

Statutory Language

Section 2 of Title 18 of the United States Code provides, in part, as follows:

Section 2. ***Principals***

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

## GOVERNMENT PROPOSED JURY INST. NO.

Principal -- To Aid, Abet, Cause, etc.  
(Single Defendant)

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

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Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), Section 12.01

*Nye & Nissen v. United States*, 336 U.S. 613, 618-20 (1949)

*Cheek v. United States*, 498 U.S. 192, 196 (1991)

*United States v. Horton*, 847 F.2d 313, 321-22 (6th Cir. 1988)

*United States v. Martin*, 747 F.2d 1404, 1407 (11th Cir. 1984)

GOVERNMENT PROPOSED JURY INST. NO.

Principal -- To Aid, Abet, Cause, etc.  
(Multiple Defendants)

In a case where two or more persons are charged with the commission of a crime, the guilt of any defendant may be established without proof that he personally did every act constituting the offense charged.

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

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Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), Section 12.02

*Nye & Nissen v. United States*, 336 U.S. 613, 618-20 (1949)

*Cheek v. United States*, 498 U.S. 192, 196 (1991)

*United States v. Horton*, 847 F.2d 313, 321-22 (6th Cir. 1988)

*United States v. Martin*, 747 F.2d 1404, 1407 (11th Cir. 1984)

## GOVERNMENT PROPOSED JURY INST. NO.

"Aid and Abet" -- Explained

A person may violate the law even though he or she does not personally do each and every act constituting the offense if that person "aided and abetted" the commission of the offense.

Section 2(a) of Title 18 of the United States Code provides:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated [*himself*] [*herself*] in some way with the crime charged and participated in it with the intent to commit the crime.

In order to be found guilty of aiding and abetting the commission of the crime charged in [**Count** \_\_\_\_\_ **of**] the indictment, the government must prove beyond a reasonable doubt that the Defendant \_\_\_\_\_:

**One**, knew that the crime charged was to be committed or was being committed,

**Two**, knowingly did some act for the purpose of [**aiding**] [**commanding**] [**encouraging**] the commission of that crime, and

**Three**, acted with the intention of causing the crime charged to be committed.

Before Defendant \_\_\_\_\_ may be found guilty as an aider or an abettor to the crime, the government must also prove, beyond a reasonable doubt, that someone committed each of the essential elements of the offense charged as detailed for you [**in Instruction No.** \_\_\_\_\_].

Merely being present at the scene of the crime or merely

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knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find that the defendant aided and abetted the commission of that crime.

The government must prove that the Defendant knowingly [**and deliberately**] associated [**himself**] [**herself**] with the crime in some way as a participant-- someone who wanted the crime to be committed-- not as a mere spectator.

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Devitt, Blackmar, Wolff and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1992), Section 18.01

**United States v. Lindell**, 881 F.2d 1313, 1323 (5th Cir. 1989),  
*cert. denied*, 496 U.S. 926 (1990)

**United States v. Morrow**, 923 F.2d 427, 436 (6th Cir. 1991)

**United States v. Roan Eagle**, 867 F.2d 436, 445 n.15 (8th Cir.),  
*cert. denied*, 490 U.S. 1028 (1989)

**United States v. Lard**, 734 F.2d 1290, 1298 (8th Cir. 1984)

**United States v. Esparsen**, 930 F.2d 1461, 1470 (10th Cir. 1991),  
*cert. denied*, 112 S. Ct. 882 (1992)

**United States v. Payne**, 750 F.2d 844, 860 (11th Cir. 1985)

GOVERNMENT PROPOSED JURY INST. NO.

Aiding and Abetting

Any person who knowingly aids, abets, counsels, commands, induces or procures the commission of a crime is guilty of that crime. However, that person must knowingly associate himself [herself] with the criminal venture, participate in it, and try to make it succeed.

