

Proposed Instruction for Count Two (Elements)

OBSTRUCTION OF AN OFFICIAL PROCEEDING

Count 2 of the indictment charges the defendant with corruptly obstructing an official proceeding, which is a violation of the law. In order to find the defendant guilty of this offense, you must find that the government proved each of the following four elements beyond a reasonable doubt:

First, the defendant acted with the intent to obstruct or impede an official proceeding.

Second, the defendant acted knowingly, with awareness that the natural and probable effect of his conduct was to obstruct or impede the official proceeding.

Third, the defendant acted corruptly.

Fourth, the defendant attempted to or did obstruct or impede an official proceeding.

Proposed Instruction for Count Two (Definitions)

OBSTRUCTION OF AN OFFICIAL PROCEEDING

The term “official proceeding” includes a proceeding before the Congress. The official proceeding need not be pending or about to be instituted at the time of the offense. If the official proceeding was not pending or about to be instituted, the government must prove beyond a reasonable doubt that the official proceeding was reasonably foreseeable to the defendant. As used in Count 2, the term “official proceeding” means Congress’s Joint Session to certify the Electoral College vote.

To act “corruptly,” the defendant must use unlawful means or act with an unlawful purpose, or both. The defendant must also act with “consciousness of wrongdoing.” “Consciousness of wrongdoing” means with an understanding or awareness that what the person is doing is wrong.

Not all attempts to obstruct or impede an official proceeding involve acting corruptly. For example, a witness in a court proceeding may refuse to testify by invoking his constitutional privilege against self-incrimination, thereby obstructing or impeding the proceeding, but he does not act corruptly. In contrast, an individual who obstructs or impedes a court proceeding by bribing a witness to refuse to testify in that proceeding, or by engaging in other independently unlawful conduct, does act corruptly.