

Ninth Circuit Model Criminal Jury Instructions

8.66 FALSE STATEMENT TO GOVERNMENT AGENCY

(18 U.S.C. § 1001 Statements or entries generally)

The defendant is charged in [Count ____ of] the indictment with knowingly and willfully [making a false statement] [using a document containing a false statement] in a matter within the jurisdiction of a governmental agency or department in violation of Section 1001 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant [made a false statement] [used a writing which contained a false statement] in a matter within the jurisdiction of the [specify government agency or department];

Second, the defendant acted willfully, that is deliberately and with knowledge that the statement was untrue; and

Third, the statement was material to the [specify government agency or department] activities or decisions.

A statement is material if it had a natural tendency to influence, or was capable of influencing, the agency's decisions or activities.

Comment

The Ninth Circuit has held the common law test for materiality, as reflected in the last sentence of this instruction, is the standard to use when false statement statutes such as 18 U.S.C. § 1001 are charged. *United States v. Peterson*, __ F.3d __, 2008 WL 3388737 (9th Cir. Aug.13, 2008) (citing *United States v. Gaudin*, 515 U.S. 506, 509 (1995)). “The false statement need not have actually influenced the agency, and the agency need not rely on the information in fact for it to be material.” *United States v. Serv. Deli Inc.*, 151 F.3d 938, 941 (9th Cir. 1998); see also *United States v. Matsumaru*, 244 F.3d 1092, 1101 (9th Cir. 2001).

No mental state is required with respect to the fact that a matter is within the jurisdiction of a federal agency, and the false statement need not be made directly to the government agency. *United States v. Green*, 745 F.2d 1205, 1208-10 (9th Cir.1984). There is no requirement that the defendant acted with the intention of influencing the government agency. *United States v. Yermian*, 468 U.S. 63, 73 & n. 13 (1984). The initial determination whether the matter is one within the jurisdiction of a department or agency of the United States—apart from the issue of materiality—should be made by the court as a matter of law. *United States v. F.J. Vollmer & Co., Inc.*, 1 F.3d 1511, 1518 (7th Cir. 1993).

To make a false statement “willfully” under Section 1001, the defendant must have the specific intent to make a false statement. Specific intent does not require evil intent but only that the defendant act deliberately and with knowledge. *United States v.*

Heuer, 4 F.3d 723, 732 (9th Cir. 1993).

Materiality must be demonstrated by the government, *United States v. Oren*, 893 F.2d 1057, 1063 (9th Cir. 1990); *United States v. Talkington*, 589 F.2d 415, 416 (9th Cir.1978), and must be submitted to the jury. *Gaudin*, 515 U.S. at 506. Actual reliance is not required. *Talkington*, 589 F.2d at 417. The materiality test applies to each allegedly false statement submitted to the jury. *Id.*

Depending on the facts in evidence, it may be appropriate to amend this instruction with language requiring specific jury unanimity (e.g., “with all of you agreeing as to which statement was false and material”). See Instruction 7.9 (Specific Issue Unanimity).

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"A jury in a federal criminal case cannot convict unless it unanimously finds that the Government has proved each element." *Richardson v. United States*, 526 U.S. 813, 817 (1999) (continuing criminal enterprise prosecution).

“Me? I’ll be happy to discuss what I am aware of with you - after you submit your [alleged] authority and questions in writing with stated specific authority and any potential use of answer(s) for each and every question-- and with an **unlimited grant of immunity.”**

For further study see,

<http://www.freedom-school.com/law/public-servant-questionnaire-genesis.html>

http://www.law.cornell.edu/uscode/uscode18/usc_sec_18_00001001----000-.html

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