UNITED STATES OF AMERICA v. LINDBERG
5:19-CR-22-MOC-DSC
CLOSING INSTRUCTIONS

AS GIVEN

INTRODUCTORY REMARKS

Ladies and Gentlemen of the jury, you have heard the evidence and the arguments of counsel, and the Court will now instruct you as to the law applying to this case. The Court will first instruct you on some rules for matters of a criminal nature, including how to assess the credibility of witnesses, then a discussion of the offenses charged in this particular case, and some concluding instructions.

It is your duty and your responsibility in this trial to find the facts. You may find those facts from the evidence which has been presented during this trial. The evidence consists only of the testimony of the various witnesses who have been called, sworn and testified in your presence, the exhibits which have been admitted into evidence by the Court, and any stipulation of fact made by the parties.

You are to take the law as it applies to this case from the Court as given to you during these instructions. You then will apply the law given to you by the Court to the facts which you find from the evidence and reach a verdict in this case.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you, of course, are to be governed by these instructions. You are not to single out one instruction alone as stating the law but must consider all of the instructions as a whole.

You are required to perform these duties without bias, prejudice, or sympathy for any party. The law does not permit jurors to decide cases on the basis of bias, prejudice, sympathy or on any basis other than solely upon the basis of the facts and the law arising in that particular case.

CONSIDERING THE EVIDENCE

ROLE OF THE JURY

Your final role is to decide the issues of fact in the case. You are the sole and exclusive judges of the facts. You determine the weight of the evidence; you determine the credibility of the witnesses; you resolve such conflicts as there may be in the testimony; and you draw whatever reasonable inferences you decide to draw from the facts as you have determined them.

In determining the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions is not evidence. In this connection, you should bear in mind that a question put to a witness is never evidence. It is only the answer or the exhibit which is evidence. As nothing a lawyer says is evidence, nothing I may have said during the trial or may say during these instructions is evidence. Thus, the evidence which is all now before you consists of the answers given by witnesses, the testimony they gave as you recall it, and the exhibits that were received in evidence.

While you may consider answers as evidence, you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers. You may also consider the stipulations of the parties as evidence.

COURT'S COMMENTS ON CERTAIN EVIDENCE

The law of the United States permits a federal judge to comment to the jury on the evidence in a case. Such comments are, however, only expressions of my opinion as to the facts and the jury may disregard them entirely. I don't recall making any such comment. If you recall any such comments, you, as jurors, are the sole judges of the facts in this case. It is your recollection and evaluation of the evidence that is important to the verdict in this case, not mine.

Although you must follow the Court's instructions concerning the law applicable to this case, you are totally free to accept or reject my observations, if any, concerning the evidence received in the case.

COURT'S RULINGS ON CERTAIN EVIDENCE

The legal rulings I have made during the trial are not any indication of my views of what your decision should be as to whether the guilt of any defendant has been proven beyond a reasonable doubt.

I also ask you to draw no inference from the fact that, from time to time, I asked questions of certain witnesses. These questions were only intended for clarification or to expedite matters and were not intended to suggest any opinions on my part as to the verdict you should render or whether any of the witnesses may have been more credible than any other witness. The court has no opinion as to the verdict you should render in this case. As to the facts, ladies and gentlemen, you are the exclusive judges. You are to perform the duty of finding the facts without bias or prejudice as to any party.

INFERENCES FROM EVIDENCE

As I just discussed, you are allowed to draw reasonable inferences from the evidence that has been presented. Inferences are simply deductions or conclusions which reason and common sense lead the jury to draw from the evidence received in the case.

USE OF NOTES

You may use the notes, if any, taken by you during the trial. You are instructed that your notes are only a tool to aid your own individual memory and should not be substituted for your memory. Moreover, you should not compare your notes with other jurors' notes in determining the content of testimony or in evaluating the importance of any evidence. Remember, your notes are not evidence. If you chose not to take notes, remember it was your own individual responsibility to listen carefully to the evidence and not use the notes of others. You cannot give this responsibility to someone who took notes. We depend on the judgment of all members of the jury; you must all remember the evidence in this case.

