

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	CR NO. 2:10cr186-MHT
)	
LARRY P. MEANS,)	
)	
Defendant.)	

DEFENDANT MEANS' REQUESTED JURY INSTRUCTIONS

COMES NOW the Defendant, Larry P. Means, in the above-styled case and presents the following requested jury instructions. Defendant reserves the right to submit additional requested instructions, to adopt certain of the requested instructions of other Defendants or to withdraw certain of these instructions, depending on the evidence presented at trial.

Respectfully submitted this 27th day of May, 2011.

/s/ William N. Clark _____
 William N. Clark (CLA013)
 Stephen W. Shaw (SHA006)
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Defendant Means' Requested Instruction Number _____

The indictment in this case is not any evidence against the Defendant. It is merely the formal method under our Constitution by which a Defendant is accused of a crime and placed on trial. It provides no proof, nor presumption, nor inference that the Defendant is guilty of the offenses charged therein, and you may not consider it as evidence of any sort against Larry P. Means.

See In re Winship, 358, 364, 25 L.Ed.2d 368 (1970).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

The indictment or formal charge against a defendant isn't evidence of guilt. The law presumes every Defendant is innocent. The Defendant does not have to prove [his] [her] innocence or produce any evidence at all. A Defendant does not have to testify, and if the Defendant chose not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

See United States v. Teague, 953 F.2d1525,1539 (11th Cir. 1992), *cert. denied*, 506 U.S.842, 121 L.Ed. 2d 82 (1992),.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

The Court charges the jury that the defendant enters into this trial with a presumption of innocence, and this is a fact in the case, which must be considered with all the evidence, and should not be disregarded unless you are convinced from the evidence beyond a reasonable doubt that the Defendant is guilty of the offense charged. If you are not so convinced then you must return a verdict of not guilty.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

See United States v. Daniels, 986 F.2d451 (11th Cir. 1993), opinion readopted on rehearing, 5 F.3d 495 (11th Cir. 1993), *cert. denied*, 511 U.S. 1054, 114 S. Ct. 1615, 128 L.Ed.2d 342 (1994).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

Now, in this case, the burden of proving that the defendant is guilty as charged rests upon the Government and before a conviction can be had in this case the Government must prove beyond a reasonable doubt that Larry P. Means is guilty as charged. Unless the Government so convinces you beyond a reasonable doubt, you must return a verdict of not guilty.

The phrase "reasonable doubt" is somewhat self-explanatory and efforts to define it do not always clarify the term, but it may help you some to say that the doubt which would justify a verdict of not guilty must be an actual doubt for which you can give a reason which caused you to doubt the proof of all or some part of the Government's case. A reasonable doubt is not a mere fanciful, vague, conjectural or speculative doubt but a doubt arising from the evidence or lack of evidence and remaining after a careful consideration of the testimony. If, after comparing and considering all the evidence in this case, your minds are left in such a condition that you cannot say you are convinced beyond a reasonable doubt, then you must return a verdict of not guilty.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

A reasonable doubt is a fair doubt, based upon reason and common sense, and arising from the evidence. You cannot find the Defendant guilty on suspicion or conjecture.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. The burden is upon the Government to prove Larry P. Means guilty beyond a reasonable doubt of every essential element of the crimes charged. Larry P. Means, like any other Defendant in a criminal case in the United States, has the right to rely upon failure of the prosecution to establish such proof. A Defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution, and upon evidence presented on behalf of the Defendant. The law never imposes upon a defendant in a criminal case the burden or duty of producing any evidence.

Upon considering all the evidence, or lack of evidence, if you have a reasonable doubt about the Defendant's guilt, arising out of any part of the evidence or lack of evidence you must find the Defendant, Larry P. Means, not guilty.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The Court charges the jury that while reasonable inferences from evidence may furnish a basis for proof beyond a reasonable doubt, mere possibility, suspicion, or guesswork, no matter how strong, will not overcome the presumption of innocence. Therefore, the Court charges the jury that if you have a reasonable doubt as to the Defendant's guilt arising from the evidence, any part of the evidence, or a lack of evidence then you must return a verdict of not guilty.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

You should ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that circumstances may change such that a witness' answer to a question at one point may be different from a later answer and both answers be entirely truthful. So, if a witness is reported to have said one thing at one point and later took a different position, you must consider any circumstances or other evidence offered which may explain such change of position.

