Memos – Perjury / Obstruction / False Statements

To: John Bates
Alex Azar
Steve Colloton
Brett Kavanaugh

5/22/96

From: Stephen Bates

re: further venue matters

FOIA(b)(7) - (C)

1. Venue under Section 1001

In general, "the situs of the criminal conduct is the determining factor in questions of proper venue." United States v. Brakke, 934 F.2d 174, 176 (8th Cir. 1991); see Fed. R. Crim. Proc. 18. An offense begun in one district and completed in another, or committed in multiple districts, ordinarily can be charged in any district where the offense was "begun, continued, or completed." 18 U.S.C. § 3237(a). Several courts have treated Section 1001 violations as multidistrict crimes to which Section 3237(a) applies. See, e.g., United States v. Simpson, 995 F.2d 109, 111-12 (7th Cir. 1993); United States v. Candella, 487 F.2d 1223, 1227-28 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974); but see United States v. Mischlich, 310 F. Supp. 669, 671 (D.N.J. 1970), aff'd on other grounds, 445 F.2d 1194 (3d Cir.), cert. denied, 404 U.S. 984 (1971). The Eighth Circuit has not addressed the issue.

It looks to me as if we have a strong argument for Arkansas venue for the interrogatories, but not for the interviews.

(a) Interrogatories

The Eighth Circuit has not considered whether a Section 1001 violation can be prosecuted where a false statement, prepared elsewhere, reaches the government. The court has construed another false-statement statute, 26 U.S.C. § 7206(1) of the tax code, which proscribes "[w]illfully mak[ing] and subscrib[ing]" particular falsehoods on tax documents. The court held that venue lies "in any district in which a false tax return was made and subscribed or filed." United States v. Shyres, 898 F.2d 647,

657 (8th Cir.) (emphasis added), cert. denied, 498 U.S. 821 (1990). Shyres thus indirectly supports venue in Arkansas as well as Washington for the interrogatory answers.

Several other courts have held that Section 1001 venue is proper both where a false statement is made and where it reaches the government. See United States v. Bilzerian, 926 F.2d 1285, 1301 (2d Cir.), cert. denied, 502 U.S. 813 (1991); De Rosier v. United States, 218 F.2d 420, 422-23 (5th Cir.), cert. denied, 349 U.S. 921 (1955); United States v. Lang, 766 F. Supp. 389, 397 (D. Md. 1991) (citing additional cases). I found no appellate cases holding that venue is not proper where a false statement reaches the government.

In its single 1001 venue case, the Supreme Court held that venue lay exclusively where the statement was filed with the government. Travis v. United States, 364 U.S. 631, 636 (1961). The statute at issue required the NLRB to have an affidavit on hand before investigating particular matters. Although lower courts have construed Travis narrowly in light of the unusual statute involved, see, e.g., United States v. Mendel, 746 F.2d 155, 165 (2d Cir. 1984), cert. denied, 469 U.S. 1213 (1985), it may offer us a bit of support.

In sum, I believe we can advance a strong argument for Arkansas venue for the interrogatory responses, given that several courts have allowed venue at the site of receipt and that (so far as I can tell) no circuit has barred venue there.

FOIA(b)(7) - (C)

(b) Interviews

[redacted]

One Second Circuit case supports downstream venue of this sort. United States v. Candella, 487 F.2d 1223 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974), concerns a HUD-funded program run by New York City. The defendants prepared and filed false statements with a City office in Brooklyn (the Eastern District of New York); the documents were conveyed to another City office in Manhattan (the Southern District) for examination and payment. Some of the documents remained in the City office in Manhattan for HUD audits; others were transferred to a HUD office in Manhattan. See id. at 1227. The defendants contended that prosecution in the Southern District was inappropriate; "appellants cite no authority for their position but seem to rely

on the theory that since enough had been done to constitute a crime in the Eastern District, the crime therefore terminated." Id. The Second Circuit disagreed, holding that "[a]lthough enough was done in the Eastern District to constitute a crime there, . . . it does not follow that the crime then terminated, and that what transpired in Manhattan was irrelevant for venue purposes." Id. at 1228. The court added:

> We think that venue is properly laid in "the whole area through which force propelled by an offender operates." The force propelled here by the defendants immediately contemplated Manhattan. 18 U.S.C. § 1001 defines the offense as the making of a false or fraudulent statement or representation in a matter within the jurisdiction of a federal agency. The false statements here were intended to produce funds. The statements continued to be false and continued to be within the jurisdiction of the United States not only when initially presented but also upon arrival in Manhattan, where the decision was reached to make the funds available.

