98-456 A
May 12, 1998

Lying to Congress: The False Statements Accountability Act of 1996

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Summary

The False Statements Accountability Act of 1996, among other things, amends the federal code to specify its applicability to the executive, legislative, and judicial branches of government prohibiting anyone from knowingly and willfully making misrepresentations to these three branches, and by making it clear that one can corruptly obstruct Congressional proceedings personally as well as by influencing another person. The Act overcomes judicial decisions that had eroded the protection of Congress against false statements and other corrupt interference while acting within the performance of its constitutional duties. This is accomplished by providing in effect that persons who make false statements to Congress or the federal judiciary could be prosecuted to the same extent as persons making false statements to the executive branch. The Act provides that its false statement provisions: (1) shall not apply with respect to statements, representations, writings, or documents submitted to a judge or magistrate by a party or that party's counsel in a judicial proceeding; and (2) shall apply to the legislative branch only with respect to administrative matters or any congressional investigation or review which is conducted consistent with applicable rules of the House or Senate. This background report will not be updated.

Background

Prior to the Supreme Court's decision in *Hubbard v. United States*[1], section 1001[2] of title 18 of the United States Code applied to all three branches of the federal government. In *Hubbard*, the Court held that section 1001 did not apply to the judicial

[1] 514 U.S. 695 (1995). *See United States v. Bramblett,* 348 U.S. 503 (1955), which was overruled by *Hubbard.*

[2] This section makes it a crime to knowingly and willfully falsify, conceal or cover up by any trick, scheme, or device, a material fact, or make any false statement in any matter within the jurisdiction of any department or agency of the United States.

branch, nor, by implication, to the legislative branch of the federal government. The Court said that a federal court was not a "department" or "agency" within the meaning of section 1001, and the statute, therefore, did not apply to false statements made in judicial proceedings.[3] The Court argued that a common sense, ordinary reading of the text of section 1001 did not define "agency" to include courts.[4] While the Court did not directly address the question of whether section 1001 still applied to Congress, in holding that section 1001 did not apply to the courts, *Hubbard* was interpreted by a majority of the courts as holding that section 1001 covered only the executive branch, leaving Congress outside its scope.[5]

A few years prior to *Hubbard*, the Federal Court of Appeals for the District of Columbia Circuit had held that the obstruction of justice statute, 18 U.S.C. §1505, could not be used to punish lying to a congressional committee.[6] One of the primary charges in *United States v. Poindexter* was that Poindexter violated 18 U.S.C. § 1505. Section 1505 forbids anyone from "corruptly" obstructing or influencing "the due and proper exercise of the power of inquiry under which any inquiry is being had" by a congressional committee. The court in *Poindexter* held that the statute's language punishing anyone who "corruptly endeavors" to influence a judicial or congressional proceeding was unconstitutionally vague. The language failed, the court said, to give notice to Poindexter that it was criminal to lie deliberately or present false and misleading evidence — rather than to induce others to lie or mislead — in order to obstruct or influence such proceedings. The amendment in section 3 of P.L. 104-292 regarding the prohibition on obstructing Congress was designed to address this issue.

Congress swiftly reacted to the *Hubbard* decision. Bills were introduced in both chambers during the second session of the 104th Congress to restore section 1001's scope to its pre-*Hubbard* dimension; thereby making material false statements made to the judicial and legislative branches prosecutable.[7] In May, 1995, Representative Martini introduced H.R. 1678, which applied section 1001 to all three branches of the federal government, without exception. At a hearing on the bill, witnesses expressed concern that the broad application of section 1001 to all three branches would chill advocacy in judicial proceedings and also undermine the fact-finding process that is indispensable to the legislative process. In response to these concerns, Representative Martini introduced H.R. 3166 on March 27, 1996, which included a judicial function exception, exempting from the scope of section 1001 those representations made by a party or party's counsel to a judge during a judicial proceeding. Representative McCollum, Chairman of the Subcommittee on Crime, offered an amendment, which passed on voice vote to provide

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[3] *Hubbard*, 514 U.S. at 699-700.

[4] "In the case of § 1001, there is nothing in the text of the statute, or in any related legislation, that even suggests—let alone shows—that the normal definition of `department' was not intended." *Id.*at 701.

[5] *See Ditty v. Checkrite, Ltd., Inc.*, 973 F. Supp. 1320, 1329 (D. Utah 1997); *In Re Grogan*, 972 F. Supp. 992, 1005 n. 18 (E.D. Va. 1997).

[6] *United States v. Poindexter*, 951 F.2d 369 (D.C. Cir. 1991).

[7] The House version was introduced as H.R. 3166, the "Government Accountability Act of 1996." See H.R. 3166, 104th Cong. (1996). The Senate version was introduced as S. 1734, the "False Statement Penalty Restoration Act." See S. 1734, 104th Cong. (1996).

a legislative function exception to section 1001. On July 17, 1996, H. R. 3166 passed the House which was subsequently amended before Senate passage. On September 26, 1996, the House revised the Senate amendment, and on September 27, 1996, the Senate agreed to the bill as modified. It was signed by the President and became Public Law No. 104-292 on October 11, 1996.

