

government established in or about 1999. The BSD was responsible for acquiring, developing, constructing, managing, and operating buildings, properties, and facilities that were owned, leased, or occupied by the City.

4. In each of the years 1999 through 2003, the City received more than \$10,000 in federal assistance.

INDIVIDUALS AND ENTITIES INVOLVED

5. From in or about November 1999 through in or about April 2003, Monique McGilbra was appointed and served as the Director of BSD, and she possessed many powers conferred upon her by law, regulation, delegation, and custom.
6. In her official position, McGilbra oversaw the daily operations of the BSD, and she had the authority to:
 - a. oversee and influence both the award and administration of City contracts;
 - b. participate substantially in the recommendation of, selection of, and negotiation with private vendors to do business and enter into contracts with the City;
 - c. oversee and manage the performance of work for the City by private vendors who had obtained contracts with the City; and

- d. supervise, directly and indirectly, other BSD employees, including selecting, hiring, and directing them.
7. Because of her position as BSD Director and a senior City employee, McGilbra was required to file a detailed financial disclosure statement with the City each year. This statement required her to disclose, among other things, any outside income over \$250 and all gifts or things of value she received worth over \$250 from anyone other than a family member.
8. In addition, McGilbra was prohibited from accepting anything of value from persons or entities doing or seeking to do business with the City, and she was precluded from using her official position for the private gain or advantage of herself or others.
9. Texas Penal Code § 36.02 stated:
- A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:
- (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter.
10. Texas Penal Code § 36.08(d) stated:
- A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit

from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

11. McGilbra owed the City of Houston and the State of Texas a duty of honest services performed free from deceit, favoritism, bias, self-enrichment, self-dealing, conflict of interest, and concealment.
12. Garland Hardeman was a California-based consultant who specialized in obtaining public contracts on behalf of others. Hardeman and McGilbra were engaged in a personal relationship.
13. Defendants ANDREW A. SCHATTE and MICHAEL D. SURFACE were commercial real estate developers in Houston, Texas.
14. Defendants SCHATTE and SURFACE jointly owned and operated a real estate development company known as the Keystone Group, Inc. ("Keystone"). Keystone, through SCHATTE and SURFACE, formed limited partnership entities to bid on and perform contracts with public entities to provide real estate properties to those public entities; these limited partnerships were owned or controlled by SCHATTE, SURFACE, or Keystone.
15. When dealing with public entities such as cities or counties, Keystone also had a pattern and practice of entering into lease-purchase agreements, in

which Keystone or its limited partnership entity would purchase land or a building, develop the project as required by the public entity, and then lease the facility to that entity for a set period of time with an option for the public entity to purchase at the end of the period.

THE CALL CENTER PROJECT

16. In or about 1999, prior to McGilbra's employment with BSD, the City awarded a contract to develop a project known as the Houston Emergency Center or the 911 Call Center ("Call Center"). The Call Center contract was valued at approximately \$53,000,000, and it was awarded to Town & Country XV, L.P. ("Town & Country"), a limited partnership entity created and controlled by Keystone specifically for the Call Center project.
17. The Call Center contract called for Town & Country to construct and develop an emergency center to combine certain police, fire, and emergency response services of the City and Harris County in one location. The Call Center contract was a lease-purchase agreement, and performance of the contract was ongoing while McGilbra was the Director of BSD.

THE SUPERSTATION PROJECT

18. From in or about spring 2001 through April 2002, the City, through McGilbra's Building Services Department, negotiated with Keystone on

another proposed lease-purchase agreement. This contract, the cost of which was estimated at approximately \$20,000,000, called for Keystone to design and construct a building to consolidate certain existing fire stations and administrative offices of the Houston Fire Department, along with additional City services. McGilbra supervised the negotiations on behalf of the City for this project, which was known as the Fire Superstation ("Superstation") project.

19. Corporation H was an architectural services company that sought to become the approved subcontractor for architectural work on the Superstation project.

