**10.3 Receiving Bribe by Public Official**

**(18 U.S.C. § 201(b)(2))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [soliciting] [receiving] [or] [agreeing to receive] a bribe in violation of Section 201(b)(2) 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 was a public official;

Second, the defendant [demanded] [sought] [received] [accepted] [agreed to receive or accept] something of value, [*specify the thing of value*], in return for [being influenced in the performance of an official act] [being influenced to commit or allow a fraud on the United States] [being induced to do or not to do an act in violation of defendant’s official duty]; and

Third, the defendant acted corruptly, that is, intending to be influenced [in the performance of an official act] [to commit or allow a fraud on the United States] [to do or to omit to do an act in violation of the defendant’s official duty]. A public official acts “corruptly” when he or she accepts or receives, or agrees to accept or receive, a thing of value, in return for being influenced with the intent that, in exchange for the thing of value, some act would be influenced.

C**omment**

“Public official” is defined in 18 U.S.C. § 201(a)(1); § 201(b)(2) also applies to a person selected to be a public official.  *See* *also* Comment to Instruction 10.2 (Bribery of Federal Public Official). The plain language of 18 U.S.C. § 201(b)(2)(B) requires only that the public official accept a thing of value in exchange for perpetrating a fraud; therefore the use of an official position is not an element of the offense under § 201(b)(2)(B). *United States v. Leyva*, 282 F.3d 623, 625-26 (9th Cir. 2002).

It is recommended that the instruction specifically describe the thing of value just as described in the indictment to avoid a variance. *See* Comment to Instruction 10.2 (Bribery of Federal Public Official).

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).

A public official is not required to actually make a decision or take an action to perform an “official act;” it is enough that the official agrees to do so. The agreement need not be explicit; the public official need not specify the means that he will use to perform his end of the bargain. *McDonnell v. United States*, 136 S. Ct. 2355, 2370-71 (2016).

It is immaterial whether the public official who receives a thing of value ever intended to follow through with his or her end of the bargain; all that is necessary is that he or she agreed to perform the official act. The offense is complete at the moment of agreement—liability does not depend on the outcome of any follow-through. *United States v. Kimbrew*, 944 F.3d 810 (9th Cir. 2019).

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 public official intended to do in return for the bribe”).  *See* Instruction 6.27 (Specific Issue Unanimity).

*Revised May 2020*