See Eleventh Circuit Pattern Jury Instructions Number 6.1 (2010) as modified.

See generally United States v. D'Antignac, 628 F.2d428, 435-36 n.10 (5th Cir. 1980), *cert. denied*, 450 U.S. 967, 101 S. Ct. 1485, 67 L.Ed. 2d 617 (1981), *cert. denied*, L.Ed.2d 820 (1989).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

The word “knowingly” means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

The word “willfully” means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted “willfully,” the person need not be aware of the specific law or rule that [his] [her] conduct may be violating.

See Eleventh Circuit Pattern Jury Instructions Number 9.1A (2010) as modified.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The word “willfully” as that term is used in the indictment or in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is with bad purpose either to disobey or disregard the law. Therefore, unless you are convinced beyond a reasonable doubt from the evidence in this case that Larry P. Means acted with the bad purpose to disobey or disregard the law and with the specific intent to do something that the law forbids, then you must find the Defendant not guilty as to each count of the indictment.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

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

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

See Eleventh Circuit Pattern Jury Instructions Number 10.2 (2010) as modified.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

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

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

See Eleventh Circuit Pattern Jury Instructions Number 10.4 (2010) as modified; See United States v. Morales, 868 F.2d1562, 1572 (11th Cir. 1989).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

Your verdict, whether guilty or not guilty, must be unanimous - in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges - judges of the facts. Your only interest is to seek the truth from the evidence in the case.

See Eleventh Circuit Pattern Jury Instructions Number 11 (2010) as modified; See United States v. Brokmond, 959 F.2d 206, 209 (11th Cir. 1992).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

All twelve of you must agree before you can reach any verdict in this case, that is, your verdict must be unanimous. During your deliberations, you should discuss your views with each other, and should carefully consider what others have to say. However, you are not required to and should not compromise your position simply for the sake of compromise. If you are convinced beyond a reasonable doubt from the evidence of the Defendant's guilt, you should say so. On the other hand, if you are not convinced beyond a reasonable doubt from the evidence that the Government has proven each and every element of the offenses charged, then you should say so. After full and fair deliberation, unless each of you is convinced beyond a reasonable doubt from the evidence that the Government has proven each and every element of the offenses charged, you cannot return a guilty verdict.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

You must consider some witnesses' testimony with more caution than others.

In this case, the Government has made a plea agreement with a Codefendant in exchange for [his] [her] testimony. Such "plea bargaining," as it's called, provides for the possibility of a lesser sentence than the Codefendant would normally face. Plea bargaining is lawful and proper, and the rules of this court expressly provide for it.

But a witness who hopes to gain more favorable treatment may have a reason to make a false statement in order to strike a good bargain with the Government.

So while a witness of that kind may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses.

And the fact that a witness has pleaded guilty to an offense isn't evidence of the guilt of any other person.

See Eleventh Circuit Pattern Jury Instructions Number 1.2 (2010) as modified; See United States v. Solomon, 856 F.2d 1572, 1578-79 (11th Cir. 1988), *cert. denied*, 489 U.S. 1070, 109 S. Ct. 1352, 103 L.Ed. 2d 820 (1989).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The credibility of a witness is solely for you, the jury, to decide. Subject the testimony to the same scrutiny that you would subject any important conversation or act. The mere fact that a witness was called by the Government does not entitle such witness' testimony to more weight than that of any other witness.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

It is the duty of the attorneys on each side of this case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not indicate any opinion as to the weight or effect of such evidence. You, the jurors, are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

“Good faith” is a complete defense to a charge that requires intent to defraud. A defendant isn't required to prove good faith. The Government must prove intent to defraud beyond a reasonable doubt. An honestly held opinion or an honestly formed belief cannot be fraudulent intent - even if the opinion or belief is mistaken.

