**10.8 Illegal Gratuity to Witness**

**(18 U.S.C. § 201(c)(2))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [giving] [offering] [promising] an illegal gratuity in violation of Section 201(c)(2) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove beyond a reasonable doubt that the defendant [gave] [offered] [promised] something of value, [*specify the thing of value*], to [*name of witness*] [for testimony to be given under oath by [him] [her] in [*specify proceeding*]] [because of testimony given under oath by [*name of witness*] at/in [*specify proceeding*]] [for being absent from [*specify proceeding*] so that [he] [she] could not testify as a witness].

**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).

 *See* Comment to Instruction 10.6 (Illegal Gratuity to Public Official).

 Section 201(c)(2) does not prohibit the government from paying fees, housing, expenses, and cash rewards to a cooperating witness so long as the payment does not recompense any corruption of the truth of testimony. *United States v. Ihnatenko*, 482 F.3d 1097, 1100 (9th Cir. 2007), *cert. denied*, 552 U.S. 904 (2007). Section 201(c)(2) also does not prohibit the government from providing immigration benefits or leniency, immunity from prosecution, or leniency to a cooperating witness. *See United States v. Feng*, 277 F.3d 1151, 1154 (9th Cir. 2002) (immigration benefits); *United States v. Smith*, 196 F.3d 1034, 1038–40 (9th Cir. 1999) (immunity); *United States v. Mattarolo*, 209 F.3d 1153, 1160 (9th Cir. 2000) (leniency).

 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 witness to do in return for the gratuity”). *See* Instruction 6.27 (Specific Issue Unanimity).

*Revised Apr. 2019*