JUROR OBLIGATIONS

In determining the facts, the jury is reminded that before each member was accepted and sworn to act as a juror, you were asked questions concerning your ability to be fair and unbiased. On the faith of those answers, you were accepted by all the parties as jurors. Therefore, those answers are as binding on each of you now as they were then, and should remain so, until the jury is discharged from consideration of this case. You have a sworn duty to remain fair and impartial as you assess the evidence and deliberate.

THE GOVERNMENT AS A PARTY

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality. The case is important to the Government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, it is important to defendants, who are charged with serious crimes.

The fact that the prosecution is brought in the name of the United States of America entitles the Government to no greater consideration than that accorded to any other party to litigation. By the same token, it is entitled to no less consideration. All parties, whether Government or individuals, stand equal in this court.

PUBLICITY

Your verdict must be based solely on the evidence presented in this courtroom in accordance with my instructions. You must completely disregard any report which you have read in the newspaper or on the internet, seen on television, or heard on the radio. Indeed, it would be unfair to consider such reports, since they are not evidence, may be inaccurate, and the parties have no opportunity to correct them, contradict their accuracy, or otherwise explain them. In short, it would be a violation of your oath as jurors to allow yourselves to be influenced in any manner by such publicity.

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, AND REASONABLE DOUBT

I instruct you that you must presume each defendant to be innocent of the crimes charged. Thus, each defendant, although accused of crimes in the indictment, begins the

trial with a "clean slate"—with no evidence against him. The indictment, as you already know, is not evidence of any kind. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against any defendant. Each defendant does not have to prove his innocence or produce any evidence at all. The burden is always on the government, which must prove each defendant guilty beyond a reasonable doubt. The presumption of innocence alone, therefore, is sufficient to acquit each defendant.

As I just mentioned, the burden is always upon the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. No defendant is obligated to produce any evidence by even cross-examining the witnesses for the government.

However, it is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. The term "reasonable doubt" means just what it says. It is a doubt based on reason and common sense. Its meaning is self-evident and understood by you, and the Court will not attempt to define the term further.

Unless the government proves, that each defendant has committed each and every element of the offenses charged in the Indictment against that defendant beyond a reasonable doubt, you must find that defendant not guilty of the offense. If the jury views the evidence in the case as reasonably permitting either of two conclusions—one of not guilty, the other of guilt—the jury must, of course, adopt the conclusion of not guilty.

THE DUTY TO FOLLOW THE COURT'S INSTRUCTIONS

Your decision must be based solely only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against any defendant or the Government. You must follow the law as I explain it—even if you do not agree with the law—and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

EXCLUSION OF STATEMENTS FROM WITNESS STAND

During the trial, I may have instructed you to exclude from consideration certain statements made from the witness stand. I remind you that it is your duty to follow that instruction and consider only that evidence which was duly allowed from the witnesses presented to you.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case.

ATTORNEY'S DUTY TO OBJECT

It is the duty of the attorney for each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Counsel also have the right and duty to ask the court to make rulings of law and to request

conferences at the side bar out of the hearing of the jury. All those questions of law must be decided by me, the court. You should not show any prejudice against an attorney or his or her client because the attorney objected to the admissibility of evidence or asked for a conference out of the hearing of the jury or asked the court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not indicate any opinion about the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

CREDIBILITY OF WITNESSES

Now, Ladies and Gentlemen of the jury, in this case as in most cases, you are called upon to make a credibility or "believability" determination with regard to the witnesses. The Court instructs you that you are the sole judges of the credibility of the witnesses and the weight their testimony deserves. While there is no absolute or arbitrary guide or measure by which you shall determine the truthfulness or untruthfulness of a witness, the Court will point out to you certain general principles which you should consider when you pass upon this phase of this case. Among the things which you may properly consider in the determination of the credibility of the

witnesses are:

1. Whether the witness has any motive or reason for being truthful or untruthful in his or her testimony.
2. His or her interest, if any, in the outcome of the case.

3. Whether there has appeared from his or her attitude or conduct any bias, prejudice or feeling which may cause his or her testimony to be influenced.
4. Whether his or her testimony bears the earmarks of truthfulness.
5. To what extent, if any, it is corroborated or confirmed by other testimony which is not questioned, or to what extent, if any, it is corroborated or confirmed by known or admitted facts.
6. You may consider the intelligence and mental capacity of a witness and his or her opportunity to have accurate knowledge of the matters to which he or she testifies.