Id. (citations omitted); cf. United States v. Barsanti, 943 F.2d 428, 434-35 (4th Cir. 1991) (where defendant signed document at attorney's office in Washington, and document was sent to mortgage bank in Virginia and from there to HUD in Washington, "pass-through" venue was proper in Virginia), cert. denied, 503 U.S. 936 (1992); United States v. DeLoach, 654 F.2d 763, 767 (D.C. Cir. 1980) (in prosecution for submitting false statement to joint federal-state program, venue was proper both where defendants submitted documents to state agency and where state agency forwarded them to federal agency), cert. denied, 450 U.S. 933 (1981).

Note, though, that these cases find venue where statements pass en route to federal authorities (Barsanti and DeLoach) or where statements first reach federal authorities (Candela and DeLoach); I have not seen any cases that mirror our situation, where false statements reach federal authorities in one jurisdiction and get passed on to federal authorities in a second jurisdiction. In addition, I'm dubious about some of the Candela court's considerations. The court noted that the false statements were intended to produce funds, but that's not an element of 1001. The court also observed that the utterances remained within the jurisdiction of a federal agency when they reached Manhattan, but that principle would support venue wherever the federal government happens to send documents containing false statements.

The Eighth Circuit did allow downstream venue in one false-statement case, but only after expressly distinguishing Section 1001 from the statute at issue. The defendant filled out a student loan application in North Dakota and submitted it to a

bank there; the bank forwarded it to a guaranty agency in South Dakota, which approved the loan; the North Dakota bank then disbursed the funds. After being convicted in South Dakota of violating 20 U.S.C. § 1097(a), the defendant argued that venue was improper. Citing Section 1001 cases, she contended that the crime was complete when she made the false statement in North Dakota. The court found the Section 1001 cases inapplicable because 1001 proscribes false statements, whereas 1097(a) proscribes obtaining funds by false statements. Accordingly, her crime was not complete until she received the funds; and under the continuing offense statute, she could be charged in either state. United States v. Redfearn, 906 F.2d 352, 353-54 (8th Cir. 1990).

An Eighth Circuit fraud case may be marginally helpful. In United States v. Chandler, 66 F.3d 1460 (8th Cir. 1995), the defendant was convicted in the Eastern District of Arkansas of misapplying federally insured bank funds. He contended that Arkansas venue was improper, given that the loan at issue had been made by a California service corporation to a California resident who in turn had passed the funds on to the defendant, himself a California resident. The court held that Arkansas venue was appropriate because the California service corporation was a second-tier subsidiary of an Arkansas institution, and because the Arkansas institution treated the transaction on its books as a direct consumer loan. Id. at 1465. Though not a false-statement case, Chandler may lend analogous support.

FOIA(b)(7) - (C)

In permitting downstream venue, neither Redfearn nor Chandler (the two Eighth Circuit cases) indicates that the defendant knew or had reason to know that the false statements would be processed in another jurisdiction, and thus that they would be rendered prosecutable there.

But cf. Barsanti, 943 F.2d at 435 (finding Virginia venue proper where defendant made statements in Washington "knowing that they would go to the lending institution in Virginia"); Candella, 487 F.2d at 1227 (finding Manhattan venue appropriate where government contended that documents "were simply accepted at the City's branch offices in Brooklyn for the convenience of parties seeking to file papers").

Finally, in the course of an extensive venue analysis for Sections 1503 and 1623, the Second Circuit made a statement that may help us: "[P]laces that suffer the effects of a crime are entitled to consideration for venue purposes. Such districts have an obvious contact with the litigation in their interest in preventing such effects from occurring." United States v. Reed, 773 F.2d 477, 482 (2d Cir. 1985) (citing cases involving Hobbs Act, Taft-Hartley, bail-jumping, and inducement of illegal entry of immigrants).

In sum, I think we'll have a tough time establishing Arkansas venue for the interviews, given the dearth of directly supportive case law and the Eighth Circuit's damaging Redfearn dictum.

2. Why Congress added § 1512(h)

The venue provision was part of The Minor and Technical Criminal Law Amendments Act of 1988. See 134 Cong. Rec. S7446-01 (June 8, 1988) (statement of Senator Kennedy). "Congress enacted the venue section because there was a split in authority on the question of where proper venue was laid under 18 U.S.C. § 1512 and under a related statute, 18 U.S.C. § 1503." United States v. Gonzalez, 922 F.2d 1044, 1054 (2d Cir.), cert. denied, 502 U.S. 1014 (1991). Although the split evidently concerned venue for Section 1503 only, and not 1512, see United States v. Cofield, 11 F.3d 413, 421 n.3 (4th Cir. 1993) (Luttig, J., dissenting in part), cert. denied, 114 S. Ct. 1125 (1994), the courts had considered the two statutes in tandem, see, e.g., United States v. Frederick, 835 F.2d 1211, 1213 (7th Cir. 1987) ("In view of the obvious relationship between sections 1503 and 1512, what is authority for one also controls the other."), cert. denied, 486 U.S. 1013 (1988).

