**10.2 Bribery of Federal Public Official**

**(18 U.S.C. § 201(b)(1))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with bribing a public official in violation of Section 201(b)(1) 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, the defendant [gave] [offered] [promised] something of value, [*specify the thing of value*], to [*name of federal public official*]; and

Second, the defendant acted corruptly, that is, with the intent to [influence an official act by the [*name of federal public official*]] [influence the [*name of federal public official*] to commit or allow a fraud on the United States] [induce the [*name of federal public official*] to do or to omit to do an act in violation of [his] [her] lawful duty][.] [; and]

[Third, [*name of federal public official*] was a federal public official.]

**Comment**

The crime of bribery requires “corrupt intent,” a higher degree of intent than is required under the provision outlawing gratuities to public officials. *United States v. Hsieh Hui Mei Chen*, 754 F.2d 817, 822 (9th Cir. 1985). Under § 201(b)(1), the term “corruptly” refers to the defendant’s intent to influence an official act. *See United States v. Leyva*, 282 F.3d 623, 626 (9th Cir. 2002) (citation omitted).

The “thing of value” given, offered, or promised to a public official is an element of the bribery charge. It is recommended that the instruction specifically describe the thing of value just as it is described in the indictment to avoid a variance. *United States v. Choy*, 309 F.3d 602, 607 (9th Cir. 2002). *But see United States v. Renzi*, 769 F.3d 731, 744-45 (9th Cir. 2014) (holding that a “recommendation is just that—a recommendation. Neither the pattern jury instruction nor any controlling precedent requires the district court to identify the thing of value, especially where variance from the indictment is not at issue”). Where the defense asserts that the thing given, offered, or promised had no value, the jury must be asked to determine whether it had value. *Id*. at 744.

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). “Public official” is defined in 18 U.S.C. § 201(a)(1); § 201(b)(1) also applies to a person selected to be a public official. Actual power to do what defendant wants is not an *element.* “[A] person may be convicted of bribery even though the action requested is not within the official’s power to perform.”  *Chen*, 754 F.2d at 825.

Omit the bracketed third element of this instruction when the recipient’s status as a federal public official is not in dispute. 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 bribe”). *See* Instruction 6.27 (Specific Issue Unanimity).

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