The Court instructs you that you may believe all that a witness says or none, or believe part and disbelieve part. You may consider the interest which the witness may have in your verdict, the demeanor of the witness on the stand, the reasons for his or her testimony and the means which the witness may have to know the things to which he or she has testified. If you find a witness is interested in your verdict, it is your duty to scrutinize his or her testimony closely, but after you have done so and if you find he or she is telling the truth in whole or in part, you will give that testimony the same weight you would that of a disinterested witness.

Also, the weight of the evidence is not determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the

testimony of a larger number of witnesses to the contrary. It is your duty, Ladies and Gentlemen of the jury, to find the truth of this matter.

**STATEMENT OR CONDUCT OF A DEFENDANT—
MULTIPLE DEFENDANTS**

This case involves more than one defendant. It is your duty to give separate and personal consideration to the case of each defendant. When you do so, you should analyze what the evidence in the case shows with respect to that defendant, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants.

Each defendant is entitled to have his case determined from evidence as to his own intent, acts, statements, and conduct and any other evidence in the case which may be applicable to him. The fact that you return a verdict of guilty or not guilty to one defendant should not, in any way, affect your verdict regarding any other defendant.

Unless specifically directed otherwise, the jury must consider each instruction given by the Court to apply separately and individually to each defendant on trial in this case.

DEFENDANT DID NOT TESTIFY

The defendant in a criminal case has an absolute right under our Constitution not to testify. The fact that a defendant did not testify must not be discussed or considered in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify. As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

INTEREST IN OUTCOME

In evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness' interest has affected or colored his or her testimony.

LAW ENFORCEMENT WITNESS

You have heard the testimony of a law enforcement official. The fact that a witness may be employed by the federal Government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

UNCONTRADICTED TESTIMONY

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, or because of the inherent improbability of his or her testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

On the other hand, the Government is not required to prove the essential elements of the offense as defined in these instructions by a particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged, if you believe that the witness has truthfully and accurately related what, in fact, occurred.

The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. By the same token, you do not have to accept the testimony of any witness who has not been contradicted or impeached, if you find the witness not to be credible. You also have to decide which witnesses to believe and which facts are true. To do this you must look at all the evidence, drawing upon your own common sense and personal experience. After examining all the evidence, you may decide that the party calling the most witnesses has not persuaded you.

You should keep in mind that the burden of proof is always on the Government and the defendant is not required to call any witnesses or offer any evidence, since he or she is presumed to be innocent.

IMPEACHMENT/INCONSISTENT STATEMENTS OR CONDUCT

The testimony of a witness may be discredited or impeached by showing that he or she previously made statements which are inconsistent with his or her present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

INCONSISTENCIES OR DISCREPANCIES

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

EVIDENCE ADMITTED FOR A LIMITED PURPOSE ONLY

In certain instances, evidence may be admitted only for a particular purpose and not generally against all parties or for all purposes. For the limited purpose for which this

evidence has been received you may give it such weight as you feel it deserves. You may not, however, use this evidence for any other purpose or against any party not specifically mentioned.

RECORDINGS AND TRANSCRIPTS

Recordings of certain conversations have been admitted into evidence. A transcript of the conversations has been prepared, but the recording and not the transcript is the evidence. The transcript is to be used only as a guide in following the recording. Your understanding of the recording, rather than the transcript, is to govern your deliberations.

The transcripts are not evidence but merely aids to follow the voices on the recording and you are bound by your own recollection of what you heard on the recording, and not what you read in the transcript. If you detect any discrepancy between the transcript and the recording, you are to consider as evidence only what you hear on the recording.

OVERVIEW OF THE CASE

INDICTMENT IS ONLY AN ALLEGATION; DEFENDANTS DENY CHARGES

This case involves multiple charges, brought by a Bill of Indictment against the defendants, and I will explain those charges to you shortly. You are instructed that an indictment is but a formal method of accusing a defendant of a crime. It is used to inform a defendant of the charges against him and to bring him to trial. It is not evidence of any

kind against any defendant or anyone else, nor does it permit any presumption or inference of guilt. It simply puts that question at issue for your decision.

At arraignment, each defendant entered a plea of not guilty to these charges and thereby made a general denial of all the accusations contained in the Bill of Indictment. It is therefore up to you, the jury, to decide if, in fact, each defendant is guilty or not guilty of the charges outlined in the Bill of Indictment.

