



18 U.S.C.A. § 287



Effective: [See Text Amendments]

United States Code Annotated Currentness
 Title 18. Crimes and Criminal Procedure (Refs & Annos)
 Part I. Crimes (Refs & Annos)
 Chapter 15. Claims and Services in Matters Affecting Government

→§ 287. False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval 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 imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 698; Oct. 27, 1986, Pub.L. 99-562, § 7, 100 Stat. 3169.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on Title 18, U.S.C., 1940 ed., § 80 (Mar. 4, 1909, c. 321, § 35, 35 Stat. 1095; Oct. 23, 1918, c. 194, 40 Stat. 1015; June 18, 1934, c. 587, 48 Stat. 996; Apr. 4, 1938, c. 69, 52 Stat. 197).

Section 80 of Title 18, U.S.C., 1940 ed., was divided into two parts. That portion making it a crime to present false claims was retained as this section. The part relating to false statements is now § 1001 of this title.

To clarify meaning of "department" words "agency" and "or agency" were inserted after it. (See definitions of "department" and "agency" in § 6 of this title.)

Words "or any corporation in which the United States of America is a stockholder" which appeared in two places were omitted as unnecessary in view of definition of "agency" in § 6 of this title.

The words "five years" were substituted for "ten years" to harmonize the punishment provisions of comparable sections involving offenses of the gravity of felonies, but not of such heinous character as to warrant a 10-year punishment. (See §§ 914, 1001, 1002, 1005, 1006 of this title.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in § 2 of this title.

Minor changes in phraseology were made. 80th Congress House Report No. 304.

1986 Acts. Senate Report No. 99-345, see 1986 U.S. Code Cong. and Adm. News, p. 5266.

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Amendments

1986 Amendments. Pub.L. 99-562 substituted "imprisoned not more than five years and shall be subject to a fine in the amount provided in this title" for "fined not more than \$10,000 or imprisoned not more than five years, or both".

Increased Penalties for False Claims in Defense Procurement

Pub.L. 99-145, Title IX, § 931, Nov. 8, 1985, 99 Stat. 699, provided that:

"(a) Criminal Fines.--Notwithstanding sections 287 and 3623 of title 18, United States Code [this section and section 3623 of this title], the maximum fine that may be imposed under such section for making or presenting any claim upon or against the United States related to a contract with the Department of Defense, knowing such claim to be false, fictitious, or fraudulent, is \$1,000,000.

"(b) Civil Penalties.--[See Civil Penalties note under section 3729 of Title 31, Money and Finance.]

"(c) Effective Date.--Subsections (a) [set out above] and (b) [set out under section 3729 of Title 31] shall be applicable to claims made or presented on or after the date of the enactment of this Act [Nov. 8, 1985]."

Canal Zone

Applicability of section to Canal Zone, see § 14 of this title.

CROSS REFERENCES

Civilian agency acquisition and penalties for submission of cost known is not allowable, see 41 USCA § 256.

False statements or entries, generally, see 18 USCA § 1001.

"Federal health care offense" defined as in this section for purposes of preventing health care fraud and abuse, see 18 USCA § 24.

Liability of persons making false claims; suits and procedure; duty of district attorneys; limitation of suits, see 31 USCA §§ 3729 to 3731.

FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines § 2F1.1, 18 USCA.

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3 ALR, Fed. 2nd Series 179, When Has Federal Prosecutor Breached Plea Agreement--Promises Related to Downward Adjustment of Sentence in Fraud and Threat Cases.

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164 ALR, Fed. 61, Downward Departure from United States Sentencing Guidelines (U.S.S.G. §§ 1a1.1 et Seq) Based on Aberrant Behavior.

150 ALR, Fed. 159, Debts Arising from Penalties as Exceptions to Bankruptcy Discharge Under § 523(A)(7) and 1328(A) of Bankruptcy Code of 1978 (11 U.S.C.A. §§ 523(A)(7) and 1328(a)).

132 ALR, Fed. 525, Test of "Dual Criminality" Where Extradition to or from Foreign Nation is Sought.

121 ALR, Fed. 323, Increase in Base Offense Level Under Sentencing Guidelines § 3B1.3 (U.S.S.G. § 3B1.3) for Abuse of Position of Public or Private Trust Significantly Facilitating Commission or Concealment Of...

122 ALR, Fed. 281, Propriety of Increase of Offense Level Under Sentencing Guideline § 3B1.3 for Use of "Special Skill" in Commission or Concealment of Offense.

68 ALR, Fed. 628, Statute of Limitations in Prosecution Under 18 U.S.C.A. § 371 for Conspiracy to Commit Offense Against or to Defraud United States.

59 ALR, Fed. 886, When is Claim "Upon or Against the United States" So as to Sustain Civil Liability Under False Claims Act (31 U.S.C.A. § 231).

52 ALR, Fed. 769, Criminal Responsibility Under 18 U.S.C.A. § 2(B) of One Who Lacks CAPacity to Commit an Offense But Who Causes Another to Do So.

53 ALR, Fed. 679, Sufficiency of Description of Business Records Under Fourth Amendment Requirement of Particularity in Federal Warrant Authorizing Search and Seizure.

43 ALR, Fed. 484, Judicial Review of Administrative Determination Involving Medicare as Precluded by 42 U.S.C.A. § 405(H).

26 ALR, Fed. 307, Specific Intent to Defraud Government as Necessary to Impose Liability Under Provisions of False Claims Act (31 U.S.C.A. § 231) Pertaining to "False" or "Fictitious" Claims or Statements.

27 ALR, Fed. 407, Construction and Application of Provision of Rule 9(B), Federal Rules of Civil Procedure, that Circumstances Constituting Fraud or Mistake be Stated With Particularity.

7 ALR, Fed. 377, Propriety and Prejudicial Effect of Federal Judge's Expressing to Jury His Opinion as to Defendant's Guilt in Criminal Case.

15 ALR 5th 391, Measure and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute.

70 ALR 4th 132, Filing of False Insurance Claims for Medical Services as Ground for Disciplinary Action Against Dentist, Physician, or Other Medical Practitioner.

98 ALR 3rd 357, Attorney's Conviction in Foreign or Federal Jurisdiction as Ground for Disciplinary Action.

63 ALR 3rd 512, Federal Income Tax Conviction as Constituting Nonprofessional Misconduct Warranting Disciplinary Action Against Attorney.

44 ALR 2nd 1027, Admissibility of Advertisements, Brochures, Catalogs, and the Like as Containing Admissions by a Litigant Contrary to a Position Taken by Him.

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175 ALR 784, Governing Law as to Existence or Character of Offense for Which One Has Been Convicted in a Federal Court, or Court of Another State, as Bearing Upon Disqualification to Vote, Hold Office, Practice Profession, Sit On...

169 ALR 315, Comment Note.--Duty in Instructing Jury in Criminal Prosecution to Explain and Define Offense Charged.

154 ALR 279, Admissibility of Corporate Books and Records Against Officers or Stockholders in Criminal Prosecutions Against Them.

