CORRUPTING THE GOVERNMENT IN THE SECOND DEGREE
(Class C felony)
PENAL LAW 496.04
(Committed on or after April 30, 2014)

The _____ count is Corrupting the Government in the Second Degree.

Under our law, a person is guilty of Corrupting the Government in the Second Degree when, being a public servant, [or acting in concert with a public servant,] he or she engages in a scheme constituting a systematic ongoing course of conduct

with intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state

to obtain property, actual services or other resources[1] [from the state, (or any political subdivision or governmental instrumentality of the state)]

by false or fraudulent pretenses, representations or promises, and thereby wrongfully obtains such property, actual services or other resources with a value in excess of twenty thousand dollars.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of those terms.

PUBLIC SERVANT means any public officer or employee of the state [or of any political subdivision thereof or of any governmental instrumentality within the state], or any person exercising the functions of any such public officer or employee.

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[1] At this point the statute repeats "or obtain property, actual services or other resources." The repetitive language is omitted and the court should simply continue to read the bracketed material if applicable.

[The term public servant includes a person who has been elected or designated to become a public servant.][2]

SCHEME means any plan, pattern, device, contrivance or course of action.[3]

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud the state [or a political subdivision of the state or a governmental instrumentality within the state] to obtain property, actual services or other resources [from the state (or any political subdivision or governmental instrumentality of the state)] by false or fraudulent pretenses, representations or promises, when that person's conscious objective or purpose is to do so.[4]

NOTE: If the defendant is charged with "acting in concert with a public servant," and the CJI2d Accomplice Liability instruction has not already been given, as recommended, prior to the instructions on the charged crimes, insert that charge here.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (*date*), in the county of (*County*), the defendant, (*defendant's name*), being a public servant [*or* acting in concert with (*specify*), a public servant], engaged in a scheme constituting a systematic ongoing course of conduct;

2. That the defendant did so with intent to defraud the state [or a political subdivision of the state or a

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[2] Penal Law § 10.00 (15).

[3] Penal Law § 496.01.

[4] *See* Penal Law § 15.05 (1).

governmental instrumentality within the state] to obtain property [or actual services or other resources] [from the state (or a political subdivision or governmental instrumentality of the state)] by false or fraudulent pretenses, representations or promises;[5] and

3. That the defendant thereby wrongfully obtained property [or actual services or other resources] with a value in excess of twenty thousand dollars.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Corrupting the Government in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Corrupting the Government in the Second Degree as charged in the _____ count.

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[5] The mens rea required by Penal Law § 496.04 is an intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state *either* "to obtain property, actual services or other resources," without specification of from whom *or* "property, actual services or other resources *from* the state, or any political subdivision or governmental instrumentality of the state." (Emphasis added).