CONSIDER ONLY THE OFFENSES CHARGED

During trial, you may have heard evidence that suggested that one or more defendants engaged in other political activities—including campaign contributions to politicians other than Commissioner Causey. The Court hereby instructs you that defendants are not on trial for any act or any conduct not specifically charged in the indictment, including those other political activities.

SEPARATE CRIME CHARGED IN EACH COUNT OF BILL OF INDICTMENT

A separate crime or offense is charged in each of the counts of the Bill of Indictment. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to <u>one</u> of the offenses charged should not control your verdict as to any <u>other</u> offense charged.

Furthermore, because this case involves multiple defendants, the fact that you find one defendant guilty or not guilty of one of the offenses charged should not control your verdict as to any other offense charged against that defendant or against any other defendant.

You must give separate and individual consideration to each charge against each defendant. To this extent, unless specifically directed otherwise, the jury must consider each instruction given by the Court to apply separately and individually to each defendant on trial in this case.

PUNISHMENT - PROVINCE OF THE COURT

The punishment provided by law for the offense charged in the Indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused

INSTRUCTIONS AS TO SUBSTANTIVE COUNTS

TRANSITION TO THE OFFENSE CHARGED

I will now instruct you concerning the charges in this case, the law applicable to those charges, the elements of those offenses, and definitions of key legal terms used in the indictment and in the applicable law.

BILL OF INDICTMENT

INTRODUCTION

The Court will now read or summarize relevant parts of the Bill of Indictment, the statutes defendants are charged with violating, and the essential elements of these offenses. You should keep in mind as I review and summarize the charges that when you go into the jury room to decide this case, you will have a redacted copy of the Bill of

Indictment with you, so it will not be necessary for you to try to memorize, while I speak, exactly how the charges are laid out.

"ON OR ABOUT"

You will note the indictment charges that the offenses were committed "in or about" or "on or about" a certain date or dates. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense in question was committed on a date reasonably near the date alleged.

COUNT ONE – THE OFFENSE

The defendants are charged in Count One of the Bill of Indictment as follows:

It is alleged that from in or about April 2017 through in or about August 2018, the defendants and others conspired to deprive North Carolina and the citizens of North Carolina of their intangible right to the honest services of the Commissioner of the North Carolina Department of Insurance through bribery. Specifically, the government charges that the defendants agreed to give, offer, or promise contributions to support the Commissioner's 2020 campaign for re-election in exchange for the removal and replacement of the Senior Deputy Commissioner in charge of overseeing the regulatory review of Defendant Lindberg's insurance companies.

COUNT ONE – THE STATUTE

In Count One, the defendants are charged with violating Title 18, United States Code, Section 1349, conspiracy to commit honest services wire fraud, which provides, in pertinent part:

> Any person who . . . conspires to commit [the offense of wire fraud] . . . shall be [guilty of a crime].

In turn, Title 18, United States Code, Section 1343, provides in pertinent part:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, . . . by means of false or fraudulent pretenses, representations or promises, transmits or causes to be transmitted, by means of wire . . . communication in interstate . . . commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be [guilty of the offense of wire fraud.]

Finally, Title 18, United States Code, Section 1346, provides in pertinent part that "the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services."

COUNT ONE – ESSENTIAL ELEMENTS

In order to sustain its burden of proof for the crime of conspiracy to commit honest services fraud as charged in Count One, the government must prove the following three essential elements beyond a reasonable doubt:

One: The conspiracy, agreement, or understanding to commit honest services fraud, as described in the Bill of Indictment, was formed, reached, or entered into by two or more persons;

Two: At some time during the existence or life of the conspiracy, agreement, or understanding, the defendant knew the purpose of the agreement; and

Three: With knowledge of the purpose of the conspiracy, agreement, or understanding, the defendant then deliberately joined the conspiracy, agreement, or understanding.

COUNT ONE – CONSPIRACY – EXISTENCE OF AN AGREEMENT

A criminal conspiracy is an agreement or a mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. A conspiracy is, in a very true sense, a partnership in crime.

A conspiracy or agreement to violate the law, like any other kind of agreement or understanding, need not be formal, written, or even expressed directly in every detail.

