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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ARTHUR ANDERSEN LLP *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 04–368. Argued April 27, 2005—Decided May 31, 2005

As Enron Corporation's financial difficulties became public, petitioner, Enron's auditor, instructed its employees to destroy documents pursuant to its document retention policy. Petitioner was indicted under 18 U. S. C. §§1512(b)(2)(A) and (B), which make it a crime to "knowingly . . . corruptly persuad[e] another person . . . with intent to . . . cause" that person to "withhold" documents from, or "alter" documents for use in, an "official proceeding." The jury returned a guilty verdict, and the Fifth Circuit affirmed, holding that the District Court's jury instructions properly conveyed the meaning of "corruptly persuades" and "official proceeding" in §1512(b); that the jury need not find any consciousness of wrongdoing in order to convict; and that there was no reversible error.

Held: The jury instructions failed to convey properly the elements of a "corrup[t] persuas[ion]" conviction under §1512(b). Pp. 6–12.

(a) This Court's traditional restraint in assessing federal criminal statutes' reach, see, *e.g., United States* v. *Aguilar,* 515 U. S. 593, 600, is particularly appropriate here, where the act underlying the conviction—"persua[sion]"—is by itself innocuous. Even "persuad[ing]" a person "with intent to . . . cause" that person to "withhold" testimony or documents from the Government is not inherently malign. Under ordinary circumstances, it is not wrongful for a manager to instruct his employees to comply with a valid document retention policy, even though the policy, in part, is created to keep certain information from others, including the Government. Thus, §1512(b)'s "knowingly . . . corruptly persuades" phrase is key to what may or may not lawfully be done in the situation presented here. The Government suggests that "knowingly" does not modify "corruptly persuades," but that is not how the statute most naturally reads. "[K]nowledge" and "knowingly" are normally associated with awareness, understanding, or conscious-

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ness, and "corrupt" and "corruptly" with wrongful, immoral, depraved, or evil. Joining these meanings together makes sense both linguistically and in the statutory scheme. Only persons conscious of wrongdoing can be said to "knowingly . . . corruptly persuad[e]." And limiting criminality to persuaders conscious of their wrongdoing sensibly allows §1512(b) to reach only those with the level of culpability usually required to impose criminal liability. See *Aguilar, supra*, at 602. Pp. 6–9.

(b) The jury instructions failed to convey the requisite consciousness of wrongdoing. Indeed, it is striking how little culpability the instructions required. For example, the jury was told that, even if petitioner honestly and sincerely believed its conduct was lawful, the jury could convict. The instructions also diluted the meaning of "corruptly" such that it covered innocent conduct. The District Court based its instruction on the Fifth Circuit Pattern Jury Instruction for §1503, which defined "corruptly" as "knowingly and dishonestly, with the specific intent to subvert or undermine the integrity" of a proceeding. However, the court agreed with the Government's insistence on excluding "dishonestly" and adding the term "impede" to the phrase "subvert or undermine," so the jury was told to convict if it found petitioner intended to "subvert, undermine, or impede" governmental factfinding by suggesting to its employees that they enforce the document retention policy. These changes were significant. "[D]ishonest[y]" was no longer necessary to a finding of guilt, and it was enough for petitioner to have simply "impede[d]" the Government's factfinding ability. "Impede" has broader connotations than "subvert" or even "undermine," and many of these connotations do not incorporate any "corrupt[ness]" at all. Under the dictionary definition of "impede," anyone who innocently persuades another to withhold information from the Government "get[s] in the way of the progress of" the Government. With regard to such innocent conduct, the "corruptly" instructions did no limiting work whatsoever. The instructions also led the jury to believe that it did not have to find *any* nexus between the "persua[sion]" to destroy documents and any particular proceeding. In resisting any nexus element, the Government relies on §1512(e)(1), which states that an official proceeding "need not be pending or about to be instituted at the time of the offense." It is, however, quite another thing to say a proceeding need not even be foreseen. A "knowingly . . . corrup[t] persaude[r]" cannot be someone who persuades others to shred documents under a document retention policy when he does not have in contemplation any particular official proceeding in which those documents might be material. Cf. *Aguilar, supra,* at 599–600. Pp. 9–12.

374 F. 3d 281, reversed and remanded.

REHNQUIST, C. J., delivered the opinion for a unanimous Court.