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***Federal Criminal Jury Instructions of the Seventh Circuit*** (1980 Ed.), Section 5.08 (modified)

***United States v. Roan Eagle***, 867 F.2d 436, 445 n.15 (8th Cir.), 490 U.S. 1028 (1989)

## GOVERNMENT PROPOSED JURY INST. NO.

Aiding and Abetting

A defendant may be found guilty of [**name principal offense**], even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

**First**, the [**principal offense**] was committed;

**Second**, the defendant knowingly and intentionally aided, counseled, commanded, induced or procured \_\_\_\_\_ to commit \_\_\_\_\_ and

**Third**, the defendant acted before the crime was completed.

It is not enough that the defendant merely associated with \_\_\_\_\_, or was present at the scene of the crime, or unknowingly or unintentionally did things that were helpful to the principal.

The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping \_\_\_\_\_ commit \_\_\_\_\_.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

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**Manual of Model Jury Instructions for the Ninth Circuit** (1992 Ed.), Section 5.01

**Nye & Nissen v. United States**, 336 U.S. 613, 619 (1949)

**United States v. Abreu**, 962 F.2d 1425, 1429 (1st Cir. 1992)

**United States v. Labat**, 905 F.2d 18, 23 (2d Cir. 1990)



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*United States v. Singh*, 922 F.2d 1169, 1173 (5th Cir.), cert. denied, 112 S. Ct. 260 (1991)

*United States v. Torres*, 809 F.2d 429, 433 (7th Cir. 1987)

*United States v. Lanier*, 838 F.2d 281, 284 (8th Cir. 1988)

*United States v. Perez*, 922 F.2d 782, 785 (11th Cir.), cert. denied, 111 S. Ct. 2840 (1991)

## GOVERNMENT PROPOSED JURY INST. NO.

Aiding And Abetting (Agency)

The guilt of a defendant in a criminal case may be established without proof that the defendant personally did every act constituting the offense alleged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished by that person through direction of another person as his or her agent, or by acting in concert with, or under the direction of, another person or persons in a joint effort or enterprise.

So, if another is acting under the direction of the defendant or if the defendant joins another person and performs acts with the intent to commit a crime, then the law holds the defendant responsible for the acts and conduct of such other persons just as though the defendant had committed the acts or engaged in such conduct.

Notice, however, that before any defendant may be held criminally responsible for the acts of others it is necessary that the accused deliberately associate himself in some way with the crime and participate in it with the intent to bring about the crime.

Of course, mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

In other words, you may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant voluntarily participated in its commission with the intent to violate the

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law.

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*Pattern Jury Instructions, Criminal Cases*, Fifth Circuit (1990 Ed.), Section 2.06

*United States v. Walker*, 621 F.2d 163 (5th Cir. 1980)

*United States v. Lindell*, 881 F.2d 1313, 1323 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990)

*United States v. Morrow*, 923 F.2d 427, 436 (6th Cir. 1991)

*United States v. Roan Eagle*, 867 F.2d 436, 445 n.15 (8th Cir.), cert. denied, 490 U.S. 1028 (1989)

*United States v. Lard*, 734 F.2d 1290, 1298 (8th Cir. 1984)

*United States v. Esparsen*, 930 F.2d 1461, 1470 (10th Cir. 1991), cert. denied, 112 S. Ct. 882 (1992)

*United States v. Perez*, 922 F.2d 782, 785 (11th Cir.), cert. denied, 111 S. Ct. 2840 (1991)

*United States v. Payne*, 750 F.2d 844, 860 (11th Cir. 1985)

## GOVERNMENT PROPOSED JURY INST. NO.

Aiding And Abetting (Agency)

The guilt of a defendant in a criminal case may be proved without evidence that he personally did every act involved in the commission of the crime charged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished through direction of another person as an agent, or by acting together with, or under the direction of, another person or persons in a joint effort.

So, if the acts or conduct of an agent, employee or other associate of the defendant are willfully directed or authorized by the defendant, or if the defendant aids and abets another person by willfully joining together with that person in the commission of a crime, then the law holds the defendant responsible for the conduct of that other person just as though the defendant had engaged in such conduct himself.

