

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	
	§	
DONALD W. HILL (01)	§	
a/k/a “Don Hill”	§	
D’ANGELO LEE (02)	§	No. 3:07-CR-289-M
SHEILA D. FARRINGTON (03)	§	
a/k/a “Sheila Farrington Hill”	§	
DARREN L. REAGAN (07)	§	
a/k/a “Dr. Darren L. Reagan”	§	
RICKEY E. ROBERTSON (10)	§	
a/k/a “Rick Robertson”	§	

COURT’S CHARGE TO THE JURY

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NO. 1 INTRODUCTION TO FINAL INSTRUCTIONS

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case; for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

NO. 2 DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened – that is, in reaching your decision as to the facts, it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without sympathy or prejudice of any kind or character. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

NO. 3 PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE
DOUBT

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, a defendant is presumed by the law to be innocent. The law does not require a defendant to prove his or her innocence or produce any evidence at all, and no inference whatever may be drawn from the election of a defendant not to testify. The government has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant.

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

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

NO. 4 EXCLUDING WHAT IS NOT EVIDENCE

As I told you earlier, it is your duty to determine the facts. In doing so, you must consider only the evidence presented during the trial, including the sworn testimony of the witnesses, the exhibits, and stipulations between counsel. Remember that any statements, objections, or arguments made by the lawyers are not evidence. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question or as to the contents of an exhibit I did not admit. Also, certain testimony or other evidence has been ordered stricken from the record and you have been instructed to disregard this evidence. Do not consider any testimony or other evidence which has been stricken in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own findings as to the facts.

NO. 5 EVIDENCE—INFERENCES—DIRECT AND CIRCUMSTANTIAL

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.

In doing so, you should not be concerned about whether the evidence is direct or circumstantial. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of events and circumstances indicating that something is or is not a fact. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

NO. 6 CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proven the guilt of each of the defendants beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or believability of each witness and the weight to be given the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You should decide whether you believe all or any part of what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

The testimony of a testifying defendant should be weighed and his credibility evaluated in the same way as that of any other witness.

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than

on the other. Do not reach a conclusion on a particular point just because there were more witnesses testifying for one side on that point.

NO. 7 CHARACTER EVIDENCE

Where a defendant has offered evidence of his or her honesty and integrity, or that he or she is a law abiding citizen, you should consider such evidence along with all the other evidence in the case.

Similarly, where the prosecution has offered evidence that a defendant is dishonest, or lacking in integrity, or is not a law abiding citizen, you should consider such evidence along with all the other evidence in the case.

You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

NO. 8 IMPEACHMENT BY EVIDENCE OF UNTRUTHFULNESS

You may have heard testimony from certain witnesses that another witness is not a truthful person. It is up to you to decide whether a testifying witness was telling the truth in this trial, taking into account the testimony of that witness as well as factors already mentioned.

NO. 9 IMPEACHMENT BY PRIOR INCONSISTENCIES

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

In some cases, earlier statements of a witness were admitted in evidence not to prove that the contents of those statements are true, but only to determine whether you think they are

consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

NO. 10 IMPEACHMENT BY PRIOR CONVICTION

You have been told that one of the witnesses, Kevin Dean, was convicted of an offense not involving the facts of this case. A conviction is a factor you may consider in deciding whether to believe a witness, but it does not necessarily destroy the witness's credibility. It has been brought to your attention only because you may wish to consider it when you decide whether you believe the witness's testimony. It is not evidence of anything else.

NO. 11 STATEMENT OF INTENTION NOT TO PROSECUTE AND MATTERS OF BIAS

You have heard from witnesses who testified that they were told by the government that it would not prosecute them. You, the jury, must decide whether a witness's testimony has been affected by that circumstance, or by a witness's interest in the outcome of the case, or by prejudice against any defendant, or by the benefits that the witness has received as a result of testifying. You should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict any defendant upon the unsupported testimony of such a witness unless you believe that testimony beyond a reasonable doubt.

NO. 12 ACCOMPLICE—CO-DEFENDANT—PLEA AGREEMENT

In this case the government called as witnesses alleged accomplices, named as co-defendants in the indictment, with whom the government has entered into a plea agreement providing for the dismissal of some charges and/or a lesser sentence than the co-defendant would otherwise be exposed to for the offense to which the co-defendant pled guilty. Such plea

bargaining, as it is called, has been approved as lawful and proper, and is expressly provided for in the rules of this court.