The government must prove that the defendant and at least one other person knowingly and deliberately arrived at an agreement or understanding that they, and perhaps others, would commit honest services fraud by means of some common plan or course of action as alleged in Count One. It is proof of this conscious understanding and deliberate agreement by the alleged members that should be central to your consideration of the charge of conspiracy.

To prove the existence of a conspiracy or an illegal agreement, the government is not required to produce a written contract between the parties or even produce evidence of an express oral agreement spelling out all of the details of the understanding. To prove that a conspiracy existed, moreover, the government is not required to show that all of the people named in the Bill of Indictment as members of the conspiracy were, in fact, parties to the agreement, or that all of the members of the alleged conspiracy were named or

charged, or that all of the people whom the evidence shows were actually members of a conspiracy agreed to all of the means or methods set out in the Bill of Indictment.

Unless the government proves beyond a reasonable doubt that a conspiracy, as just explained, actually existed, then you must acquit the defendants of the charge contained in Count One.

COUNT ONE – CONSPIRACY –
MEMBERSHIP IN AN AGREEMENT

Before the jury may find that a defendant, or any other person, became a member of the conspiracy charged in Count One, the evidence in the case must show beyond a reasonable doubt that the defendant knew the purpose or goal of the agreement or understanding and deliberately entered into the agreement intending, in some way, to accomplish the goal or purpose by this common plan or joint action.

If the evidence establishes beyond a reasonable doubt that the defendant knowingly and deliberately entered into an agreement to commit honest services fraud, the fact that a defendant did not join the agreement at its beginning, or did not know all of the details of the agreement, or did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goal is not important to your decision regarding membership in the conspiracy.

Merely associating with others and discussing common goals, mere similarity of conduct between or among such persons, merely being present at the place where a crime takes place or is discussed, or even knowing about criminal conduct does not, of itself, make someone a member of the conspiracy or a conspirator.

COUNT ONE – CONSPIRACY – OBJECT OF THE CONSPIRACY

I will now define the elements of the objective of the conspiracy, that is, of honest services wire fraud. The elements of honest services wire fraud are:

First, the defendant knowingly devised or knowingly participated in a scheme or artifice to defraud another out of the intangible right to honest services through bribery, that is, the payor provided a bribe to a public official intending that the official would thereby take specific favorable official acts or omissions;

Second, the scheme or artifice to defraud involved a material misrepresentation or material concealment of fact;

Third, the defendant acted with the intent to defraud; and

Fourth, for the purpose of executing the scheme, the defendant transmitted or caused to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds.

DEFINITIONS AND EXPLANATIONS

The phrase "scheme or artifice to defraud" means any deliberate plan of action or course of conduct by which someone intends to deprive another of the right to honest services where a bribe is offered, promised, or paid in exchange for an official act.

The definition of "official act" is explained further in another instruction. It is not necessary for the government to prove that the defendant was actually successful in defrauding anyone. An unsuccessful scheme or plan to defraud is as illegal as a scheme or plan that is ultimately successful.

To act with an "intent to defraud" means to act knowingly and with the intention or the purpose to deceive or to cheat. An intent to defraud is accompanied, ordinarily, by a desire or a purpose to bring about some gain or benefit to oneself or some other person or by a desire or a purpose to cause some loss to some person.

A statement or representation is false or fraudulent if it is known to be untrue or is made with reckless indifference as to its truth or falsity, when it constitutes a half truth, or effectively omits or conceals a fact, provided it is made with intent to defraud. A statement or representation of fact or concealment of fact is material if it would be of importance to a reasonable person in making a decision about a particular matter or transaction. The Government may be able to prove this element if you find that the bribe was concealed from the public.

The phrase "transmits by means of wire, radio, or television communication in interstate commerce" means to send from one state to another by means of telephone or telegraph lines or by means of radio or television. The government need not prove that the defendant actually used a wire communication in interstate commerce or that the defendant even intended that anything be transmitted in interstate commerce by means of a wire, radio, or television communication to further, or to advance, or to carry out the scheme or plan to defraud.

The government must prove beyond a reasonable doubt, however, that a transmission by a wire, radio, or television communication facility in interstate commerce was, in fact, used in some manner to further, or to advance, or to carry out the scheme to defraud. The government must also prove that the use of the wire, radio, or television

communication in interstate commerce would follow in the ordinary course of business or events or that the use of the wire, radio, or television communication facility in interstate commerce by someone was reasonably foreseeable. It is not necessary for the government to prove that the information transmitted by means of wire, radio, or television communication in interstate commerce itself was false or fraudulent or contained any false or fraudulent pretense, representation, or promise, or contained any request for money or thing of value. The government must prove beyond a reasonable doubt, however, that the use of the wire, radio, or television communication in interstate commerce furthered, or advanced, or carried out, in some way, the scheme or plan to defraud.