COUNT ONE
(Conspiracy – 18 U.S.C. §371)

20. Paragraphs 1 through 19 of this Indictment are adopted, alleged, and incorporated as if fully set forth herein.

THE CONSPIRACY AND ITS OBJECTS

21. Beginning on or about in or about 2000 and continuing through in or about July 2003, in the Houston Division of the Southern District of Texas and elsewhere, defendants

ANDREW A. SCHATTE
and
MICHAEL D. SURFACE

did knowingly combine, conspire, confederate, and agree with Monique McGilbra and Garland Hardeman to commit offenses against the United States, to wit:

- a. to corruptly give, offer, and agree to give anything of value to any person, with intent to influence and reward an agent of local government, which local government received federal assistance in excess of \$10,000 in a one-year period, in connection with any business, transaction, and series of transactions of such local government involving anything of value of \$5,000 or more, in violation

of Title 18, United States Code, Section 666(a)(2);

- b. being an agent of local government, which local government received federal assistance in excess of \$10,000 in a one-year period, to corruptly solicit and demand for the benefit of any person, and accept and agree to accept, anything of value from any person, intending to be influenced and rewarded in connection with any business, transaction, and series of transactions of such local government involving anything of value of \$5,000 or more, in violation of Title 18, United States Code, Section 666(a)(1)(B); and
- c. to devise and intend to devise a scheme and artifice to defraud and to deprive the City of Houston and its citizens, by means of false and fraudulent pretenses, representations, and promises, of their intangible right to the honest services of McGilbra performed free from deceit, fraud, dishonesty, favoritism, self-enrichment, and self-dealing, through the use of the mail and interstate wires, in violation of Title 18, United States Code, Sections 1341, 1343 and 1346.

THE PURPOSE OF THE CONSPIRACY

- 22. The purpose of the conspiracy was to obtain favorable decisions from and to influence decisions by McGilbra as BSD Director in the awarding and

performance of all City contracts obtained by entities owned by SCHATTE and SURFACE, by personally enriching McGilbra and her boyfriend with money and things of value, including meals and drinks, gift cards, tickets and travel expenses.

THE MANNER AND MEANS OF THE CONSPIRACY

23. The manner and means by which SURFACE and SCHATTE and their co-conspirators sought to accomplish the objects of the conspiracy included the following:
 - a. SCHATTE and SURFACE gave, offered, and agreed to give things of value directly to McGilbra, in order to influence and reward her for using her official position to benefit SCHATTE, SURFACE, Keystone, and its related entities in connection with their performance under City contracts, including the Call Center contract, and the awarding of the Superstation contract;
 - b. To provide money for McGilbra and Hardeman to influence and reward McGilbra for using her official position to influence the award and administration of City contracts to their benefit, and to conceal the nature and source of these payments, SCHATTE and SURFACE hired McGilbra's boyfriend, Garland Hardeman, as a "consultant" to

Keystone and paid him \$3,000 per month plus expenses;

- c. As SCHATTE and SURFACE intended, Hardeman provided McGilbra with a portion of his monthly payments by making cash payments to her by U.S. Mail, private carrier, or hand delivery.
- d. To ensure McGilbra would use her position to award the Superstation contract to an entity they owned, SCHATTE and SURFACE agreed to pay Hardeman an additional \$250,000 if the City awarded the Superstation contract to that entity, with payment to be made within 10 days of the contract being signed with the entity owned by SCHATTE and SURFACE.
- e. To further influence and reward McGilbra, SCHATTE and SURFACE arranged to have Corporation H hire Hardeman as a paid consultant, so that McGilbra would also share in these additional proceeds and would award the Superstation contract to Keystone and approve contracts on that project for Corporation H.
- f. To perpetuate the conspiracy, and to attempt to prevent its detection, McGilbra concealed the true nature and extent of her relationship with SCHATTE, SURFACE, and Hardeman, and her financial interest in the Superstation project, by filing false financial disclosure forms with

the City.

OVERT ACTS

24. In furtherance of the conspiracy, and to effect the objects thereof, SURFACE and SCHATTE committed and caused to be committed the following overt acts, among others, in the Houston Division of the Southern District of Texas and elsewhere:

- (1) Beginning in or about early 2000, SCHATTE and SURFACE provided free drinks and meals to McGilbra while she was responsible for overseeing the department supervising their performance of the Call Center contract, despite the City's prohibition against such gifts by persons doing and seeking to do business with the City.
- (2) In or about November or December 2000, SCHATTE provided McGilbra with a box containing champagne and approximately \$1,000 in cash at a party.
- (3) In or about December 2000, SCHATTE provided McGilbra and her family with free lodging for multiple nights at a condominium in California owned by one of Schatte's business entities.
- (4) In or about late 2000, SCHATTE and SURFACE were introduced to Hardeman by McGilbra as a person she was dating. SCHATTE and

SURFACE were also encouraged to hire Hardeman as a real estate consultant, purportedly in California.