An alleged accomplice, including one who has entered into a plea agreement with the government, is not prohibited from testifying. On the contrary, the testimony of such a witness may alone be of sufficient weight to sustain a verdict of guilty. You should keep in mind that such testimony is always to be received with caution and weighed with great care. You should never convict a defendant upon the unsupported testimony of an alleged accomplice unless you believe that testimony beyond a reasonable doubt. You may consider the alleged accomplice's guilty plea only to assess his credibility as a witness and not to create an inference of guilt against another defendant. The fact that an accused accomplice has entered a plea of guilty to the offense charged is not evidence of the guilt of any other person and may not be used as substantive evidence of the guilt of another.

NO. 13 EXPERT WITNESSES

If scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified by knowledge, skill, experience, training, or education may testify and state an opinion concerning such matters.

Merely because such a witness has expressed an opinion does not mean, however, that you must accept this opinion. You should judge such testimony like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

NO. 14 ON OR ABOUT

You will note that the indictment charges that the offense was committed on or about a specified date. The government does not have to prove that the crime was committed on that exact date, so long as the government proves beyond a reasonable doubt that a defendant committed the crime on a date reasonably near the dates alleged in the indictment.

NO. 15 CAUTION—CONSIDER ONLY CRIME CHARGED

You have heard evidence in this trial about the City Charter, the City Code of Ethics, and the Texas Penal Code. These charters and codes, which govern disclosure and public official conduct, only apply to defendants Donald Hill and D'Angelo Lee, although others are charged with conspiring with them.

The defendants are not charged with violations of these codes and charters or any other state or local law, rule or regulation. Therefore, these codes and charters may only be considered by you to the extent that they relate, if at all, to the federal crimes charged in the indictment. You are here to decide whether the government has proven beyond a reasonable doubt that the defendants are guilty of the federal crimes charged.

The defendants are not on trial for any act, conduct, or offense not charged in the indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a defendant in this case.

NO. 16 CAUTION—PUNISHMENT

If a defendant is found guilty, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. It should not enter your consideration or discussion.

NO. 17 MULTIPLE DEFENDANTS—MULTIPLE COUNTS

A separate crime is charged against one or more of the defendants in each count of the indictment. Each count, and the evidence pertaining to it, should be considered separately. The case of each defendant should be considered separately and individually. The fact that you may find one or more of the accused guilty or not guilty of any of the crimes charged should not control your verdict as to any other crime or any other defendant. You must give separate consideration to the evidence as to each defendant. You must find that the government has proven its case beyond a reasonable doubt as to each separate charge as to each separate defendant.

NO. 18 SIMILAR ACTS

You have heard evidence of some acts of some defendants that are alleged to be similar to those charged in the indictment, but which were committed on other occasions. You must not consider any of this evidence in deciding if the defendants committed the acts charged in the indictment. However, you may consider this evidence for other, very limited, purposes.

If you find beyond a reasonable doubt from other evidence in this case that a defendant committed acts charged in the indictment, then you may consider evidence of the similar acts allegedly committed on other occasions to determine whether a defendant had the state of mind or intent necessary to commit the crime charged in the indictment; or whether a defendant had a motive or the opportunity to commit the acts charged in the indictment; or whether a defendant acted according to a plan or in preparation for commission of a crime; or whether a defendant committed the acts for which he or she is on trial by accident or mistake.

The limited purposes I just articulated are the only purposes for which any evidence of other similar acts may be considered.

NO. 19 KNOWINGLY – TO ACT

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

NO. 20 TRANSCRIPT OF TAPE RECORDED CONVERSATION

The Court has received in evidence transcripts of oral conversations also received in evidence. Sometimes words are identified as UI, meaning unintelligible. If in listening to the recording, you can make out the words, you may rely on your own understanding of those unidentified terms.

NO. 21 NOTES

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

NO. 22 SUMMARIES AND CHARTS

Certain charts and summaries have been shown to you solely to help explain the facts disclosed by the books, records, and other documents which are in evidence in the case. These charts and summaries are merely demonstrative aids, not evidence or proof of any facts. You should determine the facts from the evidence. As to other charts and summaries that have been received into evidence, they are valid only to the extent that they accurately reflect the underlying supporting evidence. You should give them only such weight as you think they deserve.