Notice, however, that before any defendant can be held criminally responsible for the conduct of others it is necessary that the defendant willfully associate himself in some way with the crime, and willfully participate in it. Mere presence at the scene of a crime and even knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime. You must find beyond a reasonable doubt that the defendant was a willful participant and not merely a knowing spectator.

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***Pattern Jury Instructions, Criminal Cases***, Eleventh Circuit (1985 Ed.), Special Instructions, Instruction No. 6, p. 42

***United States v. Lindell***, 881 F.2d 1313, 1323 (5th Cir. 1989),

*cert. denied*, 496 U.S. 926 (1990)

***United States v. Morrow***, 923 F.2d 427, 436 (6th Cir. 1991)

***United States v. Lard***, 734 F.2d 1290, 1298 (8th Cir. 1984)

***United States v. Esparsen***, 930 F.2d 1461, 1470 (10th Cir. 1991),  
*cert. denied*, 112 S. Ct. 882 (1992)

***United States v. Perez***, 922 F.2d 782, 785 (11th Cir.), *cert.*  
*denied*, 111 S. Ct. 2840 (1991)

***United States v. Payne***, 750 F.2d 844, 860 (11th Cir. 1985)

**COMMENT**

***United States v. Walker***, 621 F.2d 163 (5th Cir. 1980), approved  
this instruction.

GOVERNMENT PROPOSED JURY INST. NO.

Willfully to Cause Criminal Act -- Defined

In order to cause another person to commit a criminal act, it is necessary that the accused willfully do, or willfully fail to do, something which, in the ordinary performance of official duty, or in the ordinary course of the business or employment of such other person, or by reason of the ordinary course of nature or the ordinary habits of life, results in the other person's either doing something the law forbids, or failing to do something the law requires to be done.

An act or a failure to act is "willfully" done, if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

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Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), Section 12.04

*Cheek v. United States*, 498 U.S. 192, 196 (1991)

## GOVERNMENT PROPOSED JURY INST. NO.

"Mere Presence" -- Defined

Merely being present at the scene of a crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct to find that Defendant \_\_\_\_\_ committed that crime.

In order to find the defendant guilty of the crime, the government must prove, beyond a reasonable doubt, that in addition to being present or knowing about the crime, Defendant \_\_\_\_\_ knowingly [**and deliberately**] associated [**himself**] [**herself**] with the crime in some way as a participant -- someone who wanted the crime to be committed -- not as a mere spectator.

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Devitt, Blackmar, Wolff and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1992), Section 16.09

**United States v. Lindell**, 881 F.2d 1313, 1323 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990)

**United States v. Morrow**, 923 F.2d 427, 436 (6th Cir. 1991)

**United States v. Lard**, 734 F.2d 1290, 1298 (8th Cir. 1984)

**United States v. Esparsen**, 930 F.2d 1461, 1470 (10th Cir. 1991), cert. denied, 112 S. Ct. 882 (1992)

**United States v. Payne**, 750 F.2d 844, 860 (11th Cir. 1985)



GOVERNMENT PROPOSED JURY INST. NO.

Conspiracy to Defraud the Government  
With Respect to Claims (Elements)

To sustain the charge of conspiracy to defraud the government with respect to claims, the government must prove the following propositions:

**First**, the defendant entered into a conspiracy to [**obtain payment; allowance; aid in obtaining payment; aid in obtaining allowance**] 1 of a claim against [**the United States; a department or agency of the United States**]; 2

**Second**, the claim was false, fictitious, or fraudulent; and,

**Third**, the defendant knew at the time that the claim was false, fictitious, or fraudulent.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

**Federal Criminal Jury Instructions of the Seventh Circuit** (1986), Vol. III, p.23.

**NOTES**

- 1 Insert language to reflect the charges in the case.
- 2 Insert language to reflect the charges in the case.

