

4.12 Corruptly

Comment

Consult each statute that uses the term “corruptly,” and related case law, for the meaning of the term because it is capable of different meanings in different statutory contexts.

For example:

In a prosecution under 18 U.S.C. § 1512(b)(2)(A) or (B) (making it a crime to “knowingly . . . or corruptly persuade[e] another person . . . with intent to . . . cause [the] person” to “withhold” or “alter” documents for use in “an official proceeding”), the term “corruptly” must reflect some consciousness of wrongdoing. *Arthur Andersen LLP v. United States*, 544 U.S. 696, 704-06 (2005).

In a prosecution under 26 U.S.C. § 7212(a) (making it a crime to “corruptly” endeavor to intimidate or impede the administration of tax laws), “the district court correctly instructed the jury that ‘corruptly’ means ‘performed with the intent to secure an unlawful benefit for oneself or another.’” *United States v. Massey*, 419 F.3d 1008, 1010 (9th Cir. 2005) (citing *United States v. Workinger*, 90 F.3d 1409, 1414 (9th Cir. 1996)).

In a prosecution under 18 U.S.C. § 201(b)(2)(B) (making it a crime to “corruptly” receive something of value in return for being influenced in the performance of an official act), the district court properly rejected a defendant’s requested instruction that would have required the government to prove an official acts “corruptly” when the official uses his official position to commit or aid in the commission of fraud. *United States v. Leyva*, 282 F.3d 623, 625 (9th Cir. 2002).

In a prosecution under 18 U.S.C. § 215(a)(2) (making it crime for banking officials, employees, or agents to “corruptly” solicit, demand, or accept anything of value in connection with any bank business or transaction), the district court correctly instructed the jury that “corruptly” refers to the language in § 215(a)(2) requiring the government to prove that the defendant “‘intend[ed] to be influenced or rewarded in connection with any business or transaction of’ a financial institution.” *United States v. Lonich*, 23 F.4th 881, 902-03 (9th Cir. 2022) (alteration in original).

In *United States v. Sanders*, 421 F.3d 1044 (9th Cir. 2005), the Ninth Circuit noted it had not yet ruled as to whether a defendant violates 18 U.S.C. § 1512(b) when he “corruptly persuades” others to invoke their Fifth Amendment right to remain silent. *Id.* at 1050-51. The Ninth Circuit has held, however, that a defendant does not act “corruptly” within the meaning of § 1512 when she non-coercively persuades a witness to exercise a legal privilege not to testify. *United States v. Doss*, 630 F.3d 1181, 1189-90 (9th Cir. 2011). “[T]here is a difference in approach among the circuits about whether merely attempting to persuade a witness to withhold cooperation or not to disclose information to law enforcement officials—as opposed

to actively lying—falls within the ambit of § 1512(b).” *United States v. Khatami*, 280 F.3d 907, 913 (9th Cir. 2002).

In a prosecution under 18 U.S.C. § 1512(c) (making it crime to corruptly obstruct, influence or impede any official proceeding, or attempt to do so), the district court did not err by failing to include the words “evil” and “wicked” in its instructions defining the word “corruptly”; nor would it be error to omit these words when instructing on 18 U.S.C. § 1512(b). *United States v. Watters*, 717 F.3d 733, 735 (9th Cir. 2013).

Revised June 2018