PRESENTATION
OF
MR. MANAGER CANNON

January 15, 1999

18 United States Code Section 1503

(a) Whoever . . . corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct or impede, the due administration of justice, shall be punished as provided in subsection (b).

(b) The punishment for an offense under this section is

. . .

(3) . . . imprisonment for not more than 10 years, a fine under this title, or both.

Simply an attempt to obstruct, not the success of doing so, violates the statute:

It is not necessary that a defendant's endeavor succeed for him to have violated the law. Rather, simply attempting to influence, obstruct or impede the due administration of justice violates the statute.

***U.S. v. Russell,* 255 U.S. 138, 143 (1921)**

***U.S. v. Aguilar,* 515 U.S. 593, 599 (1995)**

"It is the endeavor to bring about a forbidden result and not the success in actually achieving the result, that is forbidden."

***U.S. v. Maggitt,* 784 F.2d 590, 593 (5th Cir. 1996)**

A defendant obstructs by acting "corruptly":

A defendant acts corruptly by having an evil or improper purpose or intent.

U.S. v. Haldeman, 599 F.2d 31, 115 n.229 (D.C. Cir. 1976)

U.S. v. Sprecher, 783 F. Supp. 133, 164 (S.D.N.Y. 1992)

Acting corruptly is defined as knowingly and intentionally acting in order to encourage obstruction.

U.S. v. Barfield, 999 F.2d 1520 (11th Cir. 1993)

The government need not prove the actual intent of the defendant, rather, the intent to act corruptly can be inferred from proof that the defendant knew his corrupt actions would obstruct the justice being administered.

Sprecher, 783 F. Supp. at 164

When a defendant endeavors to influence, obstruct or impede the "due administration of justice":

Due administration of justice is defined as "providing a protective cloak over all judicial proceedings, regardless of the stage in which the improper activity occurs."

***U.S. v. Brenson,* 104 F.3d 1267, 1280 (11th Cir. 1997)**

Section 1503 is also intended to protect the discovery phase of a judicial proceeding, stating that the phrase *"due administration of justice"* is intended to provide a "free and fair opportunity to every litigant in a pending case in Federal court to learn what he may learn . . . concerning the material facts and to exercise his option as to introducing testimony of such facts."

***U.S. v. Lundwall*, 1 F. Supp.2d 249, 251 (S.D.N.Y. 1998)**

18 United States Code Section 1512

(b) Whoever knowingly . . . corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to –

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to --

(A) withhold testimony, or withhold a . . . document . . . from an official proceeding;

. . .

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

"An official proceeding need not be pending or about to be instituted at the time of the offense," for the crime to be committed.

18 U.S.C. Section 1512 (e) (1)

<u>The object of tampering need not be an active witness</u>:

"...Neither must the target be scheduled to testify at the time of the offense, nor must he or she actually give testimony at a later time." It is only necessary that there is a possibility that the target of the defendant's activities will be called on to testify in an official proceeding.

U.S. v. Shannon, **836 F.2d 1125, 1128 (8th Cir. 1988)**

The United States Court of Appeals for the District of Columbia has explained that scction 1512 is violated if the defendant asks a person to lie "to anyone who asks."

U.S. v. Morrison**, 98 F.3d 619, 630 (D.C. Cir. 1996)**