See Eleventh Circuit Pattern Jury Instructions Number 17 (2010) as modified; See United States v. Goss, 650 F.2d 1336 (5th Cir. 1981).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

It's a separate Federal crime for anyone to conspire or agree with someone else to do something that would be another Federal crime if it was actually carried out.

A "conspiracy" is an agreement by two or more people to commit an unlawful act. In other words, it is kind of "partnership" for criminal purposes. Every member of a conspiracy becomes the agent or partner of every other member.

The Government does not have to prove that all the people named in the indictment were members of the plan, or that those who were members made any kind of formal agreement.

The Government does not have to prove that the members planned together all the details of the plan or the "overt acts" that the indictment charges would be carried out in an effort to commit the intended crime.

The heart of a conspiracy is the making of the unlawful agreement itself followed by the commission of any overt act in furtherance of the conspiracy. The Government does not have to prove that the conspirators succeeded in carrying out the plan.

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

- (1) two or more persons agreed to try to accomplish a shared and unlawful objective;
- (2) the Defendant knew the unlawful purpose of the plan and

knowingly and willfully joined it;

- (3) during the conspiracy, one of the conspirators knowingly engaged in at least one overt act as described in the indictment;
- (4) the overt act was committed at or about the time alleged and with the purpose of carrying out or accomplishing some object of the conspiracy; and
- (5) that the conspiracy involved an explicit *quid pro quo* agreement as I will later define for you.

An “overt act” is any transaction or event, even one that may be entirely innocent when viewed alone, that a conspirator commits to accomplish some object of the conspiracy.

A person may be a conspirator without knowing all the details of the unlawful plan or the names and identities of all the other alleged conspirators.

If the Defendant played only a minor part in the plan but had a general understanding of the unlawful purpose of the plan and willfully joined in the plan on at least one occasion, that’s sufficient for you to find the Defendant guilty.

But simply being present at the scene of an event or merely associating with certain people and discussing common goals and interests doesn’t establish proof of a conspiracy. A person who doesn’t know about a conspiracy but happens to act in a way that advances some purpose of one doesn’t automatically become a conspirator.

See Eleventh Circuit Pattern Jury Instruction Number 13 (2010) as modified.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

Proof of several separate conspiracies isn't proof of the single, overall conspiracy charged in the indictment unless one of the several conspiracies proved is the single overall conspiracy.

You must decide whether the single overall conspiracy charged existed between two or more conspirators. If not, then you must find the Defendants not guilty of that charge.

But if you decide that a single overall conspiracy did exist, then you must decide who the conspirators were. And if you decide that a particular Defendant was a member of some other conspiracy - not the one charged - then you must find that Defendant not guilty.

So to find a Defendant guilty, you must all agree and be convinced beyond a reasonable doubt that the Defendant was a member of the conspiracy charged - not a member of some other separate conspiracy.

See Eleventh Circuit Pattern Jury Instructions Number 13.3 (2010) as modified; See United States v. Diecidue, 603 F.2d 535, 548-49 (5th Cir. 1979).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

Good faith is a complete defense to the charges in each count of the indictment since good faith on the part of the Defendant is inconsistent with intent to defraud or willfulness which are an essential part of those charges. The burden of proof is not on the Defendant to prove good faith, of course, since the Defendant has no burden to prove anything. The Government must establish beyond a reasonable doubt that the Defendant acted willfully as charged in the indictment.

One who takes an action based upon an honestly held opinion, or an honestly formed belief is not chargeable with fraudulent intent or willfulness even though the opinion is erroneous or the belief is mistaken; and similarly, evidence which establishes only that a person made a mistake in judgment, does not establish fraudulent intent.