OFFICE OF THE INDEPENDENT COUNSEL **MEMORANDUM**

TO: John Bates
Steve Colloton
Brett Kavanaugh

FROM: John McCarrick

DATE: July 5, 1996

RE: Perjury and Obstruction Cases Against Public Officials

I have surveyed prosecutions of public officials for perjury or obstruction of justice. The search for relevant cases included all federal circuit and district court cases involving U.S. senators and representatives, state senators and representatives, governors, lieutenant governors, and senior state officials. I did not search prosecutions on the state court level.

The following is a summary of the circumstances and results of the cases located. I have separated them by cases from the courts in Washington and cases from the rest of the country.

WASHINGTON CASES

United States v. Lavelle, 751 F.2d 1266 (D.C.Cir. 1985)

Rita Lavelle was the EPA's Assistant Administrator in charge of Solid Waste and Emergency Response. Prior to taking this position, she agreed, in writing to the EPA General Counsel and orally during her Senate Committee confirmation hearing, not to participate in any matters involving her previous employer, Aerojet-General Corporation ("Aerojet").

Some months later, Aerojet was identified as a responsible party in connection with a toxic waste disposal site. In response to a House Oversight Subcommittee's request, Ms. Lavelle signed a "Statement of Certification" on December 14, 1982. Under oath, she wrote in this statement that she was unaware of the Aerojet connection until June 17, 1982. Ms. Lavelle repeated this claim before the House Oversight Subcommittee during hearings in February of 1983. However, evidence revealed that she was aware of the connection before June 17: 1) Ms. Lavelle knew of Aerojet's involvement on May 28, 1982, when a member of her staff suggested that she recuse herself; 2) on May 31, Ms. Lavelle spoke with an official of Aerojet; and 3) on June 2, she participated in a weekly staff meeting where the Aerojet

matter was discussed.

Ms. Lavelle was convicted for the Statement of Certification under 18 U.S.C. § 1001 and 18 U.S.C. § 1505. Her testimony before the Subcommittee resulted in two convictions under 18 U.S.C. § 1621. There is nothing in the opinion to indicate that her underlying behavior, ie. contacting Aerojet and participating in the meetings, was illegal.

The Lavelle case has been cited in district court opinions resulting from litigation in the North and Poindexter prosecutions as an example of obstruction of Congress in violation of § 1505. United States v. North, 708 F. Supp. 385, 386 (D.D.C. 1989); United States v. Poindexter, 725 F. Supp. 13, 28 (D.D.C. 1989).

In re Olson, 818 F.2d 34 (D.C.Cir. 1987)

Mr. Olson was Assistant Attorney General. During a House Committee investigation into Superfund, he advised the EPA to assert executive privilege in response to a request for documents. The House Judiciary Committee subsequently investigated the involvement of DOJ officials' actions during the first probe. The Judiciary Committee recommended the appointment of an independent counsel to investigate possible violations of 18 U.S.C. §§ 1001, 1505, 1621-23, 371, or any provision of federal law. Alexia Morrison was appointed to investigate whether Mr. Olson, DAG Edward Schmults or AAG Carol Dinkins violated the aforementioned sections.

The Independent Counsel declined to prosecute Mr. Olson, Mr. Schmults or Ms. Dinkins. It is notable however that the Independent Counsel's primary jurisdiction included only potential violations relating to obstruction or perjury provisions without any other underlying crime.

United States v. Kelley, 36 F.3d 1118 (D.C. Cir. 1994)

John Kelley was Deputy Director for Information Research Management at the U.S. Agency for International Development ("AID"). He had responsibility for two large scale projects. He solicited and received substantial kickbacks from the contractors involved with the projects.

Mr. Kelley was convicted for obstructing justice under 18 U.S.C. § 1505 (lying to the AID Inspector General) and influencing the testimony of another person under 18 U.S.C. § 1512. He was also convicted for the underlying crimes: conspiracy to commit bribery and bribery. His convictions were upheld on appeal.

United States v. Dean, 55 F.3d 640 (D.C.Cir. 1995)

Deborah Gore Dean was an official at HUD. She administered a HUD program which oversaw state and local governments' management of funds provided by the federal government to rehabilitate deteriorated rental housing and subsidize rent of lower income families. Congress altered the way HUD could distribute these funds in 1984 and HUD officials soon devised less formal methods for allocating funds. Dean used her position to secure funds for developers who paid huge fees to lobbyists associated with Dean.