"KNOWINGLY"

The term "knowingly," as used in these instructions to describe the alleged state of mind of the defendant, means that he was conscious and aware of his actions, realized what he was doing or what was happening around him, and did not act because of ignorance, mistake or accident.

While the government must prove beyond a reasonable doubt that the defendant acted with the requisite criminal intent on both counts, the government is not required to prove that the defendant knew beyond all reasonable doubt that his acts were unlawful. In other words, mistake of law is no defense.

PROOF OF KNOWLEDGE OR INTENT

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a

person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

MOTIVE

Intent and motive are different concepts and should never be confused.

Motive is what prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is done or omitted.

Personal advancement and financial gain, for example, are two well-recognized motives for much of human conduct. These praiseworthy motives, however, may prompt one person to voluntary acts of good while prompting another person to voluntary acts of crime.

Good motive alone is never a defense where the act done or omitted is a crime. The motive of a defendant is, therefore, immaterial except insofar as evidence of motive may aid in the determination of state of mind or the intent of the defendant.

BRIBERY – "OFFICIAL ACT"

As I just explained, for purposes of honest services fraud, the phrase "scheme to defraud" means any deliberate plan of action or course of conduct by which someone intends to deprive another of the right to honest services where a bribe is offered, promised,

or paid in exchange for an "official act." The term "official act" means any decision or action on any question or matter, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust. The question or matter must be specific and focused and involve a formal exercise of governmental power similar in nature to a lawsuit, hearing, or administrative determination. A decision or action on a qualifying step for a question or matter would qualify as an official act. An official act also includes a public official exerting pressure on another official to perform an official act, or providing advice to another official, knowing or intending that such advice will form the basis for an official act by another official.

In this case, the charge is that the question or matter is the removal and replacement of the Senior Deputy Commissioner in charge of overseeing the regulatory review of Defendant Lindberg's insurance companies. You are hereby instructed that the removal or replacement of a Senior Deputy Commissioner by the Commissioner would constitute an official act. However, merely setting up a meeting, hosting an event, or talking to another official, without more, would not constitute an official act. Still, you may consider evidence that a defendant requested a meeting, hosted an event, talked to another official, expressed support, or sent a subordinate to accomplish the foregoing as evidence of acting with intent to influence an official act.

In order to satisfy the elements of bribery for this case, the public official need not actually perform an official act, or even intend to do so. When the defendant is a person

who is charged with paying a bribe, it is sufficient if the defendant intends or solicits the public official to perform an official act in exchange for a thing of value.

BRIBERY – CAMPAIGN CONTRIBUTIONS AS BRIBES

As I have explained, Count One and Count Two charge that the defendants gave, offered, or promised contributions to support the Commissioner's 2020 campaign for re-election in exchange for the removal and replacement of the Senior Deputy Commissioner in charge of overseeing the regulatory review of Defendant Lindberg's insurance companies.

The solicitation or acceptance by an elected public official of a campaign contribution, the offer of money through an independent expenditure committee, and the giving or offering of a campaign contribution to an elected public official by a donor do not, in themselves, constitute a federal crime even though the donor has business pending before the elected public official, and even if the contribution is made shortly before or after the public official takes official acts favorable to the donor. They are also not bribes if they are given with only a vague expectation of some future benefit. Instead, the government must prove they were offered, given, or promised in exchange for a specific official act by the Commissioner.

COUNT TWO – THE OFFENSE

The defendants are charged in Count Two of the Bill of Indictment as follows:

It is alleged that from in or about March 2018 through in or about August 2018, the defendants gave, offered, or agreed to give campaign contributions through an independent expenditure committee to the Commissioner of the North Carolina Department of

Insurance, intending to influence and reward the Commissioner in connection with the transfer of the Senior Deputy Commissioner in charge of overseeing the regulatory review of Defendant Lindberg's insurance companies.