NO. 23 CONSPIRACY INSTRUCTIONS
(Applicable to Counts 10, 15, 18, 19, and 20)

Defendant Donald W. Hill is charged with conspiracy to commit bribery in Count 10, conspiracy to commit extortion in Count 15, conspiracy to commit deprivation of honest services by wire fraud in Count 18, and conspiracy to commit money laundering in Counts 19 and 20. Defendant D'Angelo Lee is charged with conspiracy to commit bribery in Count 10, conspiracy to commit extortion in Count 15, conspiracy to commit deprivation of honest services by wire fraud in Count 18, and conspiracy to commit money laundering in Count 19. Defendant Sheila Farrington Hill is charged with conspiracy to commit bribery in Count 10, conspiracy to commit deprivation of honest services by wire fraud in Count 18, and conspiracy to commit money laundering in Count 19. Defendant Darren Reagan is charged with conspiracy to commit extortion in Count 15 and conspiracy to commit money laundering in Count 20. Defendant Rickey Robertson is charged with conspiracy to commit bribery in Count 10, conspiracy to commit extortion in Count 15, and conspiracy to commit money laundering in Count 19.

A "conspiracy" is an agreement between two or more persons to join together to accomplish some unlawful purpose. It is a kind of "partnership in crime" in which each member becomes the agent of every other member.

You must determine whether a conspiracy charged in the indictment existed, and, if it did, whether each defendant was a member of it. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict as to that conspiracy, even though you find that some other conspiracy existed. If you find that a defendant was not a member of a conspiracy charged in the indictment, then you must find the defendant not guilty as to that conspiracy, even though that defendant may have been a member of some other conspiracy.

One may become a member of a conspiracy without knowing all the details of the unlawful scheme or the identities of all the other alleged conspirators. If a defendant understands the unlawful nature of a plan or scheme and knowingly and intentionally joins in that plan or scheme on one occasion, that is sufficient to convict him for conspiracy even though the defendant had not participated before and even though the defendant played only a minor part.

The government need not prove that the alleged conspirators entered into any formal agreement, nor that they directly stated between themselves all the details of the scheme. Similarly, the government need not prove that all of the details of the scheme alleged in the indictment were actually agreed upon or carried out. Nor must it prove that all of the persons alleged to have been members of the conspiracy were members, or that the alleged conspirators actually succeeded in accomplishing their unlawful objectives.

Mere presence at the scene of an event, even with knowledge that a crime is being committed, or the mere fact that certain persons 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. Also, a person who has no knowledge of a conspiracy, but who happens to act in a way which advances some purpose of a conspiracy, does not thereby become a conspirator.

NO. 24 CONSPIRACY 18 U.S.C. § 371 (BRIBERY) (COUNT 10)

Title 18, United States Code, Section 371, makes it a crime for anyone to conspire with someone else to commit an offense against the laws of the United States.

Count 10 of the indictment charges Defendants Donald W. Hill, D'Angelo Lee, Sheila Farrington Hill, and Rickey Robertson with Conspiracy to Commit Bribery Concerning a Local Government Receiving Federal Benefits.

For you to find any defendant guilty of this crime, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

First: that the defendant and at least one other person made an agreement to commit the crime of bribery concerning an agent of local government receiving federal benefits, as charged in Count 10 of the indictment, and as I will describe it to you in just a moment;

Second: that the defendant knew the unlawful purpose of the agreement and joined in it willfully; that is, with the intent to further the unlawful purpose; and

Third: that one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in Count 10 of the indictment, in order to accomplish some object or purpose of the conspiracy.

To find a defendant guilty of the crime of bribery, you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

First: that the defendant was an agent of the City of Dallas;

Second: that the City of Dallas received federal benefits in excess of \$10,000 in each of the one-year periods alleged in the indictment pursuant to a federal program involving grants or other forms of assistance;

Third: that the defendant solicited, demanded, accepted or agreed to accept something of value from Brian L. Potashnik for the defendant's own benefit or for the benefit of others;

Fourth: that the defendant acted corruptly with the intent to be influenced or rewarded in connection with a business, transaction, or series of

transactions regarding Tax Credit Affordable Housing developments in the City of Dallas; and

Fifth: that the business, transaction or series of transactions involved something of value of \$5,000 or more.

The Defendants and the Government have agreed and stipulated that the first element has been met. I therefore instruct you that an elected city council member and an appointed city plan commissioner are agents of the City of Dallas, and you do not need to consider this element in your deliberations.

The Defendants and the Government have agreed and stipulated that the second element has been met. I therefore instruct you that the City of Dallas received federal benefits in excess of \$10,000 in the one-year periods alleged in the indictment pursuant to a federal program involving grants or other forms of assistance, and you do not need to consider this element in your deliberations.