Dean was indicted on three counts of conspiracy under 18 U.S.C. § 371, four counts of perjury under 18 U.S.C. § 1621, five counts of concealment under 18 U.S.C. § 1001, and one count of accepting an illegal gratuity under 18 U.S.C. § 201(c)(1)(B). The conspiracy charges were a result of Dean's involvement in steering funds towards certain developers. The § 1621 and § 1001 charges stemmed from testimony she provided before the Senate Banking Committee. She was found guilty on all charges except one of the § 1001 counts.

On appeal, all four of her convictions under § 1001 were overturned under Hubbard v. United States, which limited the scope of § 1001 to statements made to "departments," specifically excluding Congress. 115 S.Ct. 1754, 1765. All three of her convictions under § 371 and her conviction under § 201(c)(1)(B) were upheld.

One of the four perjury convictions was overturned. This conviction was reversed because the court determined that her statement was literally true and such a statement "cannot support a perjury conviction." Dean at 662. Two of the other § 1621 convictions were upheld because the government proved that her denials under oath were patently not truthful. The final § 1621 conviction was upheld on grounds less firm than the other two perjury convictions. Dean had testified before the Banking Committee that although she was on a committee that made recommendations in the awards process, this committee made decisions "solely on information provided by the Assistant Secretary for Housing." The court determined that evidence introduced at trial showing that she had discussed projects outside the process she described was sufficient to sustain a guilty verdict. The court reasoned through this point in great detail.

United States v. Watt, 911 F.Supp. 538 (D.D.C. 1995)

Former Secretary of the Department of the Interior Watt was also a target of the HUD investigation for his involvement in securing contracts for builders. He testified about his involvement before the House Subcommittee probing the matter and before the grand jury investigating potential violations. As a result of this testimony and statements in a letter to the FBI and OIC, he was indicted on 25 counts: five counts of perjury under 18 U.S.C. § 1621 for his testimony to the House Subcommittee; six counts of perjury under 18 U.S.C. § 1623 for his testimony to the Grand Jury; five counts of concealment under 18 U.S.C. § 1001 for his testimony to the House Subcommittee; six counts of concealment under 18

U.S.C. § 1603 for his testimony to the Grand Jury; two counts of making false statements under 18 U.S.C. § 1001 for his statements to the FBI and OIC; and one count for obstruction under 18 U.S.C. § 1503 for concealing documents subpoenaed by the grand jury.

Mr. Watt challenged the indictment. The district court dismissed the five counts under § 1001 for his testimony before the House Subcommittee, citing Hubbard v. United States. The district court also dismissed the remaining two § 1001 counts for statements Mr. Watt made in a letter sent to an FBI SA assigned to the OIC. The court reasoned that the letter was in response to a grand jury subpoena and therefore was actually a statement to the grand jury and not independently to the OIC . Statements to the grand jury are not within the scope of § 1001.

Although he argued that the counts against him were duplicitous, no other counts against Mr. Watt were dismissed.

On January 2, 1996, Mr. Watt pleaded guilty to one misdemeanor count and was sentenced to community service, a $5000 fine and probation.

United States v. Poindexter, 951 F.2d 369 (D.C.Cir. 1992)
United States v. North, 910, F.2d 843 (D.C.Cir. 1990)

Reagan administration officials were indicted for, among other things, obstructing congressional inquiries into the Iran-Contra affair. North and Poindexter wrote letters and made unsworn statements denying that the White House was assisting the Contras and had dealt arms to the Iranians.

Admiral Poindexter was convicted for destroying documents in violation of 18 U.S.C. § 2071 and four counts of obstruction and false statements under 18 U.S.C. §§ 1505 and 1001. All of Poindexter's convictions were overturned because the OIC failed to show that his immunized testimony was not used against him at trial. The § 1505 counts were reversed on the additional grounds that the statute did not provide sufficient notice that Poindexter's actions were illegal, specifically, that the term "corruptly" from § 1505 was unconstitutionally vague. The § 1001 counts were also reversed because Congress is not considered a "department" as the statute requires.

North was convicted for obstructing a congressional inquiry in violation of 18 U.S.C. § 1505. His convictions were vacated on appeal because Judge Gesell had not conducted a proper Kastigar hearing to determine whether witnesses had been tainted by immunized testimony. Eventually the case was dismissed by the OIC.

United States V. George, 1992 WL 121381 (D.D.C.)