COUNT TWO – THE STATUTE

In Count Two, the defendants are charged with violating Title 18, United States Code, Section 666, bribery concerning programs receiving federal funds, which provides, in pertinent part:

> Whoever . . . corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of . . . a State . . . government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more . . . shall be [guilty of a crime].

COUNT TWO – ESSENTIAL ELEMENTS

For you to find a defendant guilty of the bribery offense charged in Count Two, the government must prove each of the following beyond a reasonable doubt:

First, that the defendant gave, offered, or agreed to give anything of value to any person;

Second, that the defendant did so with intent to influence or reward an agent of an organization or of a state or local government or agency in connection with any business, transaction, or series of transactions of that organization, government, or agency;

Third, that the business, transaction, or series of transactions involved anything of value of $5,000 or more;

Fourth, that the state or local government or agency received benefits in excess of

$10,000 under a Federal program involving any form of Federal assistance in the one-year period charged in the Bill of Indictment; and

Fifth, that the defendant did so corruptly.

DEFINITIONS AND EXPLANATIONS

The phrase "anything of value" means any item, whether tangible or intangible, that the person giving or offering or the person demanding or receiving considers to be worth something. The phrase "anything of value" includes a sum of money, favorable treatment, a job, or special consideration.

An agent of an organization means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative.

The following actions performed or agreed to be performed by the government agent, without more, are not sufficient to establish a violation of Title 18, United States Code, Section 666: setting up a meeting, hosting an event, talking to another official, sending a subordinate to a meeting, or simply expressing support for a constituent. You may, however, consider evidence that a government agent took those actions as evidence of a corrupt agreement, and the government may satisfy its burden by proving that the government agent or public official took those actions in order to exert pressure on another official or to provide advice to another official, knowing or intending such advice to form the basis for action by that official. You may consider all of the evidence in the case, including the nature of the transaction, in determining whether the conduct constituted a violation of the statute.

"One-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.

The government does not have to prove that federal funds were involved in the bribery transaction, or that the bribe had any particular influence on federal funds. However, there must be some connection between the criminal conduct and the state agency receiving federal assistance.

An act is done "corruptly" if it is done with the intent to engage in some specific quid pro quo, that is, to receive a specific benefit in return for the payment, or to induce a specific act. A payment is made with corrupt intent only if it was made or promised with the intent to corrupt the particular official. Not every payment made to influence or reward an official is intended to corrupt him. One has the intent to corrupt an official only if he makes a payment or promise with the intent to engage in a specific quid pro quo with that official. The defendant must have intended for the official to engage in some specific act or omission or course of action or inaction in return for the payment charged in the Bill of Indictment.

COUNT TWO – AIDING AND ABETTING LIABILITY

Count Two charges the defendants both with the substantive commission of bribery and with aiding and abetting the commission of the crime.

A person may violate the law even though he or she does not personally do each and every act constituting the offense if that person "aided and abetted" the commission of

the offense. Title 18, United States Code, Section 2 makes it a crime to aid and abet another person to commit a crime.

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself in some way with the crime charged and participated in it with the intent to commit the crime.

In order to be found guilty of aiding and abetting the commission of the crime charged in Count Two, the government must prove beyond a reasonable doubt that the defendant:

One, knew that the crime charged was to be committed or was being committed;

Two, knowingly did some act for the purpose of aiding the commission of that crime; and

Three, acted with the intention of causing the crime charged to be committed.

Before a defendant may be found guilty as an aider or an abettor to the crime, the government must also prove, beyond a reasonable doubt, that some person or persons committed each of the essential elements of bribery, as I previously described.

Merely being present at the scene of the crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find that a defendant aided and abetted the commission of that crime.

The government must prove that the defendant knowingly associated himself with the crime in some way as a participant—someone who wanted the crime to be committed—not as a mere spectator.

"OFFICIAL ACT" WAS LAWFUL—NO DEFENSE

It is not a defense to the crime of bribery that the offer or promise of anything of value was made to the public official to influence an official act which is actually lawful, desirable, or even beneficial to the public.

ENTRAPMENT

The defendants raised the defense of entrapment. A defendant may not be convicted of the crime charged if that person was entrapped by the government.

A person is entrapped when that person has no previous intent or disposition or willingness to commit the crime charged and is induced or persuaded by law enforcement officers or by their agents to commit the offense.