As used in this instruction, to act “corruptly” means to act voluntarily and intentionally, and, at least in part, in return for being influenced to support, or to be rewarded for supporting, certain tax credit affordable housing developments in the City of Dallas.

NO. 25 AIDING AND ABETTING INSTRUCTIONS
(Applicable to Counts 11, 12, 16 and 17)

Defendant Donald W. Hill is charged with aiding and abetting bribery in Counts 11 and 12 and aiding and abetting extortion in Count 16, among other charges. Defendant D’Angelo Lee is charged with aiding and abetting bribery in Counts 11 and 12 and aiding and abetting extortion in Count 16, among other charges. Defendant Sheila Farrington Hill is charged with aiding and abetting bribery in Counts 11 and 12 and aiding and abetting extortion in Count 16,

among other charges. Defendant Darren Reagan is charged with aiding and abetting extortion in Counts 16 and 17, among other charges.

The guilt of a defendant in a criminal case may be established without proof that the defendant personally did every act constituting the offense alleged. The law recognizes that, ordinarily, anything a person can do for himself or herself may also be accomplished by directing another person as his or her agent, or by acting in concert with, or under the direction of, another person or persons in a joint effort or enterprise.

If another person is acting under the direction of the defendant or if the defendant joins another person and performs acts with the intent to commit a crime, then the law holds the defendant responsible for the acts and conduct of such other persons just as though the defendant had committed the acts or engaged in such conduct.

Before any defendant may be held criminally responsible for the acts of others it is necessary that the accused deliberately associate himself or herself in some way with the crime and participate in it with the intent to bring about the crime.

Of course, mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

In other words, you may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant voluntarily participated in its commission with the intent to violate the law.

For you to find a defendant guilty of aiding and abetting a crime, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

First: that the underlying offense was committed by some person or persons;

Second: that the defendant associated with the criminal venture;

Third: that the defendant purposefully participated in the criminal venture; and

Fourth: that the defendant sought by action to make that venture successful.

“To associate with the criminal venture” means that the defendant shared the criminal intent of the principal. This element cannot be established if the defendant had no knowledge of the principal’s criminal venture.

“To participate in the criminal venture” means that the defendant engaged in some affirmative conduct designed to aid the venture or assisted the principal of the crime.

NO. 26 SOLICITATION OR ACCEPTANCE OF A BRIBE BY AN AGENT OF A
LOCAL GOVERNMENT RECEIVING FEDERAL FUNDS AND AIDING AND
ABETTING (COUNTS 11 & 12)

Title 18, United States Code, Section 666(a)(1)(B) makes it a crime for an agent of a local government receiving federal funds to solicit or accept bribes. Counts 11 and 12 of the indictment charge Defendants Donald W. Hill and D’Angelo Lee with the crime of soliciting, demanding, accepting, or agreeing to accept a bribe as an agent of a local government receiving federal funds, and aiding and abetting each other in committing said offenses.

Counts 11 and 12 also charge Defendant Sheila Farrington Hill with the crime of aiding and abetting Defendants Donald W. Hill and/or D’Angelo Lee in the commission of bribery.

For you to find Donald W. Hill and/or D’Angelo Lee guilty of this crime, you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

- First:* that the defendant was an agent of the City of Dallas;
- Second:* that the City of Dallas received federal benefits in excess of \$10,000 in each of the one-year periods alleged in the indictment pursuant to a federal program involving grants or other forms of assistance;
- Third:* that the defendant solicited, demanded, accepted or agreed to accept something of value from Brian L. Potashnik for the defendant's own benefit or for the benefit of others;
- Fourth:* that the defendant acted corruptly with the intent to be influenced or rewarded in connection with a business, transaction, or series of transactions regarding Tax Credit Affordable Housing developments in the City of Dallas; and
- Fifth:* that the business, transaction or series of transactions involved something of value of \$5,000 or more.

The Defendants and the Government have agreed and stipulated that the first element has been met. I therefore instruct you that an elected city council member and an appointed city plan commissioner are agents of the City of Dallas, and you do not need to consider this element in your deliberations.

The Defendants and the Government have agreed and stipulated that the second element has been met. I therefore instruct you that the City of Dallas received federal benefits in excess of \$10,000 in the one-year periods alleged in the indictment pursuant to a federal program involving grants or other forms of assistance, and you do not need to consider this element in your deliberations.

