IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	)	
	)	
v.	)	1:11-CR-161-CCE
	)	
JOHNNY REID EDWARDS	)	

GOVERNMENT'S REQUESTS TO CHARGE

The United States of America, through the undersigned counsel, respectfully requests that the Court include the following proposed instructions in its charge to the jury, and that the Court charge the jury prior to closing arguments of counsel, as permitted by Federal Rule of Criminal Procedure 30(c). The government also respectfully requests leave to amend these requests at a later date if necessary based on developments at trial.

Respectfully submitted,

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Acting under authority
conferred by 28 U.S.C. § 515

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CERTIFICATE OF SERVICE

This is to certify that on May 10, 2012, I filed the foregoing document on the Court's CM/ECF system, which will transmit a copy to the following counsel of record in this case:

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REQUEST NO. 1

Province of the Court and the Jury

Members of the Jury:

Now that you have heard all of the evidence that is to be received in this trial, I will give you the final instructions on the law that is applicable to this case. You should use these instructions to guide you in your decisions.

You may recall that I gave you some instructions on the law at the beginning of trial. There should not be any inconsistency between those instructions and the ones I am about to give you, but if there is, these instructions I am giving you now control. These final instructions must guide and govern your deliberations.

It is your duty as jurors to follow the law as stated in all of the instructions of the Court and to apply these rules of law to the facts as you find them from the evidence received during the trial.

Counsel may properly refer to some of the applicable rules of law in their closing arguments to you. But if any difference appears to you between the law as stated by counsel and that as stated by me in these instructions, you, of course, are to be governed by the instructions I give you.

You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole in reaching your decisions.

You also should not be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict on any other view or opinion of the law than that given in these instructions, just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict on anything other than the evidence received in the case.

You were chosen as jurors for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented in this case. You, the members of the jury, are the sole and exclusive judges of the facts. You decide how much weight the evidence deserves, you determine the credibility of the witnesses, you resolve any conflicts that there may be in the testimony, and you draw whatever reasonable inferences you decide to draw from the facts as you have determined them. Inferences are simply deductions or conclusions that reason and common sense lead you to draw from the evidence received in the case.

I will discuss with you later how to think about the credibility – or believability – of the witnesses. In determining the facts, you must rely upon your own recollection of the evidence. What the lawyers say in their opening statements, in their closing arguments, or in their objections is not evidence. Also, you should bear in mind that a lawyer's question to a witness is never evidence. It is only the answer which is evidence. But, you may

not consider any answer that I directed you to disregard or that I directed be stricken from the record. Do not consider such answers. Treat them as if they never happened. Nor should anything I may have said during the trial or may say during these instructions about a fact matter substitute for your own independent recollection. What I say is not evidence.

The evidence 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. You may also consider the stipulations of the parties as evidence. A stipulation is simply an agreement among the parties that a certain fact is true. You should treat such agreed facts as true.

Since you are the only judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision should be on whether or not the defendant's guilt has been proven beyond a reasonable doubt. I also ask you to not read anything into the fact that on occasion I asked questions of certain witnesses. These questions were only intended for clarification or to expedite matters and certainly 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 witnesses. I have 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.

1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal §§12.01, 12.05 (6th ed. 2008); 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instructions Nos. 2-3, 5-6 (2009).

REQUEST NO. 2

Jury's Recollection Controls

If any reference by me or by counsel to testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection that counts and that should control during your deliberations. You are the sole judges of the evidence received in this case.

1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 12.07 (6th ed. 2008).

REQUEST NO. 3

Direct and Circumstantial Evidence

There are two types of evidence that are generally presented during a trial – direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who 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. For example, if someone came into the courtroom wearing a wet raincoat and carrying a wet umbrella, that would be circumstantial evidence that it was raining outside. That is all circumstantial evidence is. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is any greater degree of certainty required of circumstantial evidence than of direct evidence.

Adapted from 1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 12.04 (6th ed. 2008).

REQUEST NO. 4

Presumption of Innocence, Burden of Proof, and Reasonable Doubt

I instruct you that under the law, the defendant is presumed to be innocent of the crime charged. The defendant begins the trial with a "clean slate" – with no evidence against him. The Indictment is not evidence of any kind. Under the law, only legal evidence presented before the jury in court can be considered in support of any charge against the defendant. The presumption of innocence alone is enough to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden of proof is always on the government to prove a defendant's guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence. A defendant does not even have to produce any evidence by cross-examining the witnesses for the government. Unless the government proves each and every element of the offenses charged in the Indictment beyond a reasonable doubt, you must find the defendant not guilty of the offense.