158 ALR 1462, Civil and Criminal Liability of Soldiers, Sailors, and Militiamen.

158 ALR 1489, Judicial Decisions Involving Rationing.

152 ALR 1193, Comment Note.--Ultimate Fact, as Distinguished from Evidentiary Fact, as Regards Effect of Judgment as Estoppel.

131 ALR 917, Right to Severance Where Two or More Persons Are Jointly Accused.

133 ALR 1055, Reliance Upon Advice of Counsel as Affecting Criminal Responsibility.

135 ALR 507, Deduction or Collection of Labor Union Dues from Wages of Employees.

127 ALR 1385, Statements, Comments, or Conduct of Court or Counsel Regarding Perjury, as Ground for New Trial or Reversal in Civil Action or Criminal Prosecution Other Than for Perjury.

118 ALR 646, Failure to Procure Occupational or Business License or Permit as Affecting Validity or Enforceability of Contract.

119 ALR 725, Quo Warranto to Oust Incumbent of Public Office, Based on Misconduct or Other Ground of Forfeiture.

120 ALR 8, Pleading Waiver, Estoppel, and Res Judicata.

123 ALR 1453, Pendency of Criminal Prosecution as Ground for Continuance or Postponement of Civil Action Involving Facts or Transactions Upon Which Prosecution is Predicated.

113 ALR 1179, What Amounts to Conviction or Satisfies Requirement as to Showing of Conviction, Within Statute Making Conviction a Ground for Refusing to Grant or for Canceling License or Special Privilege.

97 ALR 137, When Does Statue of Limitations Begin to Run Against Civil Action or Criminal Prosecution for Conspiracy.

97 ALR 374, Extrajudicial Admissions of Fact by Attorney as Binding Client.

98 ALR 1109, Testimony of Expert Predicated in Whole or in Part Upon Opinions, Inferences, or Conclusions of Others.

89 ALR 1004, Validity, Construction, and Application of Statutes or Ordinances Directed Against False or Fraudulent Statements in Advertisements.

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92 ALR 1137, Right of Prosecution to Review of Decision Quashing or Dismissing Indictment or Information, or Sustaining Demurrer Thereto.

70 ALR 1511, When Sentences Imposed by Same Court Run Concurrently or Consecutively; and Definiteness of Direction With Respect Thereto.

64 ALR 900, Rights and Remedies of Tenant Who Remains in Possession of All or Part of the Premises Against Landlord for Interfering With His Possession or Enjoyment.

59 ALR 1555, Evidence: Privilege of Communications Made to Public Officer.

51 ALR 568, Genuine Making of Instrument for Purpose of Defrauding as Constituting Forgery.

21 ALR 180, False Pretense: Presentation of and Attempt to Establish Fraudulent Claim Against Governmental Agency.

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1. Constitutionality

Former § 80 of this title [now this section and § 1001 of this title] which made it a crime to make or present, for payment, a fraudulent claim against "any corporation in which the United States of America is a stockholder," was to be construed to refer only to corporations, like the Fleet Corporation, that were instrumentalities of the Government and in which, for that reason, it owned stock, and as so construed, was constitutional. U.S. v. Walter, U.S.Fla.1923, 44 S.Ct. 10, 263 U.S. 15, 68 L.Ed. 137. Conspiracy ↩ 33(3)

Contrary to contention of defendant that, as applied in his case, this section proscribing the filing of a false claim against the United States and section 1001 of this title proscribing the making of false statement to a federal department or agency were unconstitutional because local committee was given uncontrolled discretion to determine if land could be used in last six months of soil bank contract, record established that no such uncontrolled discretion existed in instant case. Johnson v. U. S., C.A.8 (Mo.) 1969, 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Constitutional Law ↩ 62(6); United States ↩ 94

This section and § 1001 of this title prohibiting making of false claim and false statement to agency of United States were not unconstitutionally vague as applied to defendant charged with making false certification of compliance with requirements of conservation reserve program. U. S. v. Johnson, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Criminal Law ↩ 13.1(2.5)

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Provision of former § 80 of this title [now this section and § 1001 of this title] which made it an offense to knowingly and willfully present false claims against the United States, insofar as it related to income tax evasion, was not unconstitutional because it imposed a more onerous penalty than former §§ 145 [now §§ 7201 to 7203 and 7343] and 3616 [now §§ 7207 and 7210] of Title 26 which defined offenses of income tax evasion. *Ex parte Berkoff*, D.C.Minn.1946, 65 F.Supp. 976, affirmed 159 F.2d 5. Constitutional Law ↩ 258(3.1); United States ↩ 94

2. Power of Congress

Congress may enact legislation for protection of moneys in the United States Treasury from fraudulent claims. *U.S. v. Brogren*, D.C.Mass.1945, 63 F.Supp. 702. United States ↩ 121

3. Construction

Force and effect of former § 80 of this title [now this section and § 1001 of this title] could not be frittered away by mere literal construction. *Spivey v. U.S.*, C.C.A.5 (Ala.) 1940, 109 F.2d 181, certiorari denied 60 S.Ct. 1079, 310 U.S. 631, 84 L.Ed. 1401.

4. Other laws

To nullify former §§ 80 [now this section and § 1001], 82 [now §§ 641 and 1361], 83 [now § 286], 84 [now § 1022], 85 [now § 1023] and 86 [now § 1024] of this title which governed fraudulent claims against United States by strict interpretation, because of dislike of independent § 232 of Title 31 governing action against one presenting fraudulent claim, would be to exercise a "veto power" which Supreme Court did not possess. *U. S. ex rel. Marcus v. Hess*, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Constitutional Law ↩ 70.1(10)

In interpreting so much of former §§ 80 [now this section and § 1001], 82 [now §§ 641 and 1361], 83 [now § 286], 84 [now § 1022], 85 [now § 1023] and 86 [now § 1024] of this title which prohibited fraudulent claims against United States as said sections share with § 232 of Title 31 on the same subject, court must give it careful scrutiny lest those be brought within their reach who are not clearly included, but after such scrutiny must give them the fair meaning of their intentment. *U. S. ex rel. Marcus v. Hess*, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States ↩ 121

Section 232 of Title 31 authorizing informer's action against one presenting fraudulent claim against United States need not be interpreted with utmost strictness, especially where to do so would detract from meaning of former §§ 80 [now this section and § 1001] and 83 [now § 286] of this title which governed fraudulent claims. *U. S. ex rel. Marcus v. Hess*, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States ↩ 122

Former § 80 of this title [now this section and § 1001 of this title] when construed with other sections of former chapter 4 of this title was not limited to the land jurisdiction of the United States but extended to such frauds when committed on vessels of the United States on the high seas, or in foreign ports, at least when committed by American citizens. *U.S. v. Bowman*, U.S.N.Y.1922, 43 S.Ct. 39, 260 U.S. 94, 67 L.Ed. 149. See, also, *St. Clair v. U.S.*, Cal.1894, 14 S.Ct. 1002, 154 U.S. 134, 38 L.Ed. 936; *U.S. v. Rodgers*, Mich.1893, 14 S.Ct. 109, 150 U.S. 247, 37 L.Ed. 1071; *In re Moncan*, C.C.Or.1882, 14 F. 44. United States ↩ 121