**COMMENT**

- 1 Section 286 does not require the allegation or proof of an

overt act. See *United States v. Umentum*, 547 F.2d 987, 989-991 (7th Cir. 1976)(21 U.S.C. § 846); *United States v. Cortwright*, 528 F.2d 168, 172 n.1 (7th Cir. 1975) (21 U.S.C. § 846).

GOVERNMENT PROPOSED JURY INST. NO.

False Claim -- Offense Charged

The indictment sets forth \_\_\_\_\_ counts or charges.

Count \_\_\_\_\_ charges that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, the defendant, \_\_\_\_\_, a resident of \_\_\_\_\_, made and presented to the United States Treasury Department a claim against the United States for payment, which he [she] knew to be false, fictitious, or fraudulent, by [*e.g., preparing and causing to be prepared, and filing and causing to be filed, what purported to be a federal income tax return*], 1 which was presented to the United States Treasury Department, through the Internal Revenue Service, wherein he [she] claimed [*e.g., a refund of taxes*] 2 in the amount of \$\_\_\_\_\_, knowing such claim to be false, fictitious, or fraudulent.

Count II charges that \* \* \*.

All in violation of Title 18, United States Code, Section 287.

**NOTES**

1 The instruction should be drafted so as to reflect the charge and basis for venue as set forth in the indictment.

2 The instruction should be drafted so as to reflect the charge as set forth in the indictment.

**COMMENT**

1 When the false claim charged was filed electronically, the prosecutor should insure that the indictment and instructions do not charge either the signing or the filing of a federal income tax return unless the paper Form 8453 relating to each false

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IRS and can be introduced into evidence along with the electronic portion of the return. The Form 8453 is a necessary part of the "tax return," and without it the government cannot prove that a "tax return" was filed. For further information, see "Prosecuting Electronic Fraud" (distributed to all U.S. Attorneys on February 6, 1993, and available from the Tax Division).

GOVERNMENT PROPOSED JURY INST. NO.

Statutory Language -- Section 287

Section 287 of Title 18 of the United States Code provides, in part, as follows:

Section 287. False, fictitious or fraudulent claims.

Whoever makes or presents to any person . . . in the civil . . . service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be . . . [**guilty of an offense against the laws of the United States**].

GOVERNMENT PROPOSED JURY INST. NO.

18 U.S.C. 287 -- Purpose of the Statute

The objective of Congress in enacting section 287 was to assure the integrity of claims and vouchers submitted to the government, and thereby protect the funds and property of the government from fraudulent claims, regardless of the particular form of the claim or the particular function of the government department or agency against which the claim is made. Congress intended to prevent any deception that would impair, obstruct or defeat the lawful, authorized functions of government departments or agencies.

Sand, Siffert, Loughlin & Reiss, **Modern Federal Jury Instructions: Criminal** (1993 Ed.), Vol. 1, Instruction 18-2, p. 18-3

**Rainwater v. United States**, 356 U.S. 590 (1958)

**United States v. Maher**, 582 F.2d 842 (4th Cir. 1978), cert. denied, 439 U.S. 1115 (1979).

GOVERNMENT PROPOSED JURY INST. NO.

Elements of the Offense

In order to prove the crime of making a false claim, the government must establish beyond a reasonable doubt each of the following facts:

**First**, that on or about [*insert date*], the defendant knowingly made or presented a claim to [*insert (1) name of person or officer in the civil or military service of the United States or (2) name of department or agency of the United States*].

**Second**, that the claim which was presented was a claim against the United States or a department or agency of the United States.

**Third**, that the claim was false, fictitious, or fraudulent.

**Fourth**, that the defendant knew that the claim was false, fictitious, or fraudulent.

Sand, Siffert, Loughlin & Reiss, *Modern Federal Jury Instructions: Criminal* (1993 Ed.), Vol. 1, Instruction 18-3, p. 18-4 (modified)



GOVERNMENT PROPOSED JURY INST. NO.

First Element--Submission of Claim

The first element which the government must establish beyond a reasonable doubt is that the defendant knowingly made or presented a claim to [*insert (1) name of person or officer in the civil or military service of the United States or (2) name of department or agency of the United States*]. In this regard, I instruct you that [*insert name of person*] is a person (or officer) in the [*name of department or agency*].