Clair George was Deputy Director of Operations at the CIA. He was indicted for giving false unsworn testimony before the Senate Committee on Foreign Relations under 18 U.S.C. §§ 1505 and 1001. He sought dismissal of the § 1505 counts because § 1505 does not apply to unsworn false statements before a Committee. United States v. Poindexter, 951 F.2d 369 (D.C.Cir. 1991). The Government did not object and those counts were dismissed. He had also been indicted for perjury under 18 U.S.C. §§ 1621 and 1623.

The OIC filed a superseding indictment under § 1505 charging that Mr. George obstructed justice by instructing a subordinate, Alan Fiers, to withhold testimony during his testimony before the committee. Eventually Mr. George was convicted for one count of making false statements and one count of perjury. Mr. George was pardoned by President Bush before he was sentenced.

United States v. Clarridge, 811 F.Supp. 697 (D.D.C. 1992)

Mr. Clarridge was a senior officer at the CIA. He was indicted 18 U.S.C. §§ 1621 and 1001 for statements made to a Senate Committee, House Select Committees and the Tower Commission in relation to Iran-Contra. He challenged the indictment by arguing that the statements were literally true. The court refused to grant his motion, noting that the statements could have different interpretations and the government could prove that the statements were false at trial. The case was scheduled to begin in early 1993, but never went to trial because President Bush pardoned several former government officials, including Mr. Clarridge.

United States v. Weinberger, 1992 WL 294877 (D.D.C.)

Former Secretary of Defense Weinberger was indicted for obstruction under 18 U.S.C. § 1505 for failing to provide subpoenaed notes to a Senate Committee; twice under 18 U.S.C. § 1001 for making false statements to the OIC/FBI and the Senate Committee; and twice under 18 U.S.C. § 1621 for perjury before the Senate Committee.

Mr. Weinberger challenged his indictment and the district court dismissed the § 1505 charge. According to the court, the OIC did not have sufficient evidence to charge Weinberger under the new Poindexter reading of § 1505, ie. Weinberger did not corrupt someone else to obstruct the investigation.

Weinberger was scheduled to go to trial on the remaining counts in early 1993, but was pardoned by President Bush.

Watergate

The Watergate Special Prosecution Force (WSPF) prosecuted several Nixon administration officials:

Charles Colson was indicted under § 1503 and pleaded guilty several months later to this obstruction charge.

John Dean pleaded guilty to conspiracy to obstruct justice under 18 U.S.C. § 371.

John Ehrlichman was indicted for obstruction of justice under § 1503, two counts of false statements before a grand jury under § 1623 and two counts of making false statements to the FBI under 18 U.S.C. § 1001. The § 1001 counts against him were dismissed. He was convicted on all other counts and sentenced to prison. His conviction was upheld on appeal.

Harry Haldeman was indicted on one count of conspiracy to obstruct justice under § 371, one count of obstruction of justice under § 1523, and three counts of perjury under § 1623. He was found guilty on all counts and his conviction was upheld on appeal.

Jeb Magruder pleaded guilty to conspiracy to obstruct justice under § 371.

John Mitchell was indicted for obstruction of justice under § 1503, two counts of false statements before a grand jury under § 1623 and one count of making false statements to the FBI under 18 U.S.C. § 1001. The § 1001 count against him was dismissed. He was convicted on all other counts and sentenced to prison. His conviction was upheld on appeal.

Congressmen

Several Congressmen have been indicted for false statements under § 1001 relating to false reports filed with the House Finance Office. However those cases have been rendered moot by Hubbard. United States v. Rostenkowski, 1996 WL 342110 (D.D.C.).

United States v. Barry, 938 F.2d 1327 (D.C.Cir. 1991)

Mayor of Washington was indicted for conspiracy to possess cocaine and three counts of making false declarations before the grand jury under § 1623. He was found not guilty on all but one possession count.

CASES OUTSIDE OF WASHINGTON

United States v. Biaggi, 853 F.2d 89 (2nd Cir.)

Biaggi, a U.S. Congressman, was convicted for perjury and obstruction as well as bribery and racketeering for his dealings with defense contractors. His convictions were upheld on appeal.

United States v. Grubb, 11 F.3d 426 (4th Cir. 1993)

Grubb, a state judge, was convicted for perjury and obstruction as well as bribery and racketeering. His convictions were upheld on appeal.

United States v. LeMaster, 54 F.3d 1224 (6th Cir. 1994)

LeMaster, a state legislator, was convicted under § 1001 for making false statements to FBI investigators but found not guilty of extortion.

United States v. Bordallo, 857 F.2d 519 (9th Cir. 1988)

Governor of Guam was found guilty of bribery and extortion. He was also convicted for witness tampering under § 1512. His conviction for § 1512 was upheld on appeal.