Terminated employee's state court complaint, asserting cause of action under Ohio law for retaliatory employment discharge in violation of public policy, and identifying, as sources of public policy, federal statute punishing act of knowingly presenting false claims to United States, and federal statute creating civil penalties against persons who present false claims to government, did not raise substantial federal question over which federal courts could

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exercise original or removal jurisdiction, where Congress provided no private right of action under such statutes, statutes' meaning was not in serious dispute, it could not be disputed that submitting false claims to government violated national policy, and division of labor between federal and state courts would be upset by converting state public policy claim into federal action. *Eastman v. Marine Mechanical Corp.*, C.A.6 (Ohio) 2006, 438 F.3d 544, petition for certiorari filed 2006 WL 1522073. Removal Of Cases ↩ 19(5)

Although, like mail fraud, false claim conviction must be based on proof that accused undertook fraudulent scheme, it differs from mail fraud in that claim must have actually been presented to government, and use of mails is not necessary component. *U.S. v. Coachman*, C.A.D.C.1984, 727 F.2d 1293, 234 U.S.App.D.C. 194. Fraud ↩ 68.10(1)

Fact that Congress enacted specific statute governing false statements in connection with applications for social security payments or for disability determinations did not preclude conviction of defendant for filing applications for supplemental security income under false and fraudulent names and social security numbers in violation of this section. *U.S. v. Ruster*, C.A.9 (Cal.) 1983, 712 F.2d 409. Fraud ↩ 68.10(1)

Fact that remedies were provided by section 1831 of Title 7 for breach of soil bank contract in question did not negate right of the government, if elements of crime were established to indict and convict under this section proscribing the filing of a false, fictitious or fraudulent claim against the United States. *Johnson v. U. S.*, C.A.8 (Mo.) 1969, 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. United States ↩ 123

Penalties provided under Servicemen's Readjustment Act, former § 693 et seq. of Title 38, for making or conspiring to make false statements concerning claims arising under it are not exclusive but are to be imposed in addition to any and all other penalties imposed by law and therefore prosecution of real estate agent for causing false certificate to be made for purpose of inducing Veterans' Administration to guarantee home loan to Veteran under Servicemen's Readjustment Act of 1944 could properly be charged under either the Servicemen's Readjustment Act, former § 693 et seq. of Title 38, or under this section. *U. S. v. Aderman*, C.A.7 (Wis.) 1951, 191 F.2d 980, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691, rehearing denied 72 S.Ct. 552, 342 U.S. 950, 96 L.Ed. 706. United States ↩ 123

Even where government withholds payment upon discovery of fraud and thereby precludes incursion of actual damages, flat monetary penalty prescribed by civil statutes for violation of former section 5438 of this title may be recovered. *U. S. v. Winchester*, D.C.Del.1975, 407 F.Supp. 261. United States ↩ 122

Informer statute, § 231 of Title 31, which incorporated former § 80 of this title [now this section and § 1001 of this title] regarding presentment of false claims against United States incorporated such former section as it stood when the informer statute was adopted and not later amendment to such former section. *U.S. ex rel. Kessler v. Mercur Corporation*, S.D.N.Y.1935, 13 F.Supp. 742, affirmed 83 F.2d 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424. Statutes ↩ 51

5. Purpose

Purpose of this section and § 1001 of this title prohibiting making of false claim or false statement to agency of United States is to protect government against those who would cheat or mislead it in administration of its programs. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Fraud ↩ 68.10(3); United States ↩ 121

Former § 80 of this title [now this section and § 1001 of this title] had for its purpose the protection of federal government from fraudulent, fictitious or false claims. *U.S. v. MacEvoy*, D.C.N.J.1944, 58 F.Supp. 83.

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The object of a predecessor statute was to prohibit and punish the drawing of money from the treasury of the United States without having rendered legal and recognized equivalents. *U.S. v. Bittinger*, W.D.Mo.1875, 24 F.Cas. 1150, No. 14599.

6. Law governing

In prosecution of real estate agent and others under this section and §§ 1001 and 371 of this title, for conspiracy to cause false certificate to be used by lender and for causing such certificates to be used by lender for purpose of inducing Veterans' Administration to guarantee home loan to veteran, defendant was not entitled to rely on state law in determining whether fixtures were personal property and veterans' participation in evasion of Servicemen's Readjustment Act of 1944, § 693 et seq. of Title 38, established for his own benefit, did not exonerate the defendant. *U. S. v. Aderman*, C.A.7 (Wis.) 1951, 191 F.2d 980, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691, rehearing denied 72 S.Ct. 552, 342 U.S. 950, 96 L.Ed. 706. Fraud ⚡ 69(1); Federal Courts ⚡ 404

7. Repeals

R.S. § 5438 [now this section and § 1001 of this title] was not repealed by R.S. § 4746, which was incorporated in part in former § 126 of Title 38 [now § 289 of this title]. *Edgington v. U. S.*, U.S.Iowa 1896, 17 S.Ct. 72, 164 U.S. 361, 41 L.Ed. 467.

Former § 80 of this title [now this section and § 1001 of this title] was not, with respect to income tax frauds, impliedly repealed by former § 2616 of Title 26 [now § 7206 of Title 26]. *Capone v. U.S.*, C.C.A.7 (Ill.) 1931, 51 F.2d 609, certiorari denied 52 S.Ct. 44, 284 U.S. 669, 76 L.Ed. 566.

Act Oct. 23, 1918, which amended former § 80 of this title [now this section and § 1001 of this title], while relating to the same subject-matter as former article 94 of the Articles of War [now article 132 of the Uniform Code of Military Justice, § 932 of Title 10], and applying to both civilians and persons in the military or naval service, did not amend or repeal such article, nor deprive courts-martial of jurisdiction in respect to persons in the military and naval service. *U.S. v. Barry*, S.D.N.Y.1919, 260 F. 291. Armed Services ⚡ 44(2)

Provision of former § 80 of this title [now this section and § 1001 of this title] which made it an offense to knowingly and willfully present false claims against the United States, insofar as it related to income tax evasion, would not be construed as impliedly repealed by former §§ 145 [now §§ 7201 to 7203 and 7343] and 3616 [now §§ 7207 and 7210] of Title 26 which defined offenses of income tax evasion. *Ex parte Berkoff*, D.C.Minn.1946, 65 F.Supp. 976, affirmed 159 F.2d 5. Internal Revenue ⚡ 5251

8. Definitions

The term "false" used means unfounded or unjust; by "fictitious" is meant not real; by "fraudulent," wrong or deceitful; these terms have no special legal signification in their use, but are to be taken in their ordinary and well-understood sense. *U.S. v. Bittinger*, W.D.Mo.1875, 24 F.Cas. 1150, No. 14599.