The Government Accountability Act of 1996, P.L. 104-292, applies section 1001 to all three branches of the federal government, with two exceptions: (1) it does not apply with respect to statements, representations, writings, or documents submitted to a judge or magistrate by a party or that party's counsel in a judicial proceeding; and (2) it shall apply to the legislative branch only with respect to administrative matters or any congressional investigation or review conducted and consistent with House or Senate rules. The purpose of this exception is to avoid creating an atmosphere which might so discourage the submission of information to Congress that it undermined the fact-finding process which is indispensable to the legislative process.

Section-by-section analysis of P. L. 104-292

The Act contains several sections. Section 1 provides that the short title is the "False Statements Accountability Act of 1996."

Section 2 amends subsection 1001(a) of title 18 of the United States Code to specify its applicability to the executive, legislative, and judicial branches of the government prohibiting anyone from knowingly and willfully making misrepresentations to the government. This section covers offenses that fall into three general categories: (1) falsification, concealment or other cover-up of a material fact by any trick, scheme or device; (2) the making of any false, fictitious, or fraudulent statements or representations; and (3) the making or use of any writing or document with knowledge that such document contains false statements. It also provides for the restoration of false statement penalties by applying the criminal penalties of section 1001 to persons who knowingly and willfully make misrepresentations to all three branches of the federal government.[8]

Section 2, subsection 1001(b) provides that the provisions with respect to subsection (a) do not apply to a party to a judicial proceeding, or that party's counsel for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

Subsection 1001(c) provides that with respect to those matters within the jurisdiction of the legislative branch, subsection (a) applies only to: (1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or (2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate. Relative to exception (b), the House Report states:

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[8] Section 1001 violations may be penalized by a fine, imprisonment for not more than five years, or both (18 U.S.C. §1001).

> "[This] ... exception is intended to codify the judicial function exception which has long been recognized by many Federal courts as necessary to safeguard from the threat of prosecution statements made in the course of adversarial litigation. Allowing the criminal penalties of section 1001 to apply to statements made in the course of adversarial litigation would chill vigorous advocacy, thereby undermining the adversarial process. The exception is consistent with the Court's reasoning in *Bramblett* and *Morgan,* and subsequent case law, which consistently distinguished the adjudicative from the administrative functions of the court, exempting from section 1001 only those communications made to the court when it is acting in its adjudicative or judicial capacity , and leaving subject to section 1001 those representations made to the court when it is functioning in its administrative capacity. Thus, false statements uttered during the course of court proceedings or contained in court pleadings would not be covered by section 1001...."[9]

Relative to exception (c), Representative McCollum stated:

> "The legislative function exception limits section 1001's application in a legislative context to administrative matters and to any investigation or review that is conducted pursuant to the authority of a committee, subcommittee, commission or Office of Congress, consistent with applicable rules. I think it is important to note that the term "review," as used here, refers to an action that is ordinarily initiated by the chairman of a committee, subcommittee, office, or commission, consistent with the performance of their oversight or enforcement activities. "Investigation or review" is not intended to include routine fact gathering or miscellaneous inquiries by committee or personal staff."[10]

As amended, section 1001 will have application to communications to Congress, which includes all forms of testimony and most correspondence.[11] Information which is "neither furnished as part of an administrative filing, nor furnished pursuant to a duly authorized congressional investigation is not subject to the criminal penalties of section 1001".[12]

Section 3 amends section 1515 of title 18, United States Code and it responds to the Federal Court of Appeals for the District of Columbia decision in *United States v. Poindexter*[13] by clarifying that a person acting alone may obstruct a congressional committee inquiry. The court dismissed two counts charging Poindexter with obstruction, on the ground that the word "corruptly" in 18 U.S.C. § 1505 did not give Poindexter fair notice that it would be illegal to lie to the committees for the purpose of obstructing their investigations. The statute could be said to proscribe no more than inducing another to lie to a congressional committee. The amendment inserted in section 3(b) states: "As used

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[9] H.R. Rep. No. 680, 104th Cong., 2d Sess. 4 (1996).

[10] 142 Cong. Rec. H 11138 (daily ed., Sept. 25, 1996).

[11] *Supra* note 9, at 5.

[12] *Supra,* at 4.

[13] Former National Security Advisor, John Poindexter was charged with five felonies, including one count of conspiring with former White House aide Oliver L. North and others to conceal the National Security Council's Iran-Contra activities from Congress, and four substantive counts of obstruction and false statements. The convictions were overturned on appeal, *United States v. Poindexter,* 951 F.2d 369 (D.C. Cir. 1991).

in section 1505, the term `corruptly' means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information."

Section 4 (Enforcing Senate Subpoena) amends section 1365(a) of title 28, United States Code by targeting explicitly the executive branch by clarifying that resistance to a Senate subpoena by a federal employee claiming a governmental privilege must be authorized by the executive branch and may not be based on a claim of personal privilege.[14]

Section 5 (Compelling Truthful Testimony From Immunized Witness) amends section 6005 of title 18, United States Code so as to allow Congress "to compel an immunized witness to testify at depositions as well as hearings."[15]

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[14] *Supra* note 10, at H11138.

[15] *Supra.*