IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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| UNITED STATES OF AMERICA<br>*v.*<br>DANIEL ERIC JAY | CRIMINAL INDICTMENT<br>1:20-CR-228-MHC-JKL<br>SECOND SUPERSEDING |

**Government's Supplemental Jury Instructions**

The United States of America hereby submits two proposed jury instructions. One is a corrected instruction on bank fraud. The other is the Eleventh Circuit's pattern instruction on punishment, which was inadvertently omitted from the Government's original proposed jury instructions.

Respectfully submitted,

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**O52**
**Bank Fraud**
**18 U.S.C. § 1344**

It's a Federal crime to carry out or attempt to carry out a scheme to defraud a financial institution, or to get money or property owned or controlled by a financial institution by using false pretenses, representations, or promises.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

- the Defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution **or** to get money from a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact;
- the false or fraudulent pretenses, representations, or promises were material;
- the Defendant intended to defraud the financial institution **or someone**; and
- the financial institution was federally insured.

A "scheme to defraud" includes any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises relating to a material fact.

A statement or representation is "false" or "fraudulent" if it is about a material fact that the speaker knows is untrue or makes with reckless indifference as to the truth and makes with intent to defraud. A statement or representation may be "false" or "fraudulent" when it's a half truth or effectively conceals a material fact and is made with the intent to defraud.

A "material fact" is an important fact that a reasonable person would use to decide whether to do or not do something. A fact is "material" if it has the capacity or natural tendency to influence a person's decision. It doesn't matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false.

To act with "intent to defraud" means to act knowingly and with the specific intent to use false or fraudulent pretenses, representations, or promises to cause loss or injury. Proving intent to deceive alone, without the intent to cause loss or injury, is not sufficient to prove intent to defraud.

The Government doesn't have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also doesn't have to prove that the alleged scheme actually succeeded in defrauding anyone. What must be proved beyond a reasonable doubt is that the Defendant knowingly attempted or carried out a scheme substantially similar to the one alleged in the indictment.

**B10.2**
**Caution: Punishment**
**(Single Defendant, Multiple Counts)**

Each count of the indictment charges a separate crime. You must consider each crime and the evidence relating to it separately. If you find the Defendant guilty or not guilty of one crime, that must not affect your verdict for any other crime.

I caution you that the Defendant is on trial only for the specific crimes charged in the indictment. You're here to determine from the evidence in this case whether the Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether the Defendant is guilty. If you find the Defendant guilty, the punishment is for the Judge alone to decide later.

## CERTIFICATE OF SERVICE

I hereby certify that, on June 30, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system.

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