United States v. Schmermerhorn, 906 F.2d 66 (2nd Cir. 1990)

Schmermerhorn, a state senator, was convicted for obstruction of justice under § 1523 as well as tax evasion and mail fraud. His conviction was upheld on appeal.

OFFICE OF THE INDEPENDENT COUNSEL **MEMORANDUM**

TO: John Bates
Steve Colloton
Brett Kavanaugh

FROM: John McCarrick

DATE: July 5, 1996

RE: Perjury and Obstruction Cases Against Public Officials

I have surveyed prosecutions of public officials for perjury or obstruction of justice. The search for relevant cases included all federal circuit and district court cases involving U.S. senators and representatives, state senators and representatives, governors, lieutenant governors, and senior state officials. I did not search prosecutions on the state court level.

The following is a summary of the circumstances and results of the cases located. I have separated them by cases from the courts in Washington and cases from the rest of the country.

WASHINGTON CASES

United States v. Lavelle, 751 F.2d 1266 (D.C.Cir. 1985)

Rita Lavelle was the EPA's Assistant Administrator in charge of Solid Waste and Emergency Response. Prior to taking this position, she agreed, in writing to the EPA General Counsel and orally during her Senate Committee confirmation hearing, not to participate in any matters involving her previous employer, Aerojet-General Corporation ("Aerojet").

Some months later, Aerojet was identified as a responsible party in connection with a toxic waste disposal site. In response to a House Oversight Subcommittee's request, Ms. Lavelle signed a "Statement of Certification" on December 14, 1982. Under oath, she wrote in this statement that she was unaware of the Aerojet connection until June 17, 1982. Ms. Lavelle repeated this claim before the House Oversight Subcommittee during hearings in February of 1983. However, evidence revealed that she was aware of the connection before June 17: 1) Ms. Lavelle knew of Aerojet's involvement on May 28, 1982, when a member of her staff suggested that she recuse herself; 2) on May 31, Ms. Lavelle spoke with an official of Aerojet; and 3) on June 2, she participated in a weekly staff meeting where the Aerojet

matter was discussed.

Ms. Lavelle was convicted for the Statement of Certification under 18 U.S.C. § 1001 and 18 U.S.C. § 1505. Her testimony before the Subcommittee resulted in two convictions under 18 U.S.C. § 1621. There is nothing in the opinion to indicate that her underlying behavior, ie. contacting Aerojet and participating in the meetings, was illegal.

The Lavelle case has been cited in district court opinions resulting from litigation in the North and Poindexter prosecutions as an example of obstruction of Congress in violation of § 1505. United States v. North, 708 F. Supp. 385, 386 (D.D.C. 1989); United States v. Poindexter, 725 F. Supp. 13, 28 (D.D.C. 1989).

In re Olson, 818 F.2d 34 (D.C.Cir. 1987)

Mr. Olson was Assistant Attorney General. During a House Committee investigation into Superfund, he advised the EPA to assert executive privilege in response to a request for documents. The House Judiciary Committee subsequently investigated the involvement of DOJ officials' actions during the first probe. The Judiciary Committee recommended the appointment of an independent counsel to investigate possible violations of 18 U.S.C. §§ 1001, 1505, 1621-23, 371, or any provision of federal law. Alexia Morrison was appointed to investigate whether Mr. Olson, DAG Edward Schmults or AAG Carol Dinkins violated the aforementioned sections.

The Independent Counsel declined to prosecute Mr. Olson, Mr. Schmults or Ms. Dinkins. It is notable however that the Independent Counsel's primary jurisdiction included only potential violations relating to obstruction or perjury provisions without any other underlying crime.

United States v. Kelley, 36 F.3d 1118 (D.C. Cir. 1994)

John Kelley was Deputy Director for Information Research Management at the U.S. Agency for International Development ("AID"). He had responsibility for two large scale projects. He solicited and received substantial kickbacks from the contractors involved with the projects.

Mr. Kelley was convicted for obstructing justice under 18 U.S.C. § 1505 (lying to the AID Inspector General) and influencing the testimony of another person under 18 U.S.C. § 1512. He was also convicted for the underlying crimes: conspiracy to commit bribery and bribery. His convictions were upheld on appeal.

United States v. Dean, 55 F.3d 640 (D.C.Cir. 1995)

Deborah Gore Dean was an official at HUD. She administered a HUD program which oversaw state and local governments' management of funds provided by the federal government to rehabilitate deteriorated rental housing and subsidize rent of lower income families. Congress altered the way HUD could distribute these funds in 1984 and HUD officials soon devised less formal methods for allocating funds. Dean used her position to secure funds for developers who paid huge fees to lobbyists associated with Dean.