It is not required that the government prove guilt beyond all possible doubt, however. The test is one of reasonable doubt.

Adapted from 1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 12.10 (6th ed. 2008); *United States v. Najjar*, 300 F.3d 466, 486 (4th Cir. 2002) (improper for district court to define

reasonable doubt unless jury specifically requests a definition); *United States v. Walton*, 207 F.3d 694, 699 (4th Cir. 2000) (en banc) (discouraging further definition of reasonable doubt standard and declining to require providing a definition, even when jury requests one).

REQUEST NO. 5

Specific Investigative Techniques Not Required
(if applicable)

During the trial you have heard testimony of witnesses and argument by counsel that the government did not use specific investigative techniques. You are instructed that there is no legal requirement that the government use any specific investigative techniques to prove its case. Your concern is to determine whether or not, on the evidence or lack of evidence, the government has proven the defendant's guilt beyond a reasonable doubt.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 4-4 (2009).

REQUEST NO. 6

Credibility of Witnesses – Generally

You, as jurors, are the sole judges of the credibility of each of the witnesses called to testify in this case, and only you determine the importance or the weight that their testimony deserves. In making your determination about the credibility of a witness, you may decide to believe all of that witness' testimony, only a portion of it, or none of it.

In thinking about a particular witness you should carefully scrutinize all of the testimony given by that witness, the circumstances under which the witness has testified, and all of the other evidence that tends to show whether the witness, in your opinion, is worthy of belief. Consider each witness' intelligence, motive to lie, state of mind, and appearance and manner while on the witness stand. Consider the witness' ability to observe the matters that he or she has testified about and consider whether he or she impresses you as having a good memory of these matters. Consider also any relation a witness may have to either side of the case, the way each witness might be affected by your verdict, and whether each witness is supported or contradicted by other evidence in the case.

Inconsistencies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident may simply see or hear it differently. Innocently misremembering, just like failing to remember things, is not an uncommon human

experience. In weighing the effect of an inconsistency, however, always consider whether it concerns something important or an insignificant detail, and consider whether the inconsistency comes from an innocent error or from intentional lying.

After making your own judgment about the believability of a witness, you can then give such importance or weight to that testimony, if any, that you feel it deserves.

1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 15.01 (6th ed. 2008).

REQUEST NO. 7

Cooperating Witnesses

You have heard the testimony of a witness who has been promised that in exchange for testifying truthfully, completely, and fully, he will not be prosecuted for any crimes that he may have admitted here in court or in interviews with the prosecutors.

The government is allowed to make these kinds of promises and to call as witnesses people to whom these promises are given. Cooperating witnesses are frequently used by the Government to obtain leads and information relating to persons suspected of violating the law. There are certain types of crimes where, without the use of cooperating witnesses, detection would be extremely difficult. Because this law enforcement technique is entirely lawful, your personal view on its use – whether you approve or disapprove – is beside the point and must not affect your evaluation of the evidence in this case. You may convict a defendant on the basis of such a witness' testimony alone, if you find that his testimony proves the defendant guilty beyond a reasonable doubt.

However, the testimony of a witness who has been promised that he will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is given in such a way as to make the defendant seem guilty in order to further the witness' own interests. You may give the testimony of such a witness whatever weight, if any, that you believe it deserves.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 7-9 (2009).

REQUEST NO. 8

Indictment Is Not Evidence

Before I turn to the charges contained in the Indictment, let me caution you that an Indictment is only a formal method used by the government to accuse a defendant of a crime. It is not evidence of any kind against the defendant. The defendant is presumed to be innocent of the crime charged. Even though the Indictment has been returned against the defendant, the defendant begins this trial with absolutely no evidence against him.

The defendant has pled "not guilty" to this Indictment and, therefore, denies that he is guilty of the charges.

Adapted from 1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 13.04 (6th ed. 2008).

REQUEST NO. 9

Multiple Counts – One Defendant

The Indictment contains a total of six counts. Each count charges the defendant with a different crime. You must consider each count separately and return a separate verdict of guilty or not guilty for each. Whether you find the defendant guilty or not guilty of one offense should not affect your verdict on any of the other offenses charged.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 3-6 (2009).