See Eleventh Circuit Pattern Jury Instructions Number 16 (2010) as modified.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The credibility of a witness is solely for you, the jury, to decide. Subject the testimony to the same scrutiny that you would subject any important conversation or act. The mere fact that a witness is a Government agent or investigator does not entitle such witness' testimony to more weight than that of any other witness.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The Defendant has presented evidence of his good character through the testimony of character witnesses. Proof of good character, in connection with all the other evidence in this case, or the lack of evidence, may generate a reasonable doubt which entitles the Defendant to an acquittal even though without such proof of good character, the jury would otherwise be disposed to convict.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

The Defendant has presented evidence of his good character through the testimony of character witnesses. This evidence is to be considered by you along with all the other evidence in this case. If, after consideration of all the evidence, including the evidence of the Defendant's good character, you are not convinced of the Defendant's guilt beyond a reasonable doubt, then you must find him not guilty.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

I charge you that the Defendant may testify as a witness in his own behalf, and, when he does so, you may consider his testimony along with all the other evidence. You may not willfully disregard his testimony solely because he is the Defendant, but you must consider it along with all the other evidence.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

It's a Federal crime under 18 U.S.C. §666 (a)(1)(B) for anyone who is an agent of a local government, or local government agency receiving significant benefits under a Federal assistance program to corruptly [solicit or demand] [accept] [agree to accept] anything of value from any person when the agent intends to be influenced or rewarded in connection with certain transactions of the government, or agency.

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

- (1) the Defendant was an agent of the State of Alabama;
- (2) during that period, the State of Alabama received benefits greater than \$10,000 under a Federal program involving some form of Federal assistance;
- (3) during that period the Defendant corruptly entered into an explicit *quip pro quo* agreement to vote for certain legislation in exchange for a campaign contribution;
- (4) pursuant to that explicit agreement the Defendant in exchange for the campaign contribution agreed to vote for certain legislation in which the contributor had an interest involving something worth \$5,000 or more; and
- (5) the Defendant acted corruptly.

To act "corruptly" means to act voluntarily, deliberately and dishonestly, i.e., the Government must prove beyond a reasonable doubt that the explicit agreement to exchange a campaign contribution for a particular vote was wrongful, immoral, depraved or evil.

I will further instruct you regarding what proof is required for the explicit *quid pro quo* agreement to which I referred in a subsequent instruction.

An “agent” is any employee, officer, or director of the State of Alabama.

See Arthur Anderson v. United States, 544 U.S. 696, 705 (2005).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

It's a Federal crime to [use the United States mail] [transmit something by private or commercial interstate carrier] to carry out a scheme to fraudulently deprive someone else of a right to honest services.

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

- (1) the Defendant knowingly devised or participated in a scheme to fraudulently deprive the public of the intangible right of honest services;
- (2) the Defendant did so with an intent to defraud; and
- (3) the Defendant used [the United States Postal Service by mailing or by causing to be mailed] [a private or commercial interstate carrier by depositing or causing to be deposited with the carrier] some matter or thing to carry out the scheme to defraud; and
- (4) that the alleged scheme to defraud involved an explicit *quid pro quo* agreement that the Defendant would receive a campaign contribution in exchange for his vote. I will further instruct you as to what is required for the explicit *quid pro quo* agreement in a subsequent instruction.

[A "private or commercial interstate carrier" includes any business that transmits, carries, or delivers items from one state to another. It doesn't matter whether the message or item actually moves from one state to another as long as the message or item is delivered to the carrier.]

A “scheme” includes any plan or course of action intended to deceive or cheat someone.

To act with “intent to defraud” means to act knowingly and with the specific intent to deceive someone, usually for personal financial gain or to cause financial loss to someone else.

To “deprive someone else of the intangible right of honest services” is to violate, or to cause [a public official or employee] [an employee or agent of another person] to violate, a duty to provide honest services to an employer. In order to prove the offense charged here, the Government must further prove the existence of an explicit quid pro quo agreement as I will later define for you.

Public officials must act in the public’s best interest; in other words, they have a duty to the public to do what’s best and what’s right for the public. So if an official or employee does something or makes a decision that serves the official’s or employee’s personal interest by, for example, taking a bribe, as I will define that term for you, the official defrauds the public of honest services, even if the public agency suffers no monetary loss.

The Government does not have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It doesn’t have to prove the material mailed was itself false or fraudulent; or that the use of the mail was intended as the specific or exclusive way to carry out the alleged fraud; or that the Defendant actually [mailed] [deposited] the material. And it doesn’t have to prove that the alleged scheme actually

succeeded in defrauding anyone.

To “cause” the mail to be used is to do an act knowing that the use of the mail will follow in the ordinary course of business or where that use can reasonable be expected to follow.