9. Crimes involving moral turpitude

Violation of this section prohibiting making false statements to federal agency is not necessarily a crime involving moral turpitude, for purpose of deporting alien. *Hirsch v. Immigration and Naturalization Service*, C.A.9 1962, 308 F.2d 562. Aliens ⚡ 53.2(2)

10. Classification of offenses

The offenses described in R.S. § 5438 [now this section and § 1001 of this title] were not felonies. *U. S. v.*

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Daubner, E.D.Wis.1883, 17 F. 793. Jury ☞ 136(5)

The offense created by former § 80 of this title [now this section and § 1001 of this title] might in one view be regarded as a felony, and in another view as a misdemeanor. U.S. v. Goggin, C.C.E.D.Wis.1880, 1 F. 49, 9 Biss. 269.

11. Separate and distinct offenses

Where defendant was tried on both the substantive count of presenting false claims against United States and in aiding and obtaining payment thereof and for conspiring to commit an offense against the United States acquittal on the conspiracy count did not invalidate convictions on the substantive counts, since the offenses were separate and distinct and evidence showed that defendant was not merely aiding and abetting a principal but was in fact the principal. Robinson v. U.S., C.A.9 (Cal.) 1949, 175 F.2d 4, certiorari denied 70 S.Ct. 75, 338 U.S. 832, 94 L.Ed. 506, rehearing denied 70 S.Ct. 156, 338 U.S. 881, 94 L.Ed. 541, certiorari denied 70 S.Ct. 76, 338 U.S. 832, 94 L.Ed. 506. Criminal Law ☞ 878(3)

In pension claims, where the pension certificate was genuine, but had been fraudulently obtained, each presentation of the certificate constituted a distinct offense within the meaning of former § 80 of this title [now this section and § 1001 of this title]. U.S. v. Coggin, C.C.E.D.Wis.1880, 3 F. 492, 9 Biss. 416. Pensions ☞ 13

Former § 80 of this title [now this section and § 1001 of this title] distinguished between the making and the presenting of a fraudulent account or bill, and made each a distinct offense. Ex parte Shaffenburg, C.C.Colo.1877, 21 F.Cas. 1144, No. 12696.

12. Making or presenting claim

In prosecution of physician who allegedly fraudulently submitted false medicare claims to private insurance carriers for payment under contract with the United States, there was no prejudice to defendant in affirming on theory that he "caused" the carriers to submit the claims to the United States though the trial court and the Government relied on theory that the carriers were agencies of the United States, where defendant had full opportunity to explore the relationship between the carriers and the Government and where it would have been futile for defendant to contend that he did not know that the claim forms sent to the carriers would ultimately be paid out of the federal treasury. U. S. v. Catena, C.A.3 (Pa.) 1974, 500 F.2d 1319, certiorari denied 95 S.Ct. 621, 419 U.S. 1047, 42 L.Ed.2d 641. Criminal Law ☞ 1134(6)

By making a claim, as defined in former § 80 of this title [now this section and § 1001 of this title], was meant the asking or demanding on part of the defendant from the government of payment for services. U.S. v. Bittinger, W.D.Mo.1875, 24 F.Cas. 1150, No. 14599.

13. Person or officer to whom claim presented

It was immaterial, on the prosecution of a deputy marshal for presenting a fraudulent claim to the marshal, that the marshal was not expressly authorized by law to approve a deputy's account, for the fact that he was required to incorporate the deputy's account into his own, and to swear that the items therein charged were correct and legal, was sufficient to show that he had to pass upon it within the meaning of R.S. 5438 [now this section and § 1001 of this title]. U.S. v. Strobach, C.C.M.D.Ala.1883, 48 F. 902.

Presentation of a marshal's account to a United States judge in open court, for approval as required by statute, was a presentation to an officer in the civil service of the United States within the meaning of R.S. § 5438 [now this section and § 1001 of this title], as the act of approval or disapproval required of the court was not a judicial but only a quasi-judicial act, Act of Feb. 22, 1875 making it subject to the revision of the accounting officers of the

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treasury. U.S. v. Strobach, C.C.M.D.Ala.1883, 48 F. 902.

The presentation of a false claim for payment or approval to any person of any department of the United States was within purview of former § 80 of this title [now this section and § 1001 of this title] which made it an offense to present false claims against the government, without showing particular person or officer of department to whom claim was presented. U.S. v. MacEvoy, D.C.N.J.1944, 58 F.Supp. 83. United States  121

The Court of Claims was not a "person or officer in the civil, military, or naval service" within the meaning of former § 80 of this title [now this section and § 1001 of this title]. U.S. ex rel. McManus v. Moore, D.C.Sup.1877, 10 D.C. 226.

14. Department or agency to which claim presented

Fact that allegedly false claim forms for reimbursement under medicaid or medicare programs for laboratory services were submitted to insurance companies which had contracted to administer the program rather than to the Government directly did not bar prosecution and conviction under this section making it an offense to file a false claim with the United States or any department or agency thereof. U. S. v. Precision Medical Laboratories, Inc., C.A.2 (N.Y.) 1978, 593 F.2d 434. United States  121

Physician who was charged with fraudulently submitting false medicare claims to private insurance carriers for payment under contracts with the United States could be convicted of fraudulent presentation of claims "to any person or officer in the civil * * * service of the United States, or to any department or agency thereof * * *" though it was doubtful that the carriers could be considered "agencies" of the United States for purposes of the criminal prohibition of this section, since it could properly be found that defendant "caused" the private carriers to submit the false claims to federal agencies. U. S. v. Catena, C.A.3 (Pa.) 1974, 500 F.2d 1319, certiorari denied 95 S.Ct. 621, 419 U.S. 1047, 42 L.Ed.2d 641. United States  121

The presenting of a false and fraudulent claim for approval of and payment by the United States Maritime Commission was a crime under former § 80 of this title [now this section and § 1001 of this title]. U.S. v. Michener, C.C.A.3 (N.J.) 1945, 152 F.2d 880.

The United States Maritime Commission was a "department" of the United States within former § 80 of this title [now this section and § 1001 of this title]. U.S. v. Michener, C.C.A.3 (N.J.) 1945, 152 F.2d 880. United States  121

Evidence supported finding that false certification by participant in conservation reserve program of compliance with requirements of program and of correctness of amount shown due on application was matter within jurisdiction of department or agency of United States as provided in this section and § 1001 of this title prohibiting making of false statement or representation to department or agency of United States. U. S. v. Johnson, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72 . Fraud  69(5)

Where alleged false claims for rental of equipment were against Federal Works Agency, and not against Treasury Department, presentation of alleged false claims to Treasury Department for payment did not constitute a presentation to a "department" of United States within former § 80 of this title [now this section and § 1001 of this title]. U.S. v. MacEvoy, D.C.N.J.1944, 58 F.Supp. 83. United States  121

The Federal Works Agency was a "department" of the United States within former § 80 of this title [now this section and § 1001 of this title] which made presentation of false claim to department of United States an offense. U.S. v. MacEvoy, D.C.N.J.1944, 58 F.Supp. 83. United States  121