Sand, Siffert, Loughlin & Reiss, *Modern Federal Jury Instructions: Criminal* (1993 Ed.), Vol. 1, Instruction 18-4, p. 18-6 (modified)

GOVERNMENT PROPOSED JURY INST. NO.

Second Element -- Claim Against the United States

The second element the government must prove beyond a reasonable doubt is that the claim was made or presented upon or against the United States or a department or agency of the United States.

If you find that the claim received by an agency or department of the United States was one which the agency or department was expected to pay, then this element of the offense is satisfied.

Sand, Siffert, Loughlin & Reiss, *Modern Federal Jury Instructions: Criminal* (1993 Ed.), Vol. 1, Instruction 18-6, p. 18-11 (modified)

GOVERNMENT PROPOSED JURY INST. NO.

Third Element -- Claim was False, Fictitious or Fraudulent

The third element you must find beyond a reasonable doubt is that the claim was false, fictitious, or fraudulent.

A claim is false if it was untrue when made and was then known to be untrue by the person making it or causing it to be made.

A claim is fictitious if it is not real or if it does not correspond to what actually happened.

A claim is fraudulent if it was falsely made or caused to be made with the specific intent to deceive.

The question you must focus on is whether the claim in question contained any entry which you find from the evidence was false, fictitious, or fraudulent. You need not find that all of the entries on the claim were false, fictitious, or fraudulent, so long as you find that there was one entry which was false, fictitious, or fraudulent.

Sand, Siffert, Loughlin & Reiss, *Modern Federal Jury Instructions: Criminal* (1993 Ed.), Vol. 1, Instruction 18-8, p. 18-8 (modified)

GOVERNMENT PROPOSED JURY INST. NO.

Fourth Element -- Knowledge that Claim Was False

The fourth element the government must prove beyond a reasonable doubt is that the defendant had knowledge that the claim was false or fictitious or fraudulent.

An act is not done unlawfully or with knowledge of its false or fictitious or fraudulent character if it is done by mistake, carelessness, or other innocent reason.

It is not necessary, however, that the government prove that the defendant had exact knowledge of the relevant criminal provisions governing his conduct. You need only find that the defendant acted with knowledge that the claim was false or fictitious or fraudulent. **1**

Sand, Siffert, Loughlin & Reiss, *Modern Federal Jury Instructions: Criminal* (1993 Ed.), Vol. 1, Instruction 18-9, p. 18-16 (modified)

**NOTE**

**1 CAUTION:** The courts have debated whether the government must prove that the defendant acted "willfully" (i.e., that the defendant knew he was violating the law) or that there was an intent to cause the government a loss. You should check the law of your circuit.

GOVERNMENT PROPOSED JURY INST. NO.

False Claims Against the Government

Title 18, United States Code, Section 287, makes it a crime knowingly to make a false claim against any department or agency of the United States. You are instructed that the [**insert name of agency**] is a department or agency of the United States within the meaning of that law.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt;

**First:** That the defendant knowingly presented to an agency of the United States a false or fraudulent claim against the United States; and

**Second:** That the defendant knew that the claim was false or fraudulent.

A claim is "false" or "fraudulent" if it is untrue at the time it is made and is then known to be untrue by the person making it. It is not necessary to show, however, that the government agency was in fact deceived or misled.

To make a claim, the defendant need not directly submit the claim to an employee or agency of the United States. It is sufficient if the defendant submits the claim to a third party knowing that the third party will submit the claim or seek reimbursement from the United States (or a department or agency thereof).

If you find that the government has proved these things, you do not need to consider whether the false claim was material, although that term is used in the indictment. This is not a question for the jury to decide.

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Ed.), Section 2.20, p.89

GOVERNMENT PROPOSED JURY INST. NO.

