**10.6 Illegal Gratuity to Public Official**

**(18 U.S.C. § 201(c)(1)(A))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [giving] [offering] [or] [promising] an illegal gratuity in violation of Section 201(c)(1)(A) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant [gave] [offered] [promised] something of value, [*specify the thing of value*] to a [*specify public official*]; and

Second, the defendant acted for or because of an official act performed or to be performed by the [*specify public official*].

**Comment**

It is recommended that the instruction specifically describe the thing of value just as it is described in the indictment to avoid a variance. *See* Comment to Instruction 10.2 (Bribery of Federal Public Official).

To establish a violation of 18 U.S.C. § 201(c)(1)(A), the government must prove a link between a thing of value conferred upon a public official and a specific “official act” for or because of which it was given. *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 414 (1999).

If there is any question in the case about the “official” character of the action sought by the defendant, give Instruction 10.1 (Official Act—Defined).

The distinguishing features of the crimes of “bribery” and “illegal gratuity” are their intent elements. Bribery requires intent “to influence” an official act or “to be influenced” in an official act, while illegal gratuity requires only that the gratuity be given or accepted “for or because of” a specific official act. Bribery requires a specific intent to give or receive something of value in exchange for an official act. An illegal gratuity may constitute a reward for some future act the public official will take (and may already have determined to take) or for an act already taken. *Sun-Diamond Growers*, 526 U.S.at 404-05. The gratuity offenses are lesser included offenses of the parallel bribery offenses. *See United States v. Crutchfield*, 547 F.2d 496, 500 (9th Cir. 1977); *United States v. Brewster*, 506 F.2d 62, 71-72 (D.C. Cir. 1974).

Depending on the facts in evidence, it may be appropriate to amend this instruction with language requiring specific jury unanimity (*e.g.*, “with all of you agreeing as to what the defendant intended the public official to do in return for the gratuity”). *See* Instruction 6.27 (Specific Issue Unanimity).

*Revised Apr. 2019*