REQUEST NO. 10

"Knowingly" – Defined

A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. In other words, the government must prove that the defendant knew the facts making up each element of the offense, and I will discuss those elements with you shortly. Whether the defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 3A-1 (2011); *Bryan v. United States*, 524 U.S. 184, 192-93 (1998); *United States v. Wilson*, 133 F.3d 251, 262-63 (4th Cir. 1997).

REQUEST NO. 11

"Willfully" – Defined

"Willfully" means to act with knowledge that one's course of conduct is unlawful and with the intent to do something the law forbids, in other words, with the bad purpose to disobey or to disregard the law.

> *Bryan v. United States*, 524 U.S. 184, 193 (1998); *see also United States v. Fowler*, 932 F.2d 306, 316-17 (4th Cir. 1991) (no separate instruction on good faith required where adequate instructions on specific intent are given).

REQUEST NO. 12

Conscious Avoidance

In determining whether the defendant acted knowingly, you may consider whether the defendant deliberately closed his eyes to what would otherwise have been obvious to him. If you find beyond a reasonable doubt that the defendant acted with a conscious purpose to avoid learning the truth – and not because he was merely negligent, foolish, or mistaken – then the element that the defendant acted knowingly may be satisfied. I want to caution you, however, that the element of willfulness cannot be satisfied in this manner.

If you find that the defendant was aware of a high probability of certain facts and that the defendant acted with deliberate disregard of those facts, you may find that the defendant acted knowingly. However, if you find that the defendant actually believed that the facts were not true, you may not find that he acted knowingly with respect to those facts.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 3A-2 (2011); *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068-71 (2011) *United States v. Guay*, 108 F.3d 545, 551 (4th Cir. 1997).

REQUEST NO. 13

Proof of Knowledge or Intent

The intent of a person or the knowledge that a person has at any given time is not ordinarily proved directly, because there is no way of directly analyzing the workings of the human mind. In determining what a person knew or what a person intended at a particular time, you may consider any statements made or acts done, or not done, by that person and all other facts and circumstances received in evidence that might help your determination of that person's knowledge or intent.

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

Adapted from 1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 17.07 (6th ed. 2008).

REQUEST NO. 14

Agent of the Defendant

In order to carry its burden of proof on any of the counts in the Indictment, the government does not have to prove that the defendant personally did every act in the offense charged.

As a general rule, whatever any person is legally capable of doing himself, he can do through another acting as his agent. Whoever willfully causes an act to be done which, if directly performed by him, would be a crime, is punishable as if he had committed the crime directly himself.

In other words, if the defendant willfully caused the acts or conduct of another – if, for example, the defendant willfully ordered, directed, commanded, induced, authorized, or consented to the other person's conduct – then the law holds the defendant responsible for that conduct just the same as if it had been personally done by him.

> Adapted from 1A O'Malley, Grenig, and Lee, Federal Jury Practice & Instructions: Criminal § 18.03 (6th ed. 2008); 18 U.S.C. § 2(b); *United States v. Jaensch*, 665 F.3d 83, 96 (4th Cir. 2011) ("Under 18 U.S.C. § 2(b), individuals who aid, abet, command, or induce a crime are punishable as principals."); *United States v. Fraley*, 858 F.2d 230, 233 (5th Cir. 1988) (specifically approving similar instruction).

REQUEST NO. 15

Count One (Conspiracy) – Nature of the Offense

In this case, the defendant is accused of having been a member of a conspiracy to violate certain federal laws. A conspiracy is a kind of criminal partnership – an agreement of two or more persons to join together to accomplish some unlawful purpose.

The crime of conspiracy to violate a federal law is an independent offense. It is separate from the actual violation of any specific federal laws, which the law refers to as "substantive crimes."

Indeed, you may find the defendant guilty of the crime of conspiracy to commit an offense against the United States even though the substantive crime that was the object of the conspiracy was not actually committed. Congress has made conspiracy, standing alone, a separate crime even if the conspiracy is not successful. This is because criminal activity undertaken together poses a greater threat to the public's safety and welfare than individual conduct, and increases the likelihood of success of a particular criminal venture.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 19-2 (2011).

REQUEST NO. 16

Count One (Conspiracy) – Elements of the Offense

In order to satisfy its burden of proof on Count One, the government must establish each of the following four essential elements beyond a reasonable doubt: First, that two or more people joined the unlawful agreement charged in the Indictment starting in or about 2007;

Second, that the defendant knowingly and willfully became a member of the conspiracy;

Third, that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the Indictment; and

Fourth, that the overt act(s) which you find to have been committed was (were) committed to further some goal of the conspiracy.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 19-3 (2011); *United States v. Kingrea*, 573 F.3d 186,195 (4th Cir. 2009).