As used in this instruction, to act “corruptly” means to act voluntarily and intentionally, and, at least in part, in return for being influenced to support, or to be rewarded for supporting, certain tax credit affordable housing developments in the City of Dallas.

For you to find a defendant guilty of aiding and abetting bribery, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

- First:* that the offense of bribery as alleged in Counts 11 and 12 was committed by Donald W. Hill and/or D’Angelo Lee;
- Second:* that the defendant associated with the criminal venture;
- Third:* that the defendant purposefully participated in the criminal venture; and
- Fourth:* that the defendant sought by action to make that venture successful.

“To associate with the criminal venture” means that the defendant shared the criminal intent of the principal. This element cannot be established if the defendant had no knowledge of the principal’s criminal venture.

“To participate in the criminal venture” means that the defendant engaged in some affirmative conduct designed to aid the venture or assisted the principal of the crime.

NO. 27 CONSPIRACY (EXTORTION) (COUNT 15)

Title 18, United States Code, Section 1951, makes it a crime for anyone to conspire with someone else to engage in extortion which obstructs, affects or delays commerce.

Count 15 of the indictment charges Defendants Donald W. Hill, D’Angelo Lee, Darren L. Reagan and Rickey E. Robertson with Conspiracy to Commit Extortion.

For you to find any defendant guilty of this crime, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

- First:* that two or more persons, directly or indirectly, reached an agreement to wrongfully obtain or attempt to wrongfully obtain property from another person with that person's consent, where that consent was induced by wrongful use or threat of use of economic harm, or that the defendant did so under color of official right;
- Second:* that the defendant knew of the unlawful purpose of the agreement;
- Third:* that the defendant joined in the agreement willfully; that is, with the intent to further its unlawful purpose; and
- Fourth:* that the defendant's conduct interfered with or affected interstate commerce.

The Defendants and the Government agree and stipulate that the fourth element has been met. I therefore instruct you that the tax credit programs referenced in the indictment affected interstate commerce, and you do not need to consider this element in your deliberations.

NO. 28 EXTORTION BY FEAR OF ECONOMIC HARM/EXTORTION UNDER COLOR OF OFFICIAL RIGHT AND AIDING AND ABETTING (COUNTS 16 & 17)

Title 18, United States Code, Section 1951, makes it a crime for anyone to obstruct, affect or delay commerce by extortion. Extortion means the obtaining of or attempting to obtain property from another, with that person's consent, induced by wrongful use of actual or threatened force, violence, or fear. Extortion also means the wrongful obtaining of or attempting to obtain property from another, with that person's consent, under color of official right.

Count 16 of the indictment charges Defendants Donald W. Hill and D'Angelo Lee with extortion and aiding and abetting extortion. Count 16 of the indictment charges Sheila Farrington Hill and Darren L. Reagan with aiding and abetting extortion.

Count 17 of the indictment charges Defendant Donald W. Hill with extortion. Count 17 of the indictment charges Darren Reagan with aiding and abetting extortion.

For you to find a defendant guilty of extortion, you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

First: that the defendant obtained or attempted to obtain property from another, with that person's consent;

Second: that the defendant did so by wrongful use of actual or threatened force, violence, or fear, or that the defendant did so under color of official right, both of which will be defined in just a moment; and

Third: that the defendant's conduct interfered with or affected interstate commerce.

The Defendants and the Government agree and stipulate that the third element has been met. I therefore instruct you that the tax credit programs referenced in the indictment affected interstate commerce, and you do not need to consider this element in your deliberations.

The term "property" includes money and other tangible and intangible things of value.

The term "fear" includes fear of economic loss or damage, as well as fear of physical harm. Fear of economic harm must be fear of an economic loss; fear of losing a potential benefit does not suffice. It is not necessary that the government prove that the fear was a consequence of a direct threat; it is sufficient for the government to show that the victim's fear was reasonable under the circumstances.

The use of actual or threatened force, violence, or fear is "wrongful" if its purpose is to cause the victim to give property to someone who has no legitimate claim to the property. It is not wrongful for a defendant to engage in "hard bargaining," or strong negotiating tactics, to increase pay for legitimate services.

“Wrongfully obtaining property under color of official right” is the taking or attempted taking by a public official of property not due to him or his office, whether or not the public official employed force, threats, or fear. The wrongful use of otherwise valid official power may convert dutiful action into extortion. In other words, if a public official accepts or demands property in return for promised performance or nonperformance of an official act, the official is guilty of extortion. This is true even if the official was already duty bound to take or withhold the action in question, or even if the official did not have the power or authority to take or withhold the action in question, if the victim reasonably believed that the official had that authority or power.