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Former § 80 of this title [now this section and § 1001 of this title] applied to frauds, even though there was an independent agency through which money was handled. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States  121

15. Claims within section--Generally

Obtaining possession of nondutiable merchandise from collector was not obtaining approval of claim on or against government within meaning of former § 80 of this title [now this section and § 1001 of this title]. U.S. v. Cohn, U.S.Ill.1926, 46 S.Ct. 251, 270 U.S. 339, 70 L.Ed. 616. United States  121

Government contractors' submission to government of second estimate for partial payment was separate actionable "claim" within meaning of federal false claims statute, even though much of same allegedly false information previously had been submitted in initial estimate for which five-year limitations period had expired; second estimate informed government that remaining balance was due, and could serve as new false "claim" for amounts previously due by asserting that contractors were still awaiting payment of amount requested in initial submission. U.S. v. Benjamin, C.A.3 (Virgin Islands) 1993, 995 F.2d 19. United States  122

Forms submitted by defendant to Treasury Department after request by Veterans Administration for repayment of educational benefits, in which defendant denied receipt of benefits checks, were "claims" within meaning of Criminal False Claims Act; there was no difference between act of filing form fraudulently to cause government to abandon investigation of overpayment and to cause it to make payment. U.S. v. Jackson, C.A.9 (Cal.) 1988, 845 F.2d 880, certiorari denied 109 S.Ct. 149, 488 U.S. 857, 102 L.Ed.2d 120. United States  121

Airline ticket voucher submitted to defendant's government employer in order to reduce defendant's liability for advanced funds rather than for payment of money or property owed to him subjected Government to potential monetary loss from allegedly false voucher, and voucher was a "claim" within prohibition against filing of false claims. U.S. v. Duncan, C.A.4 (Va.) 1987, 816 F.2d 153. United States  121

Essential element of offense of false claim against government is that accused has presented claim knowing it to be false, fictitious or fraudulent, but there is no requirement that claim have actually been honored. U.S. v. Coachman, C.A.D.C.1984, 727 F.2d 1293, 234 U.S.App.D.C. 194. Fraud  68.10(2)

Question of materiality of allegedly false statement contained in invoice used to obtain payment on indication that contracted for products had been shipped, although defendant knew that they had not yet been completed, while an essential element of offense of knowingly making a false, fictitious and fraudulent claim to government agency, was nevertheless a matter of law. U.S. v. Pruitt, C.A.8 (Mo.) 1983, 702 F.2d 152. United States  123

False claims submitted to State of Louisiana by defendants involved with a social-economic welfare program funded by federal-state cooperation, when defendants knew that state would rely on claims for reimbursement from the federal government, fell within this section, as against defendants' contention that charges of false claims, false statements and conspiracy to defraud were all directed to the state and only indirectly against the United States. U. S. v. Beasley, C.A.5 (La.) 1977, 550 F.2d 261, rehearing denied 553 F.2d 101, rehearing denied 553 F.2d 100, certiorari denied 98 S.Ct. 427, 434 U.S. 938, 54 L.Ed.2d 297, certiorari denied 98 S.Ct. 195, 434 U.S. 863, 54 L.Ed.2d 138, rehearing denied 98 S.Ct. 496, 434 U.S. 961, 54 L.Ed.2d 323. United States  121

This section applies to a scheme to defraud the United States in an attempt to evade the payment of taxes. U. S. v. Miller, C.A.9 (Cal.) 1976, 545 F.2d 1204, certiorari denied 97 S.Ct. 1549, 430 U.S. 930, 51 L.Ed.2d 774. Postal Service  35(10)

Claim, which was prepared in form of a settlement proposal, seeking collection of money from United States

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Treasury, was a claim upon the United States within contemplation of this section fixing penalty for filing a claim upon or against United States or any department or agency thereof knowing such claim to be false, fictitious or fraudulent. *U. S. v. Mastro*, C.A.3 (Pa.) 1958, 257 F.2d 808, certiorari denied 79 S.Ct. 49, 358 U.S. 830, 3 L.Ed.2d 68. United States ↩ 121

In prosecution of corporation's principal for conspiracy to defraud and defrauding United States, and bribery of government official, search warrant's paragraph listing, as items being sought, "[a]ny records, documents, materials and files maintained on a computer.... all information preserved in any form, visual, magnetic, electronic or aural," even if not constituting prohibited general warrant, was overbroad and subject to strike, since it was without limitation as to subject matter or time; probable cause affidavit described alleged conspiracy that was limited to single contract and particular time period. *U.S. v. Slaey*, E.D.Pa.2006, 433 F.Supp.2d 494. Searches And Seizures ↩ 125

This section prohibited filing "valid" claims which were allegedly submitted for work performed under contracts which allegedly were procured through illegal bid-rigging. *U. S. v. Winchester*, D.C.Del.1975, 407 F.Supp. 261. United States ↩ 121

Letter submitted by defendants to Bureau of Indian Affairs (BIA) in connection with asphalt supply contract did not constitute "claim" within meaning of statute proscribing making of false claim to United States agency, and thus did not support conviction, when letter did not actually make demand for money or request for payment, but rather, at most, indicated corporate defendant's future intent to make such a request and asserted that corporate defendant could establish costs at \$176,000. *U.S. v. Zimmerman*, C.A.9 (Mont.) 2004, 120 Fed.Appx. 15, 2004 WL 2984350, Unreported, appeal after new sentencing hearing 2006 WL 1069732. Fraud ↩ 68.10(1)

16. ---- Court claims, claims within section

A fraudulent claim presented to the court of private claims created by Act March 3, 1891, c. 539, 26 Stat. 854, was within R.S. § 5438 [now this section and § 1001 of this title]. *In re Peraltareavis*, N.M.1895, 41 P. 538, 8 N.M. 27, 8 Gild. 27.

The object of a predecessor statute was apparent; it was to protect the government against fraudulent claims presented to its officers for settlement, and was never designed to apply to the prosecution of claims before a tribunal like the Court of Claims. *U.S. ex rel. McManus v. Moore*, D.C.Sup.1877, 10 D.C. 226.