- (5) On or about March 19, 2001, SCHATTE sent an electronic mail message ("email") from Houston, Texas, to Hardeman in California regarding the initiation of a consulting relationship with Keystone.
- (6) On or about April 18, 2001, SCHATTE sent an email from Houston, Texas to Hardeman in California confirming that the final version of Hardeman's consulting contract was being sent to Hardeman that day.
- (7) On or about April 19, 2001, SURFACE signed, on behalf of Keystone, a consulting agreement with Hardeman. The agreement called for Hardeman to receive \$3,000 per month for six months, with the agreement continuing on a month to month basis afterwards, in exchange for "the identification of prospective clients and financial opportunities ("Clients") for Keystone to which Keystone may provide services in accordance with the Business."
- (8) On or about April 19, 2001, SCHATTE caused a Keystone employee in Houston to send to Hardeman in California three copies of the contract and the first \$3,000 payment. The first payment was made by a check signed by SCHATTE.

- (9) On or about April 20, 2001, Hardeman countersigned the consulting agreement and returned it to Keystone in Houston, Texas.
- (10) On or about the dates below, SCHATTE and SURFACE caused Keystone to make payments by check to Hardeman for either his monthly retainer or expenses by U.S. Mail or commercial carrier:

OVERT ACT	DATE	AMOUNT
10(a)	April 19, 2001	\$3,000
10(b)	May 1, 2001	\$3,000
10(c)	June 4, 2001	\$3,000
10(d)	July 2, 2001	\$3,000
10(e)	August 1, 2001	\$3,000
10(f)	September 4, 2001	\$3,000
10(g)	October 2, 2001	\$3,000
10(h)	November 1, 2001	\$3,000
10(I)	December 4, 2001	\$3,000
10(j)	January 7, 2002	\$3,000
10(k)	January 31, 2002	\$4,379
10(l)	February 5, 2002	\$3,000
10(m)	March 5, 2002	\$3,000
10(n)	April 2, 2002	\$3,000
	TOTAL	\$43,379

- (11) On or about the dates listed below, Hardeman provided a portion of his Keystone payments to McGilbra by either U.S. Mail, Federal Express, or hand delivery:

OVERT ACT	DATE	AMOUNT	METHOD OF PAYMENT
11(a)	May 1, 2001	\$600	U.S. Mail (cash)
11(b)	May 11, 2001	\$600	Hand delivery (cash)
11(c)	June 7, 2001	\$600	Hand delivery (cash)
11(d)	July 27, 2001	\$500	Hand delivery (check)
11(e)	July 27, 2001	\$100	Hand delivery (cash)
11(f)	August 15, 2001	\$600	Hand delivery (cash)
11(g)	September 15, 2001	\$600	Hand delivery (cash)
11(h)	October 9, 2001	\$600	Federal Express (cash)
11(i)	November 3, 2001	\$600	Hand delivery (cash)
11(j)	December 10, 2001	\$600	Federal Express (cash)
11(k)	January 12, 2002	\$600	Hand delivery (cash)
11(l)	February 15, 2002	\$600	Hand delivery (cash)
11(m)	March 12, 2002	\$600	Hand delivery (cash)
11(n)	April 7, 2002	\$600	Hand delivery (cash)
	TOTAL	\$7,800	

- (12) In or about August or September 2001, SURFACE contacted the owner of Corporation H and told him that Keystone wanted to use

Corporation H as its architect for the Superstation project.

SURFACE asked whether Corporation H had Hardeman "on board," and he stated that hiring Hardeman was "the key" to getting

Corporation H approved as the Superstation architect by McGilbra.

- (13) From in or about September 2001 through December 2002, as a result of SURFACE's comments, Corporation H hired Hardeman as a consultant and paid him a total of \$16,000.
- (14) In or about November 2001, SURFACE provided McGilbra with a \$1,000 gift certificate to a department store at a party.
- (15) From in or about December 27–29, 2001, McGilbra, Hardeman, and McGilbra's family traveled to San Antonio, Texas. Expenses associated with the trip, including lodging, air fare, and entertainment for McGilbra, her family, and Hardeman, were paid for by Keystone.
- (16) On or about January 28, 2002, Hardeman and Keystone signed an addendum to Hardeman's consulting agreement with Keystone. The addendum called for Hardeman "to assist and provide advice to Keystone as Keystone pursues approval of" the Superstation project. If awarded a contract in connection with the Superstation project, Keystone was to pay Hardeman within ten days the sum of \$250,000.