The solicitation of campaign contributions from any person is a necessary and permissible form of political activity on the part of persons who seek political office and persons who have been elected to public office. A campaign contribution given in anticipation of favorable future action is not extorted “under color of official right” unless there was an explicit promise of favorable future action; that is, the receipt of a campaign contribution is taken “under color of official right” only if the payment is made in return for an explicit promise or undertaking by the official to perform or not to perform an official act. If the official knows that he is being offered the payment or benefit in exchange for a specific requested exercise of his official power, passive acceptance of the payment is enough; the official does not need to make an explicit demand for payment or take any specific action to induce the offering of the benefit.

A private citizen cannot be guilty of conspiracy to commit extortion “under color of official right” unless the extortion was to result in the receipt of money by a public official, and a public official was a knowing participant in the scheme.

For you to find a defendant guilty of aiding and abetting extortion, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

- First:* that the offense of extortion as alleged in Counts 16 and 17 was committed by some person;
- Second:* that the defendant associated with the criminal venture;
- Third:* that the defendant purposefully participated in the criminal venture; and
- Fourth:* that the defendant sought by action to make that venture successful.

NO. 29 CONSPIRACY TO COMMIT DEPRIVATION OF HONEST SERVICES BY WIRE FRAUD (COUNT 18)

Title 18, United States Code, Sections 1343 and 1346 make it a crime for anyone to use interstate wire communications facilities in carrying out a scheme to defraud by depriving another of the intangible right to honest services.

Title 18, United States Code, Section 1349, makes it a crime for anyone to conspire with someone else to commit a deprivation of honest services by wire fraud.

Count 18 charges Defendants Donald W. Hill, D'Angelo Lee, and Sheila Farrington Hill with conspiring to deprive the residents of Dallas, the Dallas City Council, and/or the Dallas City Plan and Zoning Commission of the intangible right to the honest services of public officials Donald W. Hill and D'Angelo Lee by wire fraud.

For you to find any defendant guilty of this crime, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

- First:* that two or more persons, directly or indirectly, reached an agreement to devise a scheme or artifice to deprive the residents of Dallas, the Dallas City Council and/or the Dallas City Plan and Zoning Commission of their or its right to the

honest services of Council Member Donald W. Hill and Plan Commissioner D'Angelo Lee when taking official action;

Second: that the defendant knew of the unlawful purpose of the agreement; and

Third: that the defendant joined in the agreement willfully, that is, with the intent to further its unlawful purpose.

“Economic interest” includes, but is not limited to, legal or equitable property interests in land, chattels, intangibles, and contractual rights, having more than de minimus value.

“Official action” includes any affirmative act that is within the scope of an official’s duties, and any failure to act, if the official is under a duty to act.

You must further be convinced that the government has proven each of the following elements of wire fraud beyond a reasonable doubt:

First: that the defendant or a co-conspirator knowingly created a scheme to defraud as alleged in Count 18 of the indictment;

Second: that the defendant acted with a specific intent to defraud;

Third: that the defendant or a co-conspirator used interstate wire communications facilities, or caused another person to use interstate wire communications facilities, in connection with carrying out the scheme; and

Fourth: that the scheme to defraud employed false material representations.

The Defendants and the Government agree and stipulate that the third element, as to the use of interstate wire communications facilities, has been met. I therefore instruct you that the defendants or a co-conspirator used interstate wire communications facilities, or caused another person to use interstate wire communications facilities, in connection with the actions of the

defendants alleged in the indictment, and you do not need to consider this element in your deliberations.

A “scheme to defraud” includes any scheme to deprive another of the intangible right to honest services by means of false or fraudulent pretenses, representations, or promises.

An “intent to defraud” means an intent to deceive or cheat someone. If the defendant rendered all the services his position called for, and if these and all other services rendered by the defendant are exactly the same services that would be rendered by a totally faithful official—that is, by a person impartially performing his official duties as a public servant—and if the scheme to defraud did not contemplate that the defendant would do otherwise than act like a totally faithful official, there has been no deprivation of honest services.

A representation is “false” if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation would also be “false” when it constitutes a half-truth, or effectively omits or conceals a material fact, provided it is made with intent to defraud.

A false statement is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the person or entity to whom or which it is addressed.

It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme, or that the material transmitted by wire was itself false or fraudulent, or that the alleged scheme actually succeeded in defrauding anyone, or that the use of interstate wire communications facilities was intended as the specific or exclusive means of accomplishing the alleged fraud.