17. ---- Pension claims, claims within section

R.S. § 5438 [now this section and § 1001 of this title], which related to the presenting of false claims against the government, included a false claim presented by a person as a pensioner, demanding money as a pensioner. *U.S. v. Coggin*, C.C.E.D.Wis.1880, 3 F. 492, 9 Biss. 416. Pensions ↩ 13

18. Knowledge and intent

To be false, claim must not only be inaccurate but consciously so. *U.S. v. Barker*, C.A.9 (Cal.) 1991, 967 F.2d 1275. Fraud ↩ 68.10(2)

Scienter requirement for both offense of filing a false claim with the United States and for mail fraud is "knowledge." *U. S. v. Precision Medical Laboratories, Inc.*, C.A.2 (N.Y.) 1978, 593 F.2d 434. Postal Service ↩ 35(5); United States ↩ 121

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The offenses of tax evasion, mail fraud, involving false tax returns, and filing false claims against the United States require an intent to evade taxes, which is the equivalent of an intent to defraud the government. *U. S. v. Miller*, C.A.9 (Cal.) 1976, 545 F.2d 1204, certiorari denied 97 S.Ct. 1549, 430 U.S. 930, 51 L.Ed.2d 774. Internal Revenue  5263.35; Postal Service  35(2); United States  121

A "guilty avoidance of knowledge" and "bona fide belief resulting from negligence" can form generally the requisite criminal scienter in rare cases and usually actual guilty knowledge is required for scienter under criminal statutes pertaining to the taking of any claim against the United States, knowing such claim to be false, fictitious or fraudulent or use of false, fictitious or fraudulent statements. *U. S. v. Cooperative Grain & Supply Co.*, C.A.8 (Neb.) 1973, 476 F.2d 47. Fraud  68.10(2)

Requirement that government prove, as an essential element of its case, that the defendant's conduct was "willful" relieved this section proscribing the filing of a false, fictitious or fraudulent claim against United States of the objection that it punished without adequate warning. *Johnson v. U. S.*, C.A.8 (Mo.) 1969, 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Criminal Law  13.1(2.5)

Act of president of packing company in causing false claims for government subsidies to be filed with the Defense Supplies Corporation on behalf of company was act of the company, and president's guilty intent was imputable to the company for purpose of proving company's guilt. *U.S. v. Empire Packing Co.*, C.A.7 (Ill.) 1949, 174 F.2d 16, certiorari denied 69 S.Ct. 1534, 337 U.S. 959, 93 L.Ed. 1758. War And National Emergency  129; Corporations  423

Knowledge and intent are essential elements of crime of aiding and abetting the presentation of false claims to an agency of the United States. *McCoy v. U. S.*, C.C.A.9 (Mont.) 1948, 169 F.2d 776, certiorari denied 69 S.Ct. 298, 335 U.S. 898, 93 L.Ed. 433. United States  121

To constitute a crime under R.S. § 5438 [now this section and § 1001 of this title], by presenting for payment a claim against the United States or a department thereof "knowing such claim to be false, fictitious, or fraudulent," it was not essential that the bill, voucher, or other thing used as the basis for the claim should in and of itself contain fraudulent or fictitious statements or entries, but whether the claim was genuine and honest, or false, fictitious, or fraudulent, was determined in view of all the facts and circumstances surrounding it, and the offense was committed by presenting for payment a claim originally valid, but which the person presenting it knew has been paid, and was no longer a subsisting and just demand, or one which, although valid, he knew he was not authorized to receive payment on. *Dimmick v. U.S.*, C.C.A.9 (Cal.) 1902, 116 F. 825, 54 C.C.A. 329, certiorari denied 23 S.Ct. 850, 189 U.S. 509, 47 L.Ed. 923. See, also, *U.S. v. Downey*, D.C.R.I.1919, 257 F. 366. United States  121

It was no offense under former § 80 of this title [now this section and § 1001 of this title] to make a claim upon the government for the payment of a demand that was groundless or without merit, unless the person who made it understood at the time it was made that it was a false, fictitious, or fraudulent demand, and therefore intended to defraud the government. *U.S. v. Route*, E.D.Mo.1887, 33 F. 246.

In prosecution of defendant for submitting false claims to Medicare, in which indictment alleged that defendant made claims "knowing such claims to be false, fictitious, or fraudulent," government was not required to prove intent to defraud, since disjunctive term "or" clearly indicated that making any one of three types of proscribed claims would subject claimant to criminal liability. *U.S. v. Uphoff*, D.Kan.1995, 907 F.Supp. 1475. Health  980

Where there was no evidence that defendant vendor and real estate broker who handled sale of home to war veteran knew that for Veterans' Administration to guarantee mortgage a certificate was required stating actual purchase price did not exceed appraised value, and there was no evidence that defendants knew such certificate

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was made or contemplated, or that it was ever used or required, defendants could not be convicted of making or causing to be made a certificate which falsely stated that sale price of home was greater than appraised value of home. *U. S. v. Mignon*, E.D.Pa.1952, 103 F.Supp. 20. *Armed Services* ⚡ 112

In war fraud action by Federal Government against munitions manufacturer, plaintiff must prove defendant guilty of knowingly concealing or falsifying the real facts or making false or fraudulent statements or representations for purpose of obtaining approval or payment of false claims by the Government, and there must be an intent to defraud the Government. *U.S. v. U.S. Cartridge Co.*, E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. *United States* ⚡ 122

By the word "knowing" as used in the phrase "knowing such claim to be false, fictitious, or fraudulent," "is meant the having a certain and clear perception of the falsity of the claim made." *U.S. v. Bittinger*, W.D.Mo.1875, 24 F.Cas. 1150, No. 14599.

19. Fraud

Federal statutes governing filing of false, fictitious, or fraudulent claims, conspiracy to defraud the United States, and mail fraud criminalizing conduct of employees of mobile X-ray service in failing to prorate transportation charges, contrary to Medicare rule allowing reimbursement for single transportation fee for single trip to nursing home, where defendant-employees intentionally caused false and misleading information to be included on requisition forms, and this, in turn, caused false statements to be included on billing forms that X-ray service sent to insurer, as Medicare's representative, with result that insurer paid company for services that were never performed. *U.S. v. Peterson*, C.A.8 (Ark.) 2000, 223 F.3d 756, certiorari denied 121 S.Ct. 1149, 531 U.S. 1175, 148 L.Ed.2d 1011. *Conspiracy* ⚡ 23.1; *Fraud* ⚡ 68.10(1); *Postal Service* ⚡ 35(10)

Under this section the fraud must be used in connection with making a claim against the Government. *U.S. v. U.S. Cartridge Co.*, E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. *United States* ⚡ 122

20. Falsity of claims

Check drawn on closed account that defendant presented to IRS to cover his girlfriend's outstanding income tax liability was not "false claim" under statute criminalizing presentation of false claim to government; defendant neither received any undue payments from IRS, nor tried to elicit any payments, and girlfriend's tax liability remained outstanding after defendant's check was returned to IRS for insufficient funds. *U.S. v. McBride*, C.A.6 (Ohio) 2004, 362 F.3d 360, rehearing en banc denied. *Fraud* ⚡ 68.10(1)

For a claim to be false, it must first be shown not to be in accord with the facts. *U.S. v. Barker*, C.A.9 (Cal.) 1991, 967 F.2d 1275. *Fraud* ⚡ 68.10(1)

Where physician submits Medicare claim to Government to insurer, and physician knows that treatments performed were unnecessary or nontherapeutic, he or she is criminally liable under false claim statute. *U.S. v. Campbell*, C.A.6 (Ohio) 1988, 845 F.2d 1374, certiorari denied 109 S.Ct. 259, 488 U.S. 908, 102 L.Ed.2d 248. *Health* ⚡ 980