- (17) On or about February 8, 2002, a committee headed by McGilbra selected a business owned by SCHATTE and SURFACE to enter into a lucrative contract to provide the City with a Superstation.
- (18) On or about October 16, 2002, McGilbra caused to be filed with the City a false and misleading financial disclosure statement for the period from October 1, 2001 through September 30, 2002 that failed to list the things of value and money she received from SCHATTE, SURFACE, and Hardeman.
- (19) On or about December 5, 2002, McGilbra caused to be filed with the City a false and misleading revised financial disclosure statement for the period from October 1, 2001 through September 30, 2002 that failed to list the things of value and money she received from SCHATTE, SURFACE, and Hardeman.
- (20) On or about December 11, 2002, McGilbra asked Surface to provide her with several valuable field-level tickets to a professional football game.
- (21) On or about December 13, 2002, SURFACE provided McGilbra with several valuable tickets to a professional football game, as she requested.

her with valuable field-level tickets to a professional football game.

- (21) On or about December 13, 2002, SURFACE provided McGilbra with valuable tickets to a professional football game, as she requested.
- (22) On or about December 19, 2002, SURFACE provided McGilbra with several valuable tickets to a professional football game, as she requested.
- (23) On or about November 27, 2002, the City of Houston wire transferred from Texas approximately \$2,160,000 to an account established in Ohio for the purpose of paying Keystone and others under the lease purchase agreement entered into with the City for the Call Center.
- (24) On or about May 30, 2003, the City of Houston wire transferred from Texas approximately \$1,190,000 to an account established in Ohio for the purpose of paying Keystone and others under the lease purchase agreement entered into with the City for the Call Center.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO and THREE

(Honest Services Wire Fraud - 18 U.S.C. §§ 1343, 1346, and 2)

25. The allegations contained in paragraphs 1 through 19, and 23 and 24 of Count One of this Indictment are realleged and incorporated herein as though fully set forth herein.

THE SCHEME

26. From in or about at least January 2000 and continuing through approximately July 2003, in Harris County in the Southern District of Texas, and elsewhere, the defendants ANDREW A. SCHATTE and MICHAEL D. SURFACE, devised and intended to devise a scheme and artifice to defraud and deprive the city of Houston of its intangible right to the honest services of MONIQUE MCGILBRA, performed free from deceit, favoritism, bias, self-enrichment, self-dealing, conflict of interest, and concealment.

THE PURPOSE OF THE SCHEME

27. The purpose of the scheme was for ANDREW A. SCHATTE and MICHAEL D. SURFACE to provide things of value to McGilbra and her boyfriend to influence McGilbra to exercise her official power as a senior official of the City of Houston to enrich SCHATTE and SURFACE and the entities they owned.
28. For the purpose of executing and attempting to execute the scheme and

artifice to defraud, in the Southern District of Texas and elsewhere, on or about the dates listed below, defendants ANDREW A. SCHATTE and MICHAEL D. SURFACE , did knowingly cause the City of Houston to transmit and cause to be transmitted writings, sounds, and signals by means of wire in interstate commerce as follows to pay the entities owned and controlled by SCHATTE and SURFACE and others:

<u>COUNT</u>	<u>DATE</u>	<u>WIRE</u>
TWO	Nov. 27, 2002	Wire transfer of approximately \$2,160,000 from Texas to Ohio
THREE	May 30, 2003	Wire transfer of approximately \$1,190,000 from Texas to Ohio

All in violation of Title 18, United States Code, Sections 1343, 1346, and 2.

COUNT FOUR
(False Statement—18 U.S.C. § 1001)

29. The allegations contained in Paragraphs 1 through 19 and 24 of this Indictment are adopted, alleged, and incorporated as if fully set forth herein.
30. On or about July 10, 2003, defendant

MICHAEL D. SURFACE,

in a matter within the jurisdiction of the executive branch of the government of the United States, knowingly and wilfully made a materially false, fictitious, and fraudulent statement and representation, in that he falsely stated to federal investigators that he had never provided McGilbra with anything of value other than football tickets, and that he was unaware of Keystone providing McGilbra with anything of value.

All in violation of Title 18, United States Code, Section 1001.

A true bill.

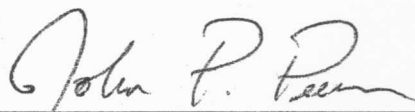
Original Signature on File

By: _____
Grand Jury Foreperson

DONALD J. DEGABRIELLE
United States Attorney

WILLIAM M. WELCH II
Chief, Public Integrity Section

By:



Mary K. Butler
John P. Pearson
Trial Attorneys