

## **False Statement Counts (Counts 2 and 3)**

The defendant is charged in counts two and three of the indictment with knowingly and willfully making false, fictitious, or fraudulent statements or representations concerning a material fact within the jurisdiction of the executive branch of the United States government, specifically the Federal Bureau of Investigation, which is commonly referred to as the FBI.

Section 1001(a) (2) of Title 18 of the United States Code states that:

“Whoever, in any matter within the jurisdiction of the executive branch of the government of the United States knowingly and willfully. . . makes any materially false, fictitious, or fraudulent statements or representations . . .” is guilty of an offense against the United States.

In order to prove this offense, the government must prove the following four elements beyond a reasonable doubt:

- (1.) That the defendant knowingly made a false, fictitious, or fraudulent statement or representation to the government of the United States, namely, the FBI;
- (2.) That the statement or representation was made in a matter within the jurisdiction of the executive branch of the United States government;
- (3.) That in making the false, fictitious, or fraudulent statement or representation, the defendant acted wilfully, knowing that the statement or representation was false; and
- (4.) That the statement or representation made by the defendant was material to the investigation being conducted by the FBI.

.....(count 2 language deleted)

Count three of the indictment alleges that Mr. Libby falsely told the FBI on October 14 or November 16, 2003, that during a conversation with Matthew Cooper of *Time* magazine on July 12, 2003, Mr. Libby told Mr.

Cooper that reporters were telling the administration that Mr. Wilson's wife worked for the CIA, but that Mr. Libby did not know if this was true.

A false or fictitious statement or representation is an assertion which is untrue when made or when used and which is known by the person making it or using it to be untrue.

A fraudulent statement or representation is an assertion which is known to be untrue and which is made or used with the intent to deceive.

A statement or representation is material if it had the natural tendency to influence, or be capable of affecting or influencing a governmental function. As related to this case, the question for you to answer in determining whether the statement or representation is material is whether it had the capacity to affect or influence the actions of the FBI.

The test is whether the false, fictitious, or fraudulent statement or representation had the capacity to impair or pervert the investigation that was being conducted by the FBI. In other words, a false, fictitious, or fraudulent statement or representation is material if it relates to an important fact that had the capacity to affect or influence the investigation being conducted by the FBI as distinguished from some unimportant or trivial fact that did not have the capacity to affect or influence the investigation being conducted by the FBI. You may consider the nature of the FBI's investigation, including the possible crimes that were being investigated, in determining whether the alleged false statements and declarations were material to the investigation.

However, you should understand that the alleged false statement or representation need not actually have influenced the actions of the FBI, and the FBI agents need not actually have been deceived. A person acts "knowingly," as this term is used in these instructions, if the person acts consciously and with awareness and comprehension and not because of ignorance, mistake, or misunderstanding or other similar reasons.

A person acts "willfully," as the term is used in these instructions, when that person acts deliberately, voluntarily, and intentionally.