REQUEST NO. 17

Count One (Conspiracy) – First Element: Existence of Agreement

The first element the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more people joined the unlawful agreement charged in the Indictment.

In order for the government to satisfy this element, you do not have to find that the alleged members of the conspiracy met together and made any formal agreement. Similarly, you do not have to find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every detail of the scheme or the means by which its object or purpose was to be accomplished. What the government has to prove, though, is that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act.

You may, of course, find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also find that one exists from the circumstances of this case and the conduct of the parties involved.

In a very real sense, then, in the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those you find to be participants as proof

that a common plan existed on the part of the persons charged to act together to accomplish an unlawful purpose.

> Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 19-4 (2011); *United States v. Kingrea*, 573 F.3d 186, 195 (tacit understanding sufficient, and conspiracy may be proven by circumstantial evidence) (citing *United States v. Ellis*, 121 F.3d 908, 922 (4th Cir. 1997) for former proposition and *United States v. Burgos*, 94 F.3d 849, 857 (4th Cir. 1996) for latter).

REQUEST NO. 18

Count One (Conspiracy) –
Second Element: Membership in the Conspiracy

The second element that the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that the defendant knowingly, willfully and voluntarily became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the Indictment existed, you must next ask yourselves whether the defendant was a member of it. In deciding whether the defendant was a member of the conspiracy, you should consider whether the defendant knowingly and willfully joined the conspiracy. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of helping to accomplish its objective?

You are instructed that, while proof of a personal or financial interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, that is a factor which you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the Indictment.

As I mentioned a moment ago, before the defendant can be found to have been a conspirator, you must first find that he knowingly joined in the unlawful agreement or plan. The key question, therefore, is whether the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

It is important for you to note that the defendant's participation in the conspiracy must be established by independent evidence of his own acts or statements, as well as those of the other alleged co-conspirators, and the reasonable inferences that may be drawn from them. The defendant's knowledge is something to be inferred from the facts proved. In that connection, I instruct you that to become a member of the conspiracy, the defendant does not need to know the identities of each and every other member, nor does he need to know about all of their activities. Moreover, the defendant does not have to be fully informed as to all of the details, or the scope, of the conspiracy in order to justify an inference of knowledge on his part. Furthermore, the defendant does not have to join in all of the conspiracy's unlawful objectives. One is sufficient.

The extent of the defendant's participation has no bearing on the issue of his guilt. A conspirator's liability is not measured by the extent or duration of his participation. Each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant into the conspiracy.

I want to caution you, however, that the defendant's mere presence at the scene of an alleged crime does not, by itself, make him a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a

criminal himself. Mere similarity of conduct or the fact that they may have gotten together and discussed common aims and interests does not necessarily establish membership in a conspiracy.

I also want to caution you that mere knowledge of an unlawful plan, or simply not stopping an unlawful plan, without participation in it, is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy, and with the intention of aiding in the accomplishment of those unlawful ends.

To summarize, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised or assisted in it for the purpose of accomplishing the goals of the illegal undertaking. In doing so he becomes a knowing and willing participant in the unlawful agreement – that is to say, a conspirator.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 19-6 (2011); *United States v. Kingrea*, 573 F.3d 186, 195 (4th Cir. 2009); *United States v. Burgos*, 94 F.3d 849, 857-58 (4th Cir. 1996).

REQUEST NO. 19

Count One (Conspiracy) –
Third Element: Commission of Overt Act

The third element which the government must prove beyond a reasonable doubt, to establish the offense of conspiracy, is that at least one of the overt acts charged in the Indictment was knowingly committed by at least one of the conspirators, at or about the time and place alleged. An overt act is just some affirmative step taken in order to advance to goals of the conspiracy.

The Indictment charges that the following overt acts were committed in the Middle District of North Carolina and elsewhere:

[the court is requested to read the overt acts listed in the Indictment]

In order for the government to satisfy this element, it does not have to prove all of the overt acts alleged in the Indictment. Similarly, you do not have to find that the defendant in this case himself committed an overt act. It is sufficient for the government to show that one of the conspirators knowingly committed an overt act in furtherance of the conspiracy. Such an act becomes, in the eyes of the law, the act of all of the members of the conspiracy.