Thus, the defense of entrapment has two elements: (1) whether the defendant was predisposed to commit the crime, and (2) whether the defendant was induced or persuaded by a law enforcement officer or by their agents to commit the crime.

A person is not entrapped when that person has a previous disposition or willingness or intent to commit the crime charged and a law enforcement officer merely provides what appears to be a favorable opportunity to commit the offense.

Predisposition refers to the defendant's state of mind before government agents make any suggestion that he commit a crime. The government does not entrap a defendant, even if he does not specifically contemplate the criminal conduct prior to this suggestion, if the defendant's decision to commit the crime is the product of his own preference and not the product of government persuasion. It is not entrapment for the government merely to solicit a person to commit a crime.

Inducement requires more than merely soliciting a person to commit a crime. Mild forms of persuasion do not amount to inducement. However, pleas based on need, sympathy, or friendship may constitute inducement. Inducement necessitates government overreaching and conduct sufficiently excessive to implant a criminal design in the mind of an otherwise innocent party.

In determining the question of entrapment, you should consider all of the evidence received in this case concerning the intentions and disposition of the defendant before contact with law enforcement, as well as the nature and the degree of the inducement provided by the law enforcement officer.

The burden is on the government to prove beyond a reasonable doubt that the defendant had a previous disposition or willingness or intent to commit the crime charged prior to first being contacted by law enforcement officers. If the government satisfies that burden, there is no entrapment. If it fails to satisfy the burden, then there would be entrapment.

You are instructed that an informant working under the direction of law enforcement is an agent of law enforcement for purposes of this instruction.

FINAL INSTRUCTIONS

VERDICT - ELECTION OF FOREPERSON - DUTY TO DELIBERATE - UNANIMITY - PUNISHMENT - FORM OF VERDICT - COMMUNICATION WITH COURT

Now members of the jury, you have heard the evidence and the arguments of counsel for the Government and for the defendants. It is your duty to remember the evidence whether it has been called to your attention or not, and if your recollection of the

evidence differs from that of the U.S. Attorney, or of the defense attorneys, you are to rely solely upon your recollection of the evidence in your deliberations. I have not reviewed the contentions of the Government or of the defendants, but it is your duty not only to consider all the evidence, but also to consider all the arguments, the contentions and positions urged by the U.S. Attorney and defense counsel in their speeches to you and any other contention that arises from the evidence, and to weigh them all in the light of your common sense, and as best you can, to determine the truth of this matter.

The law, as indeed it should, requires the presiding judge to be impartial. So, you must not attempt to draw any conclusion from any ruling that I have made, or any inflection in my voice or expression on my face, or any question I may have asked or anything else that I may have said or done during this trial that I have a particular view of this case. In particular, you are not to draw from any conduct on my part a conclusion that I have an opinion or have intimated an opinion as to whether any part of the evidence should be believed or disbelieved, as to whether any fact has or has not been proved, or as to what your findings ought to be. It is your exclusive province to find the true facts of the case and to render a verdict reflecting the truth as you find it.

Each juror is entitled to his or her opinion; each should, however, exchange views with his or her fellow jurors. That is the very purpose of jury deliberation – to discuss and consider the evidence; to listen to the arguments of fellow jurors; to present your individual views; to consult with one another; and to reach an agreement based solely and wholly on the evidence – if you can do so without violence to your own individual judgment.

I instruct you that a verdict is not a verdict until all twelve jurors agree unanimously

as to what your decision shall be. You may not render a verdict by majority vote.

The Court suggests that as soon as you reach the jury room, before beginning deliberations, you select one of your members to serve as foreperson. The foreperson has the same vote as the rest of the jurors, and simply serves to preside over the discussions. Once you begin deliberating, if you need to communicate with me, the foreperson will send a written message to me by knocking on the door and handing it to the Marshal. However, in any event, don't tell me how you stand numerically as to your verdict - for instance, if you are split in the vote, don't tell me the specific numbers in your note.

We use a verdict sheet. This is simply the written notice of the decision that you reach in this case. As soon as you have reached a verdict as to each defendant on the counts contained in the Bill of Indictment, you will return to the courtroom and your foreperson will, on request, hand the verdict sheet to the Clerk.

During the trial several items were received into evidence as exhibits. They are available to you electronically in the jury room.

[SIDEBAR]

[RELEASE THE ALTERNATES]