Dean was indicted on three counts of conspiracy under 18 U.S.C. § 371, four counts of perjury under 18 U.S.C. § 1621, five counts of concealment under 18 U.S.C. § 1001, and one count of accepting an illegal gratuity under 18 U.S.C. § 201(c)(1)(B). The conspiracy charges were a result of Dean's involvement in steering funds towards certain developers. The § 1621 and § 1001 charges stemmed from testimony she provided before the Senate Banking Committee. She was found guilty on all charges except one of the § 1001 counts.

On appeal, all four of her convictions under § 1001 were overturned under Hubbard v. United States, which limited the scope of § 1001 to statements made to "departments," specifically excluding Congress. 115 S.Ct. 1754, 1765. All three of her convictions under § 371 and her conviction under § 201(c)(1)(B) were upheld.

One of the four perjury convictions was overturned. This conviction was reversed because the court determined that her statement was literally true and such a statement "cannot support a perjury conviction." Dean at 662. Two of the other § 1621 convictions were upheld because the government proved that her denials under oath were patently not truthful. The final § 1621 conviction was upheld on grounds less firm than the other two perjury convictions. Dean had testified before the Banking Committee that although she was on a committee that made recommendations in the awards process, this committee made decisions "solely on information provided by the Assistant Secretary for Housing." The court determined that evidence introduced at trial showing that she had discussed projects outside the process she described was sufficient to sustain a guilty verdict. The court reasoned through this point in great detail.

United States v. Watt, 911 F.Supp. 538 (D.D.C. 1995)

Former Secretary of the Department of the Interior Watt was also a target of the HUD investigation for his involvement in securing contracts for builders. He testified about his involvement before the House Subcommittee probing the matter and before the grand jury investigating potential violations. As a result of this testimony and statements in a letter to the FBI and OIC, he was indicted on 25 counts: five counts of perjury under 18 U.S.C. § 1621 for his testimony to the House Subcommittee; six counts of perjury under 18 U.S.C. § 1623 for his testimony to the Grand Jury; five counts of concealment under 18 U.S.C. § 1001 for his testimony to the House Subcommittee; six counts of concealment under 18

U.S.C. § 1603 for his testimony to the Grand Jury; two counts of making false statements under 18 U.S.C. § 1001 for his statements to the FBI and OIC; and one count for obstruction under 18 U.S.C. § 1503 for concealing documents subpoenaed by the grand jury.

Mr. Watt challenged the indictment. The district court dismissed the five counts under § 1001 for his testimony before the House Subcommittee, citing Hubbard v. United States. The district court also dismissed the remaining two § 1001 counts for statements Mr. Watt made in a letter sent to an FBI SA assigned to the OIC. The court reasoned that the letter was in response to a grand jury subpoena and therefore was actually a statement to the grand jury and not independently to the OIC . Statements to the grand jury are not within the scope of § 1001.

Although he argued that the counts against him were duplicitous, no other counts against Mr. Watt were dismissed.

On January 2, 1996, Mr. Watt pleaded guilty to one misdemeanor count and was sentenced to community service, a $5000 fine and probation.

United States v. Poindexter, 951 F.2d 369 (D.C.Cir. 1992)
United States v. North, 910, F.2d 843 (D.C.Cir. 1990)

Reagan administration officials were indicted for, among other things, obstructing congressional inquiries into the Iran-Contra affair. North and Poindexter wrote letters and made unsworn statements denying that the White House was assisting the Contras and had dealt arms to the Iranians.

Admiral Poindexter was convicted for destroying documents in violation of 18 U.S.C. § 2071 and four counts of obstruction and false statements under 18 U.S.C. §§ 1505 and 1001. All of Poindexter's convictions were overturned because the OIC failed to show that his immunized testimony was not used against him at trial. The § 1505 counts were reversed on the additional grounds that the statute did not provide sufficient notice that Poindexter's actions were illegal, specifically, that the term "corruptly" from § 1505 was unconstitutionally vague. The § 1001 counts were also reversed because Congress is not considered a "department" as the statute requires.

North was convicted for obstructing a congressional inquiry in violation of 18 U.S.C. § 1505. His convictions were vacated on appeal because Judge Gesell had not conducted a proper Kastigar hearing to determine whether witnesses had been tainted by immunized testimony. Eventually the case was dismissed by the OIC.

United States V. George, 1992 WL 121381 (D.D.C.)

Clair George was Deputy Director of Operations at the CIA. He was indicted for giving false unsworn testimony before the Senate Committee on Foreign Relations under 18 U.S.C. §§ 1505 and 1001. He sought dismissal of the § 1505 counts because § 1505 does not apply to unsworn false statements before a Committee. United States v. Poindexter, 951 F.2d 369 (D.C.Cir. 1991). The Government did not object and those counts were dismissed. He had also been indicted for perjury under 18 U.S.C. §§ 1621 and 1623.

