

Appendix 16

If there is confusion about what a law means, the courts look at Congressional intent when drafting the law as well as the President's intent when signing the law. With this §1512(c)(2) statute there was extensive recording of Congressional intent, as this was a very significant issue of the time and there was an enormous amount of public discussion. All Congressional discussion, as well as the President, is consistent that this statute was intended solely to stop corporate bad actors from shredding documents or otherwise corruptly interfering with evidence. The first attachment is the [Congressional Record](#) from July 10, 2002 with the debate on this statute, and the second is the statement by [President Bush](#) when he signed this into law July 30, 2002, and the third is a detailed legal analysis in [Vanderbilt Law Review](#) from 2004.

Second, like the suggested enhancement contained in the bill Senator Biden and I have proposed, this amendment directs the U.S. Sentencing Commission to review the sentencing guidelines that apply to acts of corporate misconduct and to enhance the prison time that would apply to criminal frauds committed by corporate officers and directors. As I have stated, I strongly support such an enhancement because corporate leaders who hold high offices and breach their duties of trust should face stiff penalties.

Third, the amendment strengthens an existing federal offense that is often used to prosecute document shredding and other forms of obstruction of justice. Section 1520 of Title 18 of the United States code currently prohibits individuals from persuading others to engage in obstructive conduct. However, it does not prohibit an act of destruction committed by a defendant acting alone. While other existing obstruction of justice statutes cover acts of destruction that are committed by an individual acting alone, such statutes have been interpreted as applying only where a proceeding is pending, and a subpoena has been issued for the evidence that is destroyed.

This amendment closes this loophole by broadening the scope of the Section 1512. Like the new document destruction provision contained in [S. 2010](#), this amendment would permit the government to prosecute an individual who acts alone in destroying evidence, even where the evidence is destroyed prior to the issuance of a grand jury subpoena.

Prosecutors in the Andersen case succeeded in convicting the corporation. However, in order to do so, they had to prove that a person in the corporation corruptly persuaded another to destroy or alter documents, and acted with the intent to obstruct an investigation. Certainly, one who acts with the intent to obstruct an investigation should be criminally liable even if he or she acts alone in destroying or altering documents. This amendment will ensure that individuals acting alone would be liable for such criminal acts.

This amendment also includes new statutory provision that will strengthen the SEC's ability to freeze improper payments to corporate executives while a company is under investigation. These provisions would prevent corporate executives from enriching themselves while a company is subject to an SEC investigation, but before the SEC has gathered sufficient evidence to file formal charges.

Statement by the President

Today I have signed into law H.R. 3763, "An Act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes." The Act adopts tough new provisions to deter and punish corporate and accounting fraud and corruption, ensure justice for wrongdoers, and protect the interests of workers and shareholders.

Several provisions of the Act require careful construction by the executive branch as it faithfully executes the Act.

The legislative purpose of sections 302, 401, and 906 of the Act, relating to certification and accuracy of reports, is to strengthen the existing corporate reporting system under section 13(a) and 15(d) of the Securities Exchange Act of 1934. Accordingly, the executive branch shall construe this Act as not affecting the authority relating to national security set forth in section 13(b) of the Securities Exchange Act of 1934.

To ensure that no infringement on the constitutional right to petition the Government for redress of grievances occurs in the enforcement of section 1512(c) of title 18 of the U.S. Code, enacted by section 1102 of the Act, which among other things prohibits corruptly influencing any official proceeding, the executive branch shall construe the term "corruptly" in section 1512(c)(2) as requiring proof of a criminal state of mind on the part of the defendant.

Given that the legislative purpose of section 1514A of title 18 of the U.S. Code, enacted by section 806 of the Act, is to protect against company retaliation for lawful cooperation with investigations and not to define the scope of investigative authority or to grant new investigative authority, the executive branch shall construe section 1514A(a)(1)(B) as referring to investigations authorized by the rules of the Senate or the House of Representatives and conducted for a proper legislative purpose.

GEORGE W. BUSH
THE WHITE HOUSE,
July 30, 2002.

Corruption of a Term: The Problematic Nature of 18 U.S.C. §1512(c), the New Federal Obstruction of Justice Provision

[Daniel A. Shtob](#)

First Page

1429

Abstract

The year 2002 may be remembered in the annals of the law as the year that corporate America became accountable for its actions. The boardroom, equated with the smoke-filled room of corrupt enterprise and political machination, came under fire as industry giants sank amidst charges of misconduct. In response to high profile allegations of corporate fraud, Congress commenced a fervent bipartisan effort to draft and implement a law to counter corporate obstruction of justice. On July 1, 2002, President George W. Bush signed the Sarbanes-Oxley Act. The bill included a section that prescribes strong penalties for individuals who corruptly impede an official investigation. More specifically, 18 U.S.C. 1512(c), passed as part of Sarbanes-Oxley, provides that:

Whoever corruptly-(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

Since the passage of Sarbanes-Oxley, prosecution for obstruction of justice has gained prominence as a means of criminally sanctioning individuals suspected of involvement in other substantive misconduct. Subsequently, it appears that the obstruction charges have been levied as a type of proxy for substantive offenses, partially as a means to strengthen the prosecutor's hand during the inquiry stage of white-collar investigations.

Close examination of the Act indicates congressional intent to significantly increase the criminal penalty for unscrupulous acts in the business setting. Indeed, the Act was ascribed greater weight in Congress than a routine overhaul of criminal sanctions: its discussion was couched in crisis terms and its passage was deemed critical to both the efficient operation of capital markets and the restoration of faith in the American free enterprise system. Not only politicians stood up and took notice. A television commercial for Heineken beer, broadcast during the 2002 holiday season, vilified document destruction as being anathema to having been "good this year."

President Bush reiterated the important social interests behind subsection 1512(c), stating that the purpose of the Act was to "adopt tough new provisions to deter and punish corporate and accounting fraud and corruption, ensure justice for wrongdoers, and protect the interests of workers and shareholders." While the intent behind this portion of the Act appears manifestly clear, issues of construction give rise to ambiguous interpretation that may lead to inconsistent application. Perhaps recognizing this potential, the President attempted to provide some interpretive guidance, stating that Several provisions of the Act require careful construction by the executive branch as it faithfully executes the Act To ensure that no infringement on the constitutional right to petition the Government for redress of grievances occurs in the enforcement of section 1512(c) of title 18 of the U.S. Code ... which among other things prohibits corruptly influencing any official proceeding, the executive branch shall construe the term "corruptly" in section 1512(c)(2) as requiring proof of a criminal state of mind on the part of the defendant."

Recommended Citation

Daniel A. Shtob, Corruption of a Term: The Problematic Nature of 18 U.S.C. §1512(c), the New Federal Obstruction of Justice Provision, 57 *Vanderbilt Law Review* 1429 (2004)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol57/iss4/6>