Because taxpayer's characterization of tax collected in 1980 and 1981 as "excise tax" which was not owed was patently false and utterly groundless, taxpayer violated statute prohibiting making false claims for income tax refunds. *U.S. v. Ferguson*, C.A.7 (Ind.) 1986, 793 F.2d 828, certiorari denied 107 S.Ct. 406, 479 U.S. 933, 93 L.Ed.2d 358. *Internal Revenue* ⚡ 5250

Evidence of defendants' submission to government agency of overinflated labor and equipment charges was

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sufficient to sustain convictions of conspiracy to file false statement, to make false claims, and to defraud the United States, of filing false statements with a government agency, and of making a false claim to a government agency. *U.S. v. White*, C.A.11 (Fla.) 1985, 765 F.2d 1469. Conspiracy ↻ 47(6); Fraud ↻ 69(5)

Evidence supported finding that owner of business of importing and selling birds signed claim forms for indemnity for diseased birds that were destroyed with knowledge that he was requesting payment from United States for birds which had been illegally introduced into holding facility, thereby supporting his conviction of filing fraudulent indemnity claims. *U.S. v. Slocum*, C.A.11 (Fla.) 1983, 708 F.2d 587. Fraud ↻ 69(5)

List of crimes which may be considered in determining whether two predicate offenses necessary to make out offense under Racketeer Influenced and Corrupt Organizations Act, section 1961 et seq. of this title have been alleged does not extend to presentation of false claims to United States government. *U. S. v. Computer Sciences Corp.*, C.A.4 (Va.) 1982, 689 F.2d 1181, certiorari denied 103 S.Ct. 729, 459 U.S. 1105, 74 L.Ed.2d 953. Racketeer Influenced And Corrupt Organizations ↻ 10

The filing of a false tax return pursuant to a scheme to obtain an unjustified tax return is sufficient to establish a violation of this section. *U. S. v. Miller*, C.A.9 (Cal.) 1976, 545 F.2d 1204, certiorari denied 97 S.Ct. 1549, 430 U.S. 930, 51 L.Ed.2d 774. United States ↻ 121

Where income tax returns were not returns of named taxpayers but were ones prepared by defendant, signed by him in taxpayers' names, and filed by him, with an address controlled by him and unrelated to taxpayers and with an obvious anticipation of receiving tax refunds, falsity requirement of this section pertaining to offense of filing false, fictitious or fraudulent claims against United States was established and this section had appropriate application. *Kercher v. U.S.*, C.A.8 (Mo.) 1969, 409 F.2d 814. United States ↻ 121

Presentation of income tax refund check for payment constitutes making of "false claim" against United States within this section. *U.S. v. Branker*, C.A.2 (N.Y.) 1968, 395 F.2d 881, certiorari denied 89 S.Ct. 639, 393 U.S. 1029, 21 L.Ed.2d 573. United States ↻ 121

Agreement by which defendant was to use Army supply base and was to pay percentage of net receipts for repair and improvement of base under supervision of Quartermaster General did not give United States property interest in moneys derived by defendant from its operation of base, and hence defendant's false account of revenues and expenses was not "false claim" against United States on which informer's action under § 231 of Title 31 could be based. *U.S. ex rel. Kessler v. Mercur Corporation*, C.C.A.2 (N.Y.) 1936, 83 F.2d 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424. United States ↻ 121

Knowingly untruthful statements of material facts in reasons for refund of taxes paid under Revenue Act Feb. 24, 1919, constituted "false claim," within former § 80 of this title [now this section and § 1001 of this title]. *Evans v. U.S.*, C.C.A.4 (S.C.) 1926, 11 F.2d 37.

Where an internal revenue agent was temporarily assigned for duty in a division other than that to which he was permanently attached, his presentation to the head of such division of his monthly accounts, containing false statements of expenses, for approval as to the service rendered, which was required before audit and payment of his accounts by the head of his own division, was the presenting of a false claim against the government, within former § 80 of this title [now this section and § 1001 of this title]. *Kurzrok v. U.S.*, C.C.A.8 (Okla.) 1924, 1 F.2d 209.

To render defendant guilty of having fraudulently procured payment from the United States of a reward for the apprehension of a deserter under the Selective Service Act, Act May 18, 1917, 40 Stat. 76, c. 15, it was not essential that a bill, voucher, or other thing used as a basis for the claim should contain fraudulent or fictitious statements, but whether the claim was genuine and honest must be determined in view of all the facts surrounding it. *U.S. v. Downey*, D.C.R.I.1919, 257 F. 366. United States ↻ 121

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Under the statutory provisions and the rules and regulations of the Indian Department, which required all accounts and vouchers for claims and disbursements connected with Indian affairs to be transmitted to the Commissioner of Indian affairs for administrative examination, approval, and allowance, or correction or rejection, and to be by him passed to the proper accounting officer of the Treasury Department for settlement, such Commissioner was an officer required to pass upon, and, if found correct, to approve and allow, the accounts and vouchers of Indian agents, who had authority to make purchases and disbursements, and the transmission to the Commissioner by such an agent of a false and fraudulent voucher for disbursements claimed to have been made, and for which he claimed credit in his quarterly account, knowing such voucher to be false, constituted the presenting of a false claim against the United States, which made a criminal offense by former § 80 of this title [now this section and § 1001 of this title]. *Bridgeman v. U.S.*, C.C.A.9 (Mont.) 1905, 140 F. 577, 72 C.C.A. 145. United States  121

The transmission to the commissioner of Indian affairs by an Indian agent of a false and fraudulent voucher for disbursements claimed to have been made, and for which he claimed credit in his quarterly account, knowing such voucher to be false, constituted the presenting of a false claim against the United States. *Bridgeman v. U.S.*, C.C.A.9 (Mont.) 1905, 140 F. 577, 72 C.C.A. 145.

Evidence that defendant was attempting to avoid paying any money in income taxes, that she submitted false claims for refunds in furtherance of her plan, and that she believed that income tax laws were invalid or that income tax withheld from her wages had been collected illegally and erroneously was sufficient to establish that defendant violated 18 U.S.C.A. § 287, which proscribes filing of false claims upon or against the United States, or any department or agency thereof. *U.S. v. Ferguson*, S.D.Ind.1985, 615 F.Supp. 8, affirmed 793 F.2d 828, certiorari denied 107 S.Ct. 406, 479 U.S. 933, 93 L.Ed.2d 358. United States  123

Defendant who had stored his personal possessions in rental trailers belonging to his friends after a flood damaged his residence, and who, after Federal Emergency Management Agency (FEMA) rejected his unsupported claim for reimbursement of trailer rental expenses, obtained rental bills from his friends, who had no intention of charging him rent, marked bills "paid," submitted them to FEMA, and received disaster assistance, presented a false, fictitious, or fraudulent claim to the United States, in violation of statute. *U.S. v. Lloyd*, C.A.8 (S.D.) 2000, 205 F.3d 1348, Unreported. United States  121