The particular type of fraud that Defendants Donald W. Hill, D'Angelo Lee, and Sheila Farrington Hill have been charged with conspiring to commit is to deprive the residents of Dallas, the Dallas City Council, and/or the Dallas City Plan and Zoning Commission of the intangible right to honest services of public officials Donald W. Hill and D'Angelo Lee.

To constitute a deprivation of honest services, the services or duties must have been owed under law. Here, the government alleges that the defendant conspired to have Hill and Lee breach Texas Penal Code § 36.02(a)(1), which provides:

- (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:
 - (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter

The government further alleges that the defendant conspired to have Hill and Lee breach the following duties:

- Dallas City Charter Chapter III, § 10, which provides:

No member shall be excused from voting except on matters where his or her financial interests are involved, and in these instances, the member shall not vote.

- Dallas City Code of Ethics Chapter II, § 12A-3, which provides:

- (a) Economic interests affected. To avoid the appearance and risk of impropriety, a city official or employee shall not take any official action that he or she knows is likely to affect particularly the economic interests of:
 - (1) the official or employee;
 - (2) the official's or employee's outside client;
 - (3) the official's or employee's outside employer;
 - (4) a business entity in which the official or employee knows that he or she holds an economic interest;

- (5) a business entity that the official or employee knows is an affiliated business or partner of a business entity in which he or she holds an economic interest;
- (6) a business entity for which the city official or employee serves as an officer or director or in any other policymaking position;

...

(c) Recusal and disclosure. A city official or employee whose conduct or action on a matter would violate Subsection (a) must recuse himself or herself. From the time that the conflict is recognized, the city official or employee shall:

- (1) immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and
- (2) promptly file with the city secretary a written statement disclosing the conflict on a form provided by the city secretary.

(d) Additional recusal and disclosure requirements. In addition to the requirements of Subsection (c):

...

- (7) a board or commission member shall promptly disclose his or her conflict to the board or commission of which he or she is a member and shall not be present during any discussion or voting on the matter; and
- (8) a city council member shall promptly disclose his or her conflict to the city council and shall not be present during any discussion or voting on the matter.

An example of “official action” under City Code of Ethics § 12A-2 is an official making a formal or informal recommendation.

To find a defendant guilty of conspiring to commit a deprivation of honest services by wire fraud, you must find that the defendant conspired for Hill and Lee to breach one or more of these laws; that is, to find Sheila Farrington Hill guilty of this charge, you must find that she conspired with Hill and/or Lee to breach one or more of these laws. To find Donald W. Hill or

D'Angelo Lee guilty of this charge, you must find that he conspired with another person, i.e., Lee, Hill, or Farrington Hill, to have Hill or Lee breach one or more of these laws. You must unanimously agree on the particular law under which the duties allegedly breached were owed. You may find that a defendant conspired to have Hill and Lee breach more than one of these laws as long as your decision as to each law is unanimous.

NO. 30 CONSPIRACY TO COMMIT MONEY LAUNDERING (COUNTS 19 & 20)

Title 18, United States Code, Section 1957, makes it a crime for anyone to engage in certain kinds of financial transactions commonly known as money laundering.

Title 18, United States Code, Section 1956(a)(1), makes it a crime for anyone knowingly to use the proceeds of specified illegal activity to promote the carrying on of that illegal activity, or to conceal or disguise the nature, location, source, ownership, or control of the proceeds, or to avoid a transaction reporting requirement.

Count 19 charges Donald W. Hill, D'Angelo Lee, Sheila Farrington Hill, and Rickey E. Robertson of conspiring to violate each of the money laundering provisions set out in the indictment with respect to the bribery schemes alleged in the indictment.

Count 20 charges Donald W. Hill and Darren L. Reagan of conspiring to violate each of the money laundering provisions set out in the indictment with respect to the extortion schemes alleged in the indictment.

For you to find a defendant guilty of conspiring to launder money in violation of Title 18, United States Code, Section 1957, you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

First: that the defendant knowingly engaged or attempted to engage in a monetary transaction;

- Second:* that the defendant knew the transaction involved criminally derived property;
- Third:* that the property had a value greater than \$10,000; and
- Fourth:* that the property was, in fact, derived from bribery or extortion as alleged in the indictment.