False, Fictitious, Or Fraudulent Claims (Elements)

To sustain the charge of making a false claim, the government must prove the following propositions:

**First**, that the defendant (made or presented) a claim upon or against (the United States or a department or agency of the United States);

**Second**, that the claim was (false, fictitious, or fraudulent);

**Third**, that the defendant knew the claim was (false, fictitious, or fraudulent); and

**Fourth**, that the defendant submitted the claim with intent to defraud. <sup>1</sup>

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

**Federal Criminal Jury Instructions of the Seventh Circuit** (1983 Ed.), Vol. II, p. 40.

**NOTE**

<sup>1</sup> The Fourth and the Ninth Circuits have held that it is not necessary to prove an intent to defraud when the charge is that the defendant filed a *false* claim for a refund. **United States v. Blecker**, 657 F.2d 629 (4th Cir. 1981), *cert. denied*, 454 U.S. 1150 (1982); **United States v. Milton**, 602 F.2d 231, 233 (9th Cir. 1979). See also Section 22.06(1), *supra*.

GOVERNMENT PROPOSED JURY INST. NO.

False, Fictitious, Or Fraudulent Claims  
(Claims Submitted to Third Parties)

To make a claim, the defendant need not directly submit the claim to an employee or agency of the United States. It is sufficient if the defendant submits the claim to a third party knowing that the third party will submit the claim or seek reimbursement from the United States (or a department or agency thereof).

***Federal Criminal Jury Instructions of the Seventh Circuit*** (1983 Ed.), Vol. II, p. 42.



## GOVERNMENT PROPOSED JURY INST. NO.

Making a False Claim Against the United States

The crime of making a (false, fictitious, or fraudulent) claim against the United States, as charged in Count [*insert number of count*] of the indictment, has three essential elements, which are:

**One**, the defendant (made or presented) to [*insert name of U.S. officer or agency*] a claim against (the United States or name of department or agency of the United States);

**Two**, the claim was (false, fictitious, or fraudulent) in that [*describe how the claim was false, etc.*]; and

**Three**, the defendant knew the claim was (false, fictitious, or fraudulent).

[*Insert name of agency*] is an agency of the United States and [*describe the claim charged in the indictment*] is a claim against the United States.

(A claim is "false" or "fictitious" if any part of it is untrue when made, and then known to be untrue by the person making it or causing it to be made.) (A claim is "fraudulent" if any part of it is known to be untrue, and made or caused to be made with the intent to deceive the Government agency to which submitted.)

(The materiality of the matters set forth in Element Two is not a matter with which you are concerned and should not be considered by you in determining the guilt or innocence of the defendant.)

***Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit***, (1992 Ed.), p. 166 (modified).

GOVERNMENT PROPOSED JURY INST. NO.

Definition of Knowingly

When the word "knowingly" is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident. [**Knowledge may be proved by the defendant's conduct, and by all the facts and circumstances surrounding the case.**]

**Federal Criminal Jury Instructions of the Seventh Circuit** (1980 Ed.), Vol. I, Sec. 6.03, p. 86 (modified).

GOVERNMENT PROPOSED JURY INST. NO.

False Claims Against the Government

Title 18, United States Code, Section 287, makes it a Federal crime or offense for anyone to knowingly make a false claim against any department or agency of the United States.

You are instructed that the [*insert name of department or agency, e.g., Internal Revenue Service*] is a department or agency of the United States within the meaning of that law.

The defendant can be found guilty of the offense of making a false claim against the government only if all of the following facts are proved beyond a reasonable doubt:

**First:** That the defendant knowingly presented to an agency of the United States a false and fraudulent claim against the United States, as charged in the indictment; and

**Second:** That the defendant acted willfully and with knowledge of the false and fraudulent nature of his claim

A claim is "false" or "fraudulent" if it is untrue at the time it is made and is then known to be untrue by the person making it. It is not necessary to show, however, that the government agency was in fact deceived or misled.

**Pattern Jury Instructions, Criminal Cases**, Eleventh Circuit (1985 Ed.), Offense Instructions, Instruction No. 3, p. 68 (modified)

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