The OIC filed a superseding indictment under § 1505 charging that Mr. George obstructed justice by instructing a subordinate, Alan Fiers, to withhold testimony during his testimony before the committee. Eventually Mr. George was convicted for one count of making false statements and one count of perjury. Mr. George was pardoned by President Bush before he was sentenced.

United States v. Clarridge, 811 F.Supp. 697 (D.D.C. 1992)

Mr. Clarridge was a senior officer at the CIA. He was indicted 18 U.S.C. §§ 1621 and 1001 for statements made to a Senate Committee, House Select Committees and the Tower Commission in relation to Iran-Contra. He challenged the indictment by arguing that the statements were literally true. The court refused to grant his motion, noting that the statements could have different interpretations and the government could prove that the statements were false at trial. The case was scheduled to begin in early 1993, but never went to trial because President Bush pardoned several former government officials, including Mr. Clarridge.

United States v. Weinberger, 1992 WL 294877 (D.D.C.)

Former Secretary of Defense Weinberger was indicted for obstruction under 18 U.S.C. § 1505 for failing to provide subpoenaed notes to a Senate Committee; twice under 18 U.S.C. § 1001 for making false statements to the OIC/FBI and the Senate Committee; and twice under 18 U.S.C. § 1621 for perjury before the Senate Committee.

Mr. Weinberger challenged his indictment and the district court dismissed the § 1505 charge. According to the court, the OIC did not have sufficient evidence to charge Weinberger under the new Poindexter reading of § 1505, ie. Weinberger did not corrupt someone else to obstruct the investigation.

Weinberger was scheduled to go to trial on the remaining counts in early 1993, but was pardoned by President Bush.

Watergate

The Watergate Special Prosecution Force (WSPF) prosecuted several Nixon administration officials:

Charles Colson was indicted under § 1503 and pleaded guilty several months later to this obstruction charge.

John Dean pleaded guilty to conspiracy to obstruct justice under 18 U.S.C. § 371.

John Ehrlichman was indicted for obstruction of justice under § 1503, two counts of false statements before a grand jury under § 1623 and two counts of making false statements to the FBI under 18 U.S.C. § 1001. The § 1001 counts against him were dismissed. He was convicted on all other counts and sentenced to prison. His conviction was upheld on appeal.

Harry Haldeman was indicted on one count of conspiracy to obstruct justice under § 371, one count of obstruction of justice under § 1523, and three counts of perjury under § 1623. He was found guilty on all counts and his conviction was upheld on appeal.

Jeb Magruder pleaded guilty to conspiracy to obstruct justice under § 371.

John Mitchell was indicted for obstruction of justice under § 1503, two counts of false statements before a grand jury under § 1623 and one count of making false statements to the FBI under 18 U.S.C. § 1001. The § 1001 count against him was dismissed. He was convicted on all other counts and sentenced to prison. His conviction was upheld on appeal.

Congressmen

Several Congressmen have been indicted for false statements under § 1001 relating to false reports filed with the House Finance Office. However those cases have been rendered moot by Hubbard. United States v. Rostenkowski, 1996 WL 342110 (D.D.C.).

United States v. Barry, 938 F.2d 1327 (D.C.Cir. 1991)

Mayor of Washington was indicted for conspiracy to possess cocaine and three counts of making false declarations before the grand jury under § 1623. He was found not guilty on all but one possession count.

CASES OUTSIDE OF WASHINGTON

United States v. Biaggi, 853 F.2d 89 (2nd Cir.)

Biaggi, a U.S. Congressman, was convicted for perjury and obstruction as well as bribery and racketeering for his dealings with defense contractors. His convictions were upheld on appeal.

United States v. Grubb, 11 F.3d 426 (4th Cir. 1993)

Grubb, a state judge, was convicted for perjury and obstruction as well as bribery and racketeering. His convictions were upheld on appeal.

United States v. LeMaster, 54 F.3d 1224 (6th Cir. 1994)

LeMaster, a state legislator, was convicted under § 1001 for making false statements to FBI investigators but found not guilty of extortion.

United States v. Bordallo, 857 F.2d 519 (9th Cir. 1988)

Governor of Guam was found guilty of bribery and extortion. He was also convicted for witness tampering under § 1512. His conviction for § 1512 was upheld on appeal.

United States v. Schmermerhorn, 906 F.2d 66 (2nd Cir. 1990)

Schmermerhorn, a state senator, was convicted for obstruction of justice under § 1523 as well as tax evasion and mail fraud. His conviction was upheld on appeal.