

18 U.S.C. §§ 1343, 1346 (public official honest services wire fraud).

- *First*, that the defendant knowingly participated in, devised, intended to devise a scheme to defraud the public of its right to the honest services of the public official through bribery or kickbacks;
- *Second*, that the scheme included a material misrepresentation or concealment of a material fact;
- *Third*, that the defendant had the intent to defraud; and
- *Fourth*, that the defendant used wire, radio or television communications in interstate commerce in furtherance of the scheme.

18 U.S.C. § 1951 (extortion under color of official right).

- *First*, that the defendant was a public official;
- *Second*, that the defendant obtained accepted, took, or received property, that he was not lawfully entitled to, from another person with that persons consent;
- *Third*, that the defendant knew the property was being obtained, accepted, taken, or
- received in exchange for an official act; and
- *Fourth*, that as a result, interstate commerce was affected in any way or degree.

Explicit Quid Pro Quo

If the property was a campaign contribution, the government must prove that -

“the payments [were] made in return for an explicit promise or understanding by the official to perform or not to perform an official act.” *McCormick v. United States*, 500 U.S. 257, 273

The Government Does NOT have to Prove

- that the public official ultimately performed the official act.
- which payments controlled particular official acts or that each payment was tied to a specific official act; rather, it is sufficient if the public official understood that he was expected to exercise some influence on the payors behalf as opportunities arose.
- that the property was exchanged only for an official act. Because people rarely act for a single purpose, if you find that the property was exchanged at least in part for an official act, then it makes no difference that the defendant may have also had another separate lawful purpose for exchanging the property.
- that the defendant had the actual power to effectuate the end for which he accepted or induced payment; it is sufficient that the defendant exploited a reasonable belief that he had the power to do so.

Implicit Quid Pro Quo Instruction

- The government need not prove that the bribery agreement was explicit or stated in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods. A bribery agreement is satisfied by something short of a formalized and thoroughly articulated contractual arrangement.