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## Jury Instructions: Arthur Andersen LLP v. United States

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### Summary

On May 31, 2005, the United States Supreme Court issued its decision in *Arthur Andersen LLP v. United States*, a case concerning disputed jury instructions as to the meaning of a “corrupt persuasion” conviction under 18 U.S.C. section 1512(b). The case was appealed from the Fifth Circuit, which had held that jury instructions issued by the District Court accurately conveyed the meaning of the statutory terms “corruptly persuades” and “official proceeding” and that the jury did not need to find any consciousness of wrongdoing. The Supreme Court reversed, holding that the term at issue could apply only to persons conscious of wrongdoing and that there must be a nexus between the action and the particular proceeding.

On May 31, 2005, the United States Supreme Court issued its decision in *Arthur Andersen LLP v. United States*,<sup>1</sup> a case concerning disputed jury instructions as to the meaning of a “corrupt persuasion” conviction under 18 U.S.C. section 1512(b).

In 2001, when Enron’s financial difficulties were made known, Arthur Andersen LLP, Enron’s auditor, instructed its employees to destroy documents according to its document retention policy. Significant destruction of paper and electronic documents occurred. When the Securities and Exchange Commission opened a formal investigation of Enron, it requested accounting documents.

In March 2002 Arthur Andersen LLP was indicted in the Southern District of Texas on one count of violating 18 U.S.C. sections 1512(b)(2)(A) and (B), which state:

Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to —

(2) cause or induce any person to —

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<sup>1</sup> No. 04-368.

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding

shall be fined under this title or imprisoned not more than ten years, or both.

The jury deliberated for seven days and declared that it was deadlocked. The District Court then delivered an *Allen* charge;<sup>2</sup> the jury deliberated for three more days and then returned a guilty verdict.

The Court of Appeals for the Fifth Circuit affirmed,<sup>3</sup> holding that the jury instructions accurately conveyed the meaning of the statutory terms “corruptly persuades” and “official proceeding”; that the jury did not need to find any consciousness of wrongdoing; and that there was no reversible error. The Supreme Court granted certiorari because of a split of authority concerning the meaning of section 1512(b).<sup>4</sup>

The Supreme Court unanimously reversed the Fifth Circuit decision. The Court looked at the plain meaning of “knowingly...corruptly persuades” in the context of the statute and found that the term could apply only to persons conscious of wrongdoing.

And limiting criminality to persuaders conscious of their wrongdoing sensibly allows § 1512(b) to reach only those with the level of “culpability...we usually require in order to impose criminal liability” [citations omitted].<sup>5</sup>

The Court went on to criticize the lack of guidance given by the jury instructions.

Indeed, it is striking how little culpability the instructions required. For example, the jury was told that, “even if [petitioner] honestly and sincerely believed that its conduct was lawful, you may find [petitioner] guilty.... The instructions also diluted the meaning of “corruptly” so that it covered innocent conduct.<sup>6</sup>

The Court stated that the jury instructions were inappropriate for a second reason. The instructions led the jury to believe that it did not have to find any nexus between the persuasion to destroy documents and any particular proceeding. Instead, according to the Court, it had held in earlier cases that there must be a nexus between the obstructive act and the proceeding. Otherwise, if the defendant does not have knowledge that his actions are likely to affect the judicial proceeding, the defendant will lack the required intent to obstruct.

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<sup>2</sup> *Allen v. United States*, 164 U.S. 492 (1896).

<sup>3</sup> *United States v. Arthur Andersen LLP*, 374 F.3d 281(5th Cir. 2004).

<sup>4</sup> 125 S.Ct. 823 (Jan. 7, 2005).

<sup>5</sup> No. 04-368 2005 USSC LEXIS, at 5.

<sup>6</sup> *Id.*

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