Each separate use of the mail as a part of the scheme to defraud is a separate crime.

See Eleventh Circuit Pattern Jury Instructions Number 50.2 (2010) as modified.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

It's a Federal crime to extort something from someone else and in doing so to obstruct, delay, or affect interstate commerce.

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

- (1) the Defendant caused Milton McGregor as to Count 19 and Ronald Gilley, Jarrod Massey and Jennifer Pouncy as to Count 20 to part with property;
- (2) the Defendant did so knowingly by using extortion under color of official right; and
- (3) the extortionate transaction delayed, interrupted, or affected interstate commerce.

“Property” includes money, other tangible things of value, and intangible rights that are a source or element of income or wealth. The property involved here is alleged to be campaign contributions. For that reason, the Government must prove that the alleged actions of the Defendant involved an explicit quid pro quo as I will define for you later in my instructions.

“Extortion under color of official right” is the wrongful taking or receipt of money or property by a public officer who knows that the money or property was taken or received in return for doing official acts. It does not matter whether or not the public officer employed force threats or fear.

“Wrongful” means to get property unfairly and unjustly because the person has no lawful claim to it.

“Interstate commerce” is the flow of business activities between one state and anywhere outside of that state.

The Government doesn’t have to prove that the Defendant specifically intended to affect interstate commerce in any way. But it must prove that the natural consequences of the acts described in the indictment would be to somehow delay, interrupt, or affect interstate commerce. If you decide that there would be any effect at all on interstate commerce, then that is enough to satisfy this element. The effect can be minimal.

See Eleventh Circuit Pattern Jury Instructions Number 70.2 (2010) as modified.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instructions Number _____

The charges in this case as to Defendant Means are based solely on campaign contributions. As such, these charges impact the First Amendment's core values - protection of free political speech and the right to support issues of great public importance. You cannot convict Defendant Means for his exercise of either of these constitutionally protected activities. Because our political system is based on raising private contributions for campaigns for public office, you must be careful not to convict Defendant Means for his political speech (including requesting or receiving campaign contributions) or for voting for or against legislation as he deems to be in the best interest of his constituents.

See United States v. Siegelman, 2011 U.S. App. LEXIS 9503, *12-18 (11th Cir. 2011).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

Fundraising and campaign contributions are an important, inherent, and completely legitimate part of the American system of privately-financed elections. The law recognizes that virtually every campaign contribution is given to an elected public official because the giver supports the acts done or to be done by the elected official.

The Supreme Court of the United States has recognized that legitimate honest campaign contributions may be requested or accepted from a donor who intends to reward public officials with whom the donor agrees, or in the generalized hope that the official will continue to take official actions in the future which he supports.

Lobbyists and others often donate to the political campaigns of public officials and there is nothing illegal about this practice. Official acts that advance the interest of a contributor or of the contributor's clients, taken shortly before or after campaign contributions are solicited or received from the contributor or lobbyist are dependant on the circumstances, perfectly legal and appropriate.

See United States v. Ring, 2011 U.S. Dist. LEXIS 24889, *5 (D.D.C. 2011).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

Serving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business and responsibility of a legislator. It is also true that in our American system of elected representatives, campaigns must be run on platforms, and legislators ask for support on the basis of their views and what they intend to do or have done. Whatever ethical considerations and appearances may indicate, legislators do not commit a crime when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents, even if shortly before or after campaign contributions are solicited, promised, and received from those beneficiaries.

See United States v. McCormick, 500 U.S. 257, 272 (1991).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

All of the charges in this case against Defendant Means, involve campaign contributions. Under the laws at issue in this case, as to all charges against Mr. Means, campaign contributions are not covered. They are not bribes, and cannot be the basis of any conviction. Therefore, in order to obtain a conviction on any count against Mr. Means, the Government must prove beyond a reasonable doubt that the payment in question whether solicited or received or promise of payment was not a campaign contribution.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

Campaign contributions are protected First Amendment activity and, indeed, the normal course of politics in this country. Absent an explicit agreement that a legislator will vote a certain way in exchange for a campaign contribution, there is nothing inherently corrupt about a contribution or the offer of a contribution followed by the legislator's vote in favor of the position that the contributor supports. It is only when there is proof beyond a reasonable doubt of an explicit corrupt agreement, that there is a crime. There must be proof beyond a reasonable doubt of an explicit agreement to exchange money for vote, that is, proof that the legislator sold to the campaign contributor the legislator's duty and authority to vote, i.e., an explicit *quid pro quo* agreement. A First Amendment protected campaign contribution, and a subsequent vote by a legislator, are not a crime without proof beyond a reasonable doubt of a corrupt agreement.