In addition, the overt act need not have been committed at precisely the time alleged in the Indictment. It is sufficient if you are convinced beyond a reasonable doubt that it occurred at or about the time and place stated.

Finally, you must find that either the agreement was formed or that an overt act was committed in the Middle District of North Carolina, which includes Chapel Hill.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 19-7 (2011); *United States v. Godwin*, 272 F.3d 659, 669 (4th Cir. 2001) (overt act need not be committed by defendant); *United States v. Bowens*, 224 F.3d 302, 311 n.4 (4th Cir. 2000) (on conspiracy charge, venue proper "for all defendants wherever the agreement was made or wherever any overt act in furtherance of the conspiracy transpires."); *United States v. Al-Talib*, 55 F.3d 923, 928 (4th Cir. 1995) (same).

REQUEST NO. 20

Count One (Conspiracy) –
Fourth Element: Commission of Overt Act in Furtherance of the Conspiracy

The fourth, and final, element which the government must prove beyond a reasonable doubt is that the overt act was committed for the purpose of carrying out the unlawful agreement.

In order for the government to satisfy this element, it must prove, beyond a reasonable doubt, that at least one overt act was knowingly and willfully done, by at least one conspirator (not necessarily the defendant), in order to accomplish some object or purpose of the conspiracy, as charged in the Indictment. In this regard, you should bear in mind that the overt act, standing alone, may be an innocent, lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding or assisting the conspiratorial scheme. The overt act does not have to be an act which, in and of itself, is criminal or is an objective of the conspiracy.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 19-8 (2011).

REQUEST NO. 21

Counts Two through Five (Acceptance or Receipt of Illegal Campaign Contributions) – Nature of the Offense

Counts Two through Five of the Indictment charge the defendant with accepting and receiving illegal campaign contributions.

Counts Two through Five charge the defendant with violating the campaign finance laws found in Title 2 of the United States Code. In particular, the defendant is charged with violating a law that prohibits a candidate for federal office from knowingly accepting contributions in excess of the legal limits from any person with respect to any primary or general election.

REQUEST NO. 22

Counts Two through Five (Acceptance and Receipt of Illegal Campaign Contributions) – Elements of the Offense

In order to meet its burden of proof on Counts Two through Five, the government must establish each of the following elements beyond a reasonable doubt:

First, that the defendant was a candidate for federal office;

Second, that while a candidate for federal office, the defendant accepted or received, or caused another to accept or receive on his behalf, a contribution or contributions from a person (for Counts Two and Three, Rachel "Bunny" Mellon, and for Counts Four and Five, Fred Baron) totaling in excess of $2,300 with respect to a primary or general election;

Third, that the contributions in excess of $2,300 with respect to a primary or general election that the defendant accepted or received, or caused another to accept or receive on his behalf, from a person (Rachel "Bunny" Mellon or Fred Baron, as the case may be) totaled $25,000 or more in a calendar year (2007 or 2008, as the case may be); and

Fourth, that the defendant acted knowingly and willfully, as I have defined those terms for you already.

2 U.S.C. §§ 441a(a)(1)(A) and (f); 437g(d)(1)(A)(i); 18 U.S.C. § 2(b).

REQUEST NO. 23

Counts Two through Five (Acceptance and Receipt of Illegal Campaign Contributions) – First Element: Candidate for Federal Office

"Candidate for federal office" includes an individual who seeks nomination for election, or election, to the office of President of the United States.

2 U.S.C. §§ 431(2) and (3).

REQUEST NO. 24

Counts Two through Five (Acceptance and Receipt of Illegal Campaign Contributions) – Second Element: Contributions

The term "contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

The term also includes certain types of expenditures by a donor. An "expenditure" is any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for federal office. An expenditure that is made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate or his agent, is a contribution to such candidate.

In addition, if a particular expense would ordinarily be a personal expense, payment of that expense by any person other than the candidate is a contribution to the candidate, unless the donor would have made the payment anyway, regardless of whether the candidate was running for office.

In determining whether a gift, purchase, payment, or deposit of anything of value was made "for the purpose of influencing any election for federal office," you may consider evidence of the donor's statements or actions as well as evidence of the surrounding circumstances.

Because people rarely act with a single purpose in mind, it is not necessary that you find that a gift, purchase, or payment was made solely for the purpose of influencing a federal election. It is sufficient under the law if you find that the gift, purchase, or payment was made for, among other purposes, the purpose of influencing any election for federal office.

