than one year before March 28th, 1990;
5. Anything that was publicly known or used by others in this country before the date of invention of the claimed in the '851 patent; and
6. Anything that was not publicly known but was disclosed to the named inventor of the '851 patent before the date of the invention of the '851 patent.

In order to be considered prior art to the '851 patent, these references must be reasonably related to the claimed invention of the '851 patent. A reference is reasonably related if it is in the same field as the claimed invention or is from another field that a person of ordinary skill would look to in trying to solve a problem the named inventor was trying to solve.

OBVIOUSNESS

GENERALLY

A patent claim is invalid if the claimed invention would have been obvious to a person of ordinary skill in the field at the time the application was filed. This means that even if all of the requirements of the claim cannot be found in a single prior art reference, a person of ordinary skill in the field who knew about all the prior art would have come up with the claimed invention. The claimed invention is not obvious unless there was something in the prior art or within the understanding of a person of ordinary skill in the field that would suggest the claimed invention. In other words, you have to be careful not to look at the claimed invention with hindsight and just assume that someone of skill in the field would have thought to do it.

Your conclusion about the question whether a claim is obvious must be based on several factual decisions that you must make:

First, you must decide the scope and content of the prior art;

Second, you must decide what difference, if any, exists between the claim and the prior art;

Third, you must decide the level of ordinary skill in the field that someone would have had at the time the claimed invention was made; and

Finally, you must consider any evidence that has been presented with respect to the following:

1. Commercial success due to the merits of the claimed invention, provided that Flanders shows that the success is attributable to the invention and not advertising, marketing or discounting;
2. Unsuccessful attempts by others to find the solution provided by the claimed invention;
3. Copying of the claimed invention by others;

4. Acceptance by others of the claimed invention as shown by praise from others in the field or from the licensing of the claimed invention;
5. A long-felt need for the invention;
6. Failed attempts by others to make the invention; and
7. Independent invention of the claimed invention by others before or at about the same time as the named inventor thought of it.

The presence of any of the first six considerations may be an indication that a claimed invention would not have been obvious at the time this invention was made, and the presence of the seventh consideration may be an indication that the claimed invention would have been obvious at such time. Although you must consider any evidence of these considerations, the importance of any of them to your decision on whether the claimed invention would have been obvious is up to you.

LEVEL OF ORDINARY SKILL IN THE ART

Obviousness is determined from the perspective of a person of ordinary skill in the art; in this case, a person skilled in the art of gemstone design. This person is presumed to know all of the prior art, not just what Mr. D'Haene may have known. When faced with a problem, this ordinary skilled person is able to apply his or her experience and ability to the problem and also to look at any available prior art to help in solving the problem

OBVIOUSNESS

As I mentioned earlier, an inventor is not entitled to a patent if his or her design would have been obvious to a person of ordinary skill in the art at the time the design was made.

Unlike anticipation, obviousness may be shown by considering more than one item of prior art. The question is would it have been obvious for a person of ordinary skill in the art of gemstone design. If the answer to that question is “Yes,” then the patent is invalid. NDS has the burden of proving by clear and convincing evidence that the ‘851 design patent is invalid for obviousness.

Obviousness is determined from the perspective of a person of ordinary skill in the field of gemstone design. The issue is not whether the claimed design would have been obvious to you, to me as a judge or to a genius in the art. Rather, the question is whether or not the design would have been obvious to a person of ordinary skill in the art.

In deciding obviousness, you must avoid using hindsight; that is, you should not consider what is known today or what was learned from the teachings of the patent. You should not use the patent as a road map for selecting or combining items or prior art. You must put yourself in the place of a person of ordinary skill at the time the design was created.

In determining whether or not the claim would have been obvious, you should make the following determinations:

1. What is the scope and content of the prior art;
2. What differences, if any, are there between the design of the ‘851 patent and the prior art;
3. What is the level of ordinary skill in the art at the time the design was created; and
4. Are there any objective indications of non-obviousness.

Against this background, you must decide whether or not the invention covered by the ‘851 design patent would have been obvious.

OBVIOUSNESS TO TRY WRONG STANDARD

In deciding whether the prior art suggests the combination recited in the claim of the '851 patent, you are instructed that if the prior art merely discloses numerous possible combinations but gives no direction as to which of those many choices is likely to be successful, this does not constitute a suggestion of the claimed combination. Similarly, if the prior art merely discloses that it would be obvious to explore a new technology or general approach that seemed to be a promising field of experimentation, this would not constitute a suggestion of the claimed combination.

OBVIOUSNESS

DIFFERENCES BETWEEN THE INVENTION OF THE CLAIM AND THE PRIOR ART

In determining the differences between the invention covered by the patent and the prior art, you should not look at the individual differences in isolation. You must consider the claim design as a whole and determine whether or not it would have been obvious in light of all the prior art.

In deciding whether to combine what is described in various items of prior art, you should keep in mind that there must be some motivation or suggestion in the prior art for a person skilled in the art of gemstone design to make the combination covered by the patent claim. You should also consider whether or not the prior art teaches away from the invention covered by the patent claim.

STATUTORY BARS

A patent claim is invalid if the patent application was not filed within the time required by law. For a patent claim to be invalid here, all of its requirements must have been present in one prior art reference more than a year before the patent application was filed. Here is a list of ways NDS can show that the patent application was not timely filed:

1. If the claimed invention was already patented or described in a printed publication anywhere in the world before March 28th, 1989;
2. If the claimed invention was already being openly used in the United States before March 28th, 1989, and that use was not primarily an experimental use: (a) controlled by the inventor; and (b) to test whether the invention worked for its intended purpose; and
3. If the claimed invention was sold or offered for sale in the United States and that claimed invention was ready for patenting before March 28th, 1989.

For a claim to be not new because of a prior art reference dated at least one year earlier than the effective filing date of the patent application, all of the claimed requirements must have been specifically disclosed in the reference or would have to have been known to a person of ordinary skill in the art of gemstone design to have been necessarily present in the reference.

INVENTORSHIP DEFENSE

NDS seeks to invalidate the patent by asserting Mr. D'Haene did not invent the subject matter of the '851 patent. The patent laws provide that a person shall be entitled to a patent unless he did not himself invent the subject matter sought to be patented. In order to prevail on its inventorship defense, NDS must prove both prior conception of the invention by another and communication of that conception to Mr. D'Haene.

VERDICT FORM

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over all your deliberations and will be your representative here in court. Forms of verdict, special interrogatories and verdict have been prepared for you.

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

RENDERING A VERDICT

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all of the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror.

You are impartial judges of the facts.

COMMUNICATION WITH THE COURT

_____I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing signed by the foreperson or, if he or she is unwilling to do so, by some other juror and given to the marshal or to my courtroom deputy.

_____I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.