See United States v. Siegelman, 2011 U.S. App. LEXIS 9503, *29-31 ("a campaign donation ... is protected First Amendment activity and, indeed, the normal course of politics in this country, ...Absent an explicit agreement to 'buy an appointment' there is nothing inherently corrupt about a donation followed by an appointment. It is the corrupt agreement that transforms the exchange from a First Amendment protected campaign contribution and a subsequent appointment by a grateful governor into an unprotected crime. ...In McCormick,... the Court protected both the First and the Fifth Amendments by reading the statute to require an agreement to swap money for office, ...The official's duty to provide honest services... would be violated only by an agreement to exchange an appointment for a campaign donation. Such an agreement would amount to the official's 'selling' to the appointee the official's duty and authority to make appointments.")

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

All charges against Defendant Larry Means are based on campaign contributions. As such, the Government must prove the type of agreement that is called a "*quid pro quo*." This phrase, which comes from Latin, means an agreement to exchange something for something, this for that, in this case, an explicit agreement to exchange a campaign contribution for a vote by the Legislator.

See United States v. McCormick, 500 U.S. 257, 272 (1991); United States v. Siegelman, 2011 U.S. App. LEXIS 9503, *23 (11th Cir. 2011).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

As to Defendant Means, the Government must prove beyond a reasonable doubt for all charges, not only that there was a *quid pro quo* agreement, but also must prove beyond a reasonable doubt that the *quid pro quo* agreement was explicit.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The word “explicit,” in defining the sort of *quid pro quo* agreement that the Government must prove beyond a reasonable doubt, as to all charges against Defendant Means, means that the agreement must be “fully revealed or expressed without vagueness, implication, or ambiguity: leaving no question as to the meaning or intent.” That is to say that the agreement cannot have been an implied agreement.

The quoted definition of “explicit” is from Merriam Webster’s Collegiate Dictionary (Tenth Edition); See also, United States v. Garrison, 510 F.3d 134 (2nd Cir. 2007).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The Government must prove beyond a reasonable doubt that the explicit *quid pro quo* agreement was for a specific official action. The official must agree to take or forego some specific action in order for the doing of it to be criminal. In the absence of such an agreement on a specific action, even a close-in-time relationship between the contribution and the act will not suffice.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The Government must prove, beyond a reasonable doubt, that the explicit *quid pro quo* agreement was that Defendant Means, would take the specific acts alleged in the Indictment, in exchange for the campaign contributions alleged in the Indictment.

As a Legislator at all pertinent times under this Indictment as to Defendant Means, the Government must prove beyond a reasonable doubt that the *quid pro quo* agreement was explicitly in exchange for his vote on "an upcoming vote on ...legislation," that is, SB 380.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number _____

In addition to the other aspects of the required proof of an explicit *quid pro quo* agreement that I have explained to you, the Government must also prove beyond a reasonable doubt, that the agreement was made to alter the official's action from what it otherwise would have been - that is, to corruptly cause the official to change an official position that he otherwise would have taken, or to take official action that he would not have taken but for the agreement. That is, that for a campaign contribution alleged to have been a bribe, the Government must prove as a part of the explicit *quid pro quo* agreement beyond a reasonable doubt that the contribution was the prime mover or producer of the official act.

See United States v. Kummer, 89 F.3d 1536, 1540 (11th Cir. 1996) (“a bribe involves a specific understanding that it will affect an official action – a *quid pro quo*.”).