> 2 U.S.C. §§ 431(8)(A) and (9)(A); 441a(a)(7)(B)(i); 11 C.F.R. § 113.1(g); *United States v. Fiel*, 35 F.3d 997 (4th Cir. 1994) ("for the purpose of" in racketeering statute "should be accorded its ordinary meaning" and government need not prove gaining leadership within group was sole or primary purpose of committing crime). The Government also respectfully directs the Court to its Memorandum in support of this request, filed concurrently.

REQUEST NO. 25

Counts Two through Five (Acceptance and Receipt of Illegal Campaign Contributions) – Second Element: Contributions – Exception for Gifts of a Personal Nature

If a gift a candidate receives is of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle, then it is not a contribution. An election cycle begins on the first day following the date of the previous general election for the office or seat which the candidate seeks. In this case, the election cycle in question began on November 3, 2004.

11 C.F.R. §§ 100.3(b), 100.33(b)(6).

REQUEST NO. 26

Count Six (False Statements) – Nature of the Offense

Count Six of the Indictment charges the defendant with making a false statement. In particular, the Indictment alleges that:

[the court is requested to read Count Six of the Indictment]

REQUEST NO. 27

Count Six (False Statements) – Elements of the Offense

In order to sustain its burden of proof for the crime of knowingly and willfully causing another to conceal a material fact from an agency of the federal government as charged in Count Six of the Indictment, the government must prove the following essential elements beyond a reasonable doubt:

First, that the defendant knowingly concealed or covered up a fact by any trick, scheme or device as detailed in the Indictment;

Second, that the person from whom the defendant concealed or covered up the fact – here, the treasurer for Mr. Edwards' campaign committee – had a legal duty to disclose the fact to the Federal Election Commission, and the defendant knew it;

Third, that the fact concealed by the defendant was material to the Federal Election Commission; and

Fourth, that the subject matter involved was within the jurisdiction of the executive branch of the government of the United States.

18 U.S.C. § 1001(a)(1); *United States v. Hsia*, 176 F.3d 517, 522 (D.C. Cir. 1999); *United States v. Richeson*, 825 F.2d 17, 20 (4th Cir. 1987).

REQUEST NO. 28

Count Six (False Statements) --
First Element: "Conceals or Covers Up By Any Trick, Scheme or Device"

The phrase "conceals or covers up by any trick, scheme, or device" means any deliberate plan or course of action, or any affirmative act, or any knowing omission designed to deceive others by preventing or delaying the discovery of information. In this case, the defendant is accused of concealing the alleged contributions by Bunny Mellon and Fred Baron from the Federal Election Commission by deliberately concealing such alleged contributions from his campaign committee, and in doing so, causing the treasurer of the campaign committee to file reports with the Federal Election Commission that were inaccurate and incomplete.

2A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 40.04 (5th ed. 2011).

REQUEST NO. 29

Count Six (False Statements) --
Second Element: Duty to Disclose

A person has a legal duty to disclose a fact if the law requires the person to do so. For example, if a statute requires someone to report certain information to a Government agency, then that person has a legal duty to disclose such information.

Federal law requires the treasurer of a campaign committee to report to the Federal Election Commission, among other things, the name, mailing address, occupation, and employer name of each person who makes contributions totaling in excess of $200 during the relevant election cycle, together with the date and amount of any such contribution.

2 U.S.C. §§ 431(13)(A), 434(a)(1), & 434(b)(3)(A).

REQUEST NO. 30

Count Six (False Statements) --
Third Element: Materiality

A statement is material if it had the effect of influencing the action of an agency, or was capable of doing so, or had the potential to do so. It is not necessary that the statement actually have that influence or be relied on by the agency, as long as it had the potential or capability to do so.

United States v. Gaudin, 515 U.S. 506, 509 (1995); *United States v. Ismail*, 97 F.3d 50, 60 (4th Cir. 1996).

REQUEST NO. 31

Count Six (False Statements) --
Fourth Element: In a Matter Within the Jurisdiction of the Executive Branch

The government must establish beyond a reasonable doubt that the concealment was made concerning a matter within the jurisdiction of the government of the United States.

To be within the jurisdiction of the government of the United States means that the statement must concern an authorized function of the department or agency to which it is submitted. The government does not have to prove that the defendant had actual knowledge that the false statement was to be used in a matter within the jurisdiction of the government of the United States. It is enough for the government to prove that the false statement was made concerning a matter within the jurisdiction of the government of the United States.