For you to find a defendant guilty of violating Title 18, United States Code, Section 1956(a)(1), you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

- First:* that the defendant knowingly conducted or attempted to conduct a financial transaction;
- Second:* that the financial transaction or attempted financial transaction involved the proceeds of the unlawful activity specified in the indictment, namely bribery or extortion;
- Third:* that the defendant knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity; and
- Fourth:* that the defendant either
- (a) intended to promote the carrying on of the specified unlawful activity, namely bribery or extortion; or
 - (b) knew that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the bribery or extortion; or

(c) knew that the transaction was designed in whole or in part to avoid a transaction reporting requirement under state or federal law.

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

The term “transaction” includes a pledge, gift, deposit, withdrawal, transfer between accounts, purchase of any monetary instrument, or any other payment, transfer or delivery by, through, or to a financial institution, by whatever means effected.

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

With respect to the second element of Title 18, United States Code, Section 1956(a)(1), the government must show that in fact the property was the proceeds of the bribery or extortion alleged in the indictment, which are specified unlawful activities under the statute. The term “proceeds” means any property, or any interest in property, that someone acquires or retains as a result of the commission of the underlying unlawful activity. Proceeds can be any kind of property, not just money.

With respect to the third element of Title 18, United States Code, Section 1956(a)(1), the government must prove that the defendant knew that the property involved in the transaction was the proceeds of some kind of crime that is a felony under federal or state law, although it is not necessary to show that the defendant knew exactly what crime generated the funds. I instruct

you that the crimes of bribery and extortion described in Counts 11 and 12 are felonies under federal law.

With respect to the fourth element of Title 18, United States Code, Section 1956(a)(1), the government must prove that the defendant had one of the three mental states I described in subparagraphs (a), (b), and (c) in this instruction. The first mental state, described in subparagraph (a), charges the defendant with *intending* to promote the carrying on of bribery or extortion. This element is not satisfied by mere evidence that the transaction *resulted* in the promotion of bribery or extortion, or that the defendant *knew* that the transaction would promote the bribery or extortion; rather, this element requires evidence that the defendant had the intent to promote the bribery or extortion. This does not mean that there must be direct evidence, such as a statement by the defendant, of an intent to promote specified unlawful activity. The intent to promote criminal activity may be inferred from indirect evidence.

The second mental state, described in subparagraph (b), charges the defendant in the alternative with knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the bribery or extortion. The government must prove that the specific transaction was designed, at least in part, to make it more difficult for the government to trace and demonstrate the nature of the funds. It is not enough merely to prove that the transaction involved money that was previously laundered through other means. However, the government does not have to prove that any single transaction, in isolation, was designed to launder money; it is enough if the evidence tends to show that the transaction is part of a larger scheme designed to conceal illegal proceeds.

The third mental state, described in subparagraph (c), charges the defendant in the alternative with knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under state or federal law.

Title 18, United States Code, Section 1956(h), makes it a crime for anyone to conspire or agree with someone else to do something which, if actually carried out, would be a violation of Title 18, United States Code, Section 1956 or 1957.

Count 19 alleges that Donald W. Hill, D'Angelo Lee, Sheila Farrington Hill, and Rickey E. Robertson conspired to violate each of the money laundering provisions set out above with respect to the alleged bribery scheme contained in the indictment.

Count 20 alleges that Donald W. Hill and Darren Reagan conspired to violate each of the money laundering provisions set out above with respect to the alleged extortion scheme contained in the indictment.

For you to find any defendant guilty of this crime, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

- First:* that the defendant and at least one other person made an agreement to commit the crime of money laundering as charged in the indictment;
- Second:* that the defendant knew of the unlawful purpose of the agreement; and
- Third:* that the defendant joined in the agreement willfully, that is, with the intent to further its unlawful purpose.

NO. 31 DUTY TO DELIBERATE

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous as to each count of the indictment, and as to each defendant. Your deliberations will be secret.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges—judges of the facts. Your duty is to decide whether the government has proven the defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help to guide your deliberations and will speak for you here in the courtroom.

A form of verdict has been prepared for your convenience. The foreperson should write the unanimous answer of the jury in the spaces provided on the form for each count of the indictment, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict form.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the marshal. I will either reply in writing or bring you back into the court to answer your message.

I want to advise you that although our court reporter has taken down all of the testimony, it is not done in such a way that we can read back or furnish testimony to you at your request. Only when you have a specific disagreement as to a particular witness's testimony on a specific subject can we attempt to obtain that information for you.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, on any count of the indictment, until after you have reached a unanimous verdict, unless I instruct you otherwise.