United States v. Urciuoli, 613 F.3d 11, 15 (1st Cir. 2010) (affirming, and quoting jury instruction that required the government to “prove beyond a reasonable doubt the [the defendant] intended the payment to cause [the named legislator] to change an official position that he would otherwise have taken or to take official actions that he would not have taken but for the payment”); United States v. Gatling, 96 F.3d 1511, 1522 (D.C. Cir. 1996) (“This court has held that ‘payments to a public official for acts that would have been performed in any event ... are probably illegal gratuities rather than bribes’ ”).

United States v. Brewster, 506 F.2d 62, 82 (D.C. Cir. 1974).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

As to campaign contributions, an agreement of the type that I have explained to you is "corrupt" only if it is requested or received for the sake of private benefit to the contributor, and not because of the legislator's belief that the vote in question would be beneficial to his constituents.

See generally, United States v. Popkin, 943 F.2d 1535, 1539-40 (11th Cir. 1991); United States v. North, 910 F.2d 843, 881-82 (D.C. Cir. 1990).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

A request for a campaign contribution or the receipt of a campaign contribution, is not a crime under the statutes at issue in this case if it was done in good faith. The Defendant has no burden of proof, consequently the burden is on the Government to prove beyond a reasonable doubt that any campaign contribution requested or received by Defendant Means was not done in good faith.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

It is not a crime to discuss campaign contributions near in time to, or even in the same conversation as, discussing an official's vote. It is only when the discussion rises to the level of a corrupt explicit *quid pro quo* agreement, and when it meets the other requirements that I have explained to you, that the laws at issue in this case are implicated.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The Court charges the jury that at all times relevant to the allegations of the Indictment it was lawful under the laws of the State of Alabama for a Political Action Committee or PAC to transfer funds to another Political Action Committee and it was further lawful for a Principal Campaign Committee to transfer funds to another Principal Campaign Committee or to a Political Action Committee. Ala. Code §17-5-7 (1975). The Court further instructs the jury that you are not to draw any adverse inference against the Defendant Larry P. Means solely because he may have received a campaign contribution from a Political Action Committee that had previously received a contribution from another Political Action Committee.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The Court charges the jury that a political action committee is defined as follows:

“Any political action committee, club, association, political party, or other group of one or more persons which receives or anticipates receiving contributions or makes or anticipates making expenditures to or on behalf of any elected official, proposition, candidate, principal campaign committee or other political action committee. For the purposes of this chapter, an individual who makes a personal political contribution shall not be considered a political action committee.” Ala. Code 17-5-2 (10). See Ala. Code 17-5-2 (11).

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The Court charges the jury that at all times relevant to the Indictment a lobbyist in Alabama was defined as follows:

Ala. Code §36-25-1(20) Lobbyist.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.
2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.
3. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.
4. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

b. The term lobbyist does not include any of the following:

1. An elected official on a matter which involves that person's official duties.
2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.
3. Reporters and editors while pursuing normal reportorial and editorial duties.
4. Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a

particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.

5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.

6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

7. A person who is a member of a business, professional, or membership organization by virtue of the person's contribution to or payment of dues to the organization even though the organization engages in lobbying activities.

8. A state governmental agency head or his or her designee who provides and/or communicates information relating to policy and/or positions affecting said governmental agencies which they represent.

The Court further instructs the jury that it is not unlawful under the law of the State of Alabama for a legislator to request campaign funds from or through a lobbyist or to receive campaign funds from or through a lobbyist, unless the Government proves beyond a reasonable doubt that the contribution was pursuant to be an explicit *quid pro quo* agreement as I have defined those terms for you.

GIVEN: _____

REFUSED: _____

Defendant Means' Requested Instruction Number ____

The Court charges the jury that at all times relevant to the Indictment “lobbying” or “lobby” were defined as follows under the applicable Alabama Law:

Lobby or lobbying. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.

Ala. Code §36-25-1 (19).

The Court further instructs the jury “lobbying” as defined by Alabama Law is perfectly legal absent a corrupt and explicit *quid pro quo* agreement as I have defined those terms for you.

GIVEN: _____

REFUSED: _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following and **all counsel** of record electronically on this the 27th day of May, 2011.

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/s/William N. Clark _____
OF COUNSEL