Adapted from 2 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 36-8 (2011); *United States v. Yermian*, 468 U.S. 63, 68-69 (1984).

REQUEST NO. 32

Venue

In addition to the foregoing elements of the offense, you must consider whether any act in furtherance of the crime occurred within the Middle District of North Carolina. The Middle District of North Carolina encompasses 24 counties, one of which is Orange County, which includes Chapel Hill.

In this regard, the government need not prove that the entire crime itself was committed in this district or that the defendant himself was present here. It is sufficient to satisfy this element if any act in furtherance of the crime occurred within this district. For this issue alone, the Government need not prove it beyond a reasonable doubt, but only by a preponderance of the evidence. To prove something by a preponderance of the evidence means to prove only that it is more likely true than not true.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions Criminal, Instruction No. 3-11 (2011).

REQUEST NO. 33

"On or About" or "In or About"

The Indictment charges that each offense was committed "on or about" or "in or about" a certain date.

Although the government must prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged, it does not have to prove that the offense was committed precisely on the date charged.

Adapted from 1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal §13.05 (6th ed. 2008).

REQUEST NO. 34

Approximate Amounts

The Indictment alleges that monetary payments were involved in the crimes charged. It is not necessary for the government to prove the exact or precise amount of the monetary payments alleged in the Indictment.

1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 13.06 (6th ed. 2008).

REQUEST NO. 35

Punishment

The question of possible punishment of the defendant is of no concern to the jury and should not affect your deliberations in any way. The duty of imposing sentence rests exclusively upon the Court. Your job is to weigh the evidence in the case and to determine whether or not the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. Under your oath as jurors, you cannot allow consideration of the punishment that may be imposed on the defendant, if he is convicted, to influence your verdict, in any way, or, in any sense enter into your deliberations.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions - Criminal, Instruction No. 9-1 (2010).

REQUEST NO. 36

Sympathy

Under your oath as jurors you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case, and the crucial question that you must ask yourselves as you sift through the evidence is: Has the government proven the guilt of the defendant beyond a reasonable doubt?

It is for you alone to decide whether the government has proven that the defendant is guilty of the crimes charged solely on the basis of the evidence and subject to the law as I instruct you. It must be clear to you that once you let fear or prejudice, or bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to a defendant's guilt, you should not hesitate for any reason to find a verdict of acquittal. But on the other hand, if you should find that the government has met its burden of proving a defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

Adapted from 1 L. Sand, et al., Modern Federal Jury Instructions - Criminal, Instruction No. 2-12 (2010).

REQUEST NO. 37

Verdict – Election of Foreperson – Duty to Deliberate – Unanimity – Form of Verdict – Communication with the Court

After going to the jury room to begin your deliberations, you will elect one of your members to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court.

Your verdict must represent the collective judgment of the jury. In order to return a verdict, each juror must agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view towards reaching an agreement, if you can do so without trampling on individual judgment. Each of you must decide the case for himself and herself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if you are convinced it is wrong. But also, do not surrender your honest conviction just because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges – judges of the facts of this case. Your only interest is to seek the truth from the evidence received during the trial.

Your verdict must be based solely on the evidence received in the case. Nothing you have seen or read outside of court may be considered. Nothing that I have said or done during the course of this trial is intended in any way to somehow suggest to you what I think your verdict should be. Nothing said in these instructions and nothing in any form of verdict prepared for your convenience is to suggest to you in any way what verdict I think you should return. What the verdict will be is the exclusive duty and responsibility of you, the jury. As I have told you many times, you are the sole judges of the facts.

Forms of verdicts have been prepared for your convenience.

[The Court is respectfully requested to read the verdict form to the jury.]

You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdict, have your foreperson write your verdict, date and sign the forms, and then return with your verdict to the courtroom.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note, signed by your foreperson or by one or more members of the jury, through the Court security officer. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject about the merits of the case other than in writing or orally here in open Court.

The Court security officer, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject concerning the merits of the case.

Bear in mind also that you are never to reveal to any person – not even to me – how the jury stands, numerically or otherwise, on the question of whether or not the government has sustained its burden of proof, until after you have reached a unanimous verdict.

Adapted from 1A O'Malley, Grenig and Lee, Federal Jury Practice and Instructions: Criminal § 20.01 (6th ed. 2008).