

for the Third Circuit in United States v. Bryant, 655 F.3d. 232 (3d Cir. 2011) (hereinafter "Bryant") which was announced after the trial in this case. In Bryant, the appellants argued on appeal that "honest services fraud instructions were deficient because they did not require the jury to find an intent to 'alter' an official action." The Third Circuit did uphold jury instructions that omitted the word "alter," because the instructions as framed in terms of "influence" stated the point clearly enough. It stated:

Appellants are correct that "bribery requires a quid pro quo, which includes an intent to influence an official act or to be influenced by an official act." [United States v.] Kemp, 500 F.3d [257,] 281 [(3d Cir. 2007)] (construing federal bribery and gratuity statute, 18 U.S.C. § 201, which is "equally applicable to bribery in the honest services fraud context") (citations and internal quotation marks omitted). It is also true that "bribery requires a specific intent to give or receive something of value in exchange for an official act." *Id.* (emphasis omitted). But they are incorrect that the instruction failed to state clearly those legal requirements.

Yet Appellants ignore a key passage of the Court's instructions, which stated:

[N]ot every payment made to a public official constitutes a bribe. A payment made in a general attempt to build goodwill or curry favor with a public official, without more, does not constitute a bribe.... What distinguishes a bribe from other payments that would not constitute violations is that a bribe is offered or accepted with the intent to influence, or to be influenced, in an official act.

(emphasis added). This instruction made clear that an intent to influence was required for a finding of guilt.

Bryant, 655 F.3d at 245.

In this case, however, the Government, while admitting that § 666 does speak in terms of "influence," has insisted that "altering" is not required. Thus, in this case, the word "influence" is not enough to convey the true meaning to some people because they assert a perceived difference between the two terms. Accordingly, the jury should be instructed clearly that "altering" is required, so that the jury will not think that there is a crime if the official would have taken the same action in any event.

s/ Thomas M. Goggans
Thomas M. Goggans
Ala. State Bar No. 222-S45-T
2030 East Second Street
Montgomery AL 36106
PH: 334.834.2511
FX: 334.834.2512
e-mail: tgoggans@tgoggans.com

Attorney for Defendant
Joseph R. Crosby

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 19th day of December, 2011, electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

s/ Thomas M. Goggans