21. Materiality of claims

Materiality is not an element of the offense under the false claims statute. *U.S. v. Logan*, C.A.6 (Tenn.) 2001, 250 F.3d 350, rehearing en banc denied, certiorari denied 122 S.Ct. 216, 534 U.S. 895, 151 L.Ed.2d 154, certiorari denied 122 S.Ct. 468, 534 U.S. 997, 151 L.Ed.2d 384. United States  121

Offense of presenting false, fictitious, or fraudulent claims for tax refunds does not include element of materiality. *U.S. v. Nash*, C.A.6 (Mich.) 1999, 175 F.3d 429, certiorari denied 120 S.Ct. 210, 528 U.S. 888, 145 L.Ed.2d 176. Internal Revenue  5263.30

Materiality was not element of submitting false claim to United States. *U.S. v. Upton*, C.A.5 (Tex.) 1996, 91 F.3d 677, certiorari denied 117 S.Ct. 1818, 520 U.S. 1228, 137 L.Ed.2d 1027. United States  121

Trial court improperly submitted issue of materiality to jury in defendants' trial for submitting false Medicare claims, since any materiality issue that exists regarding that offense is issue of law for court. *U.S. v. White*, C.A.11 (Fla.) 1994, 27 F.3d 1531. Health  991

Proof of materiality was not required in prosecution against contractor for presenting fraudulent claim to the United States. *U.S. v. Elkin*, C.A.2 (N.Y.) 1984, 731 F.2d 1005, certiorari denied 105 S.Ct. 97, 469 U.S. 822, 83 L.Ed.2d 43. Fraud  69(3)

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A statement is material for purposes of offense of knowingly making a false, fictitious and fraudulent claim to a government agency if it has a tendency to induce government to act by placing claimant in a position to receive government benefits. *U.S. v. Pruitt*, C.A.8 (Mo.) 1983, 702 F.2d 152. United States ↩ 121

Materiality is not an essential element of offense of filing false claims with agency of the United States. *U. S. v. Irwin*, C.A.10 (Colo.) 1981, 654 F.2d 671, certiorari denied 102 S.Ct. 1709, 455 U.S. 1016, 72 L.Ed.2d 133. United States ↩ 121

Even if materiality is an element of offense of filing false claims with an agency of the United States the issue is one for the trial judge to handle as a question of law. *U. S. v. Haynie*, C.A.5 (Ga.) 1978, 568 F.2d 1091. United States ↩ 123

22. Persons liable

Provisions of former §§ 80 [now this section and § 1001] and 83 [now § 286] of this title which prohibited presentation of fraudulent claims against United States indicated purpose to reach any person who knowingly assisted in causing government to pay claims grounded in fraud, without regard to whether that person had direct contractual relations with the government. *U. S. ex rel. Marcus v. Hess*, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States ↩ 121

Conviction under the False Claims Act does not require a defendant who causes an intermediary to present a false claim to a federal department to know that the false claim will be presented to a federal department, but the defendant must at least know that he is causing the intermediary to present a false claim to someone. *U.S. v. Gumbs*, C.A.3 (Virgin Islands) 2002, 283 F.3d 128. United States ↩ 121

Fact that owner of medical laboratory may not have signed allegedly false medicaid or medicare claims forms did not preclude his conviction of filing false claims and mail fraud where evidence that he authorized the signing and filing of such claim forms by others was uncontradicted; for like reasons, owner could not successfully claim that he could not be charged with knowledge of contents of the claims or any false statements therein. *U. S. v. Precision Medical Laboratories, Inc.*, C.A.2 (N.Y.) 1978, 593 F.2d 434. Postal Service ↩ 35(20); United States ↩ 121

Proof, if made, that corporate defendant's general foreman, who had been in charge of production and shipment of carbine cartridge clips sold to the government, had willfully caused large quantity of defective clips to be included in certain lots which defendant represented as satisfying contract specifications and for which defendant submitted an invoice and bill for payment, would sustain charge of corporate criminality under this section. *U. S. v. Milton Marks Corp.*, C.A.3 (Pa.) 1957, 240 F.2d 838. United States ↩ 121

A defendant even though in active military service and subject to court-martial could be indicted by the grand jury under former § 80 of this title [now this section and § 1001 of this title] which penalized the presenting of false claims against United States and aiding in obtaining payment thereof for activities while acting as a civilian buyer at a Post Exchange. *Robinson v. U.S.*, C.A.9 (Cal.) 1949, 175 F.2d 4, certiorari denied 70 S.Ct. 75, 338 U.S. 832, 94 L.Ed. 506, rehearing denied 70 S.Ct. 156, 338 U.S. 881, 94 L.Ed. 541, certiorari denied 70 S.Ct. 76, 338 U.S. 832, 94 L.Ed. 506. Armed Services ↩ 3

Making and presenting false certificate or claim is inhibited, whether by one on his own behalf or that of another. *Summers v. U.S.*, C.C.A.4 (Va.) 1926, 11 F.2d 583, certiorari denied 46 S.Ct. 632, 271 U.S. 681, 70 L.Ed. 1149. United States ↩ 121

Former § 80 of this title [now this section and § 1001 of this title] was not limited in its operation to false claims presented by the accused on his own behalf, but applied as well to such claims presented by an attorney, agent,

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officer, or other person presenting or aiding in the collection of a false claim, knowing it to be false. U.S. v. Hull, D.C.Neb.1882, 14 F. 324, 4 McCrary 272. United States  121

Under regulations permitting participant in conservation reserve program to destroy vegetative cover during last six months of contract for purpose of planting crop and permitting destruction of cover during last year of contract for purpose of summer fallow operations, defendant who broke cover for purpose of developing property at time when conservation contract had six years to run was not immune from prosecution for falsely certifying compliance with requirements of program and correctness of amount claimed to be due on application on theory that he had not cheated government out of anything. U. S. v. Johnson, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Fraud  68.10(3)

The object of former § 80 of this title [now this section and § 1001 of this title] which prohibited presentation of fraudulent claims against the United States was to prohibit the drawing of money from treasury of the United States by fraudulent claims, and hence such former section reached any person who caused fraudulent claims to be presented to the United States, even if fraudulent claims were presented through intermediary. U.S. v. Brogren, D.C.Mass.1945, 63 F.Supp. 702. United States  121

23. Forfeitures for submitting false claims

In government's action against defendant to recover forfeitures for submitting false claims for materials supplied by defendant as subcontractor on a Navy shipbuilding project, defendant could not escape liability on ground that he had no knowledge that the bids being submitted for Navy approval were not bona fide, where such bids were procured by defendant's agents for defendant's sole benefit. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126. United States  122

24. Venue

Venue for prosecution for presentation of false claims to an agency of United States was proper in the district in which the false claims were submitted to an intermediary who paid the claims and then transmitted claims for reimbursement based on those payments to a government agency in another district. U. S. v. Blecker, C.A.4 (Va.) 1981, 657 F.2d 629, certiorari denied 102 S.Ct. 1016, 454 U.S. 1150, 71 L.Ed.2d 304. Criminal Law  113

Colorado was proper venue of prosecution of defendant corporation and others for making of false claim to supply agency of the United States Department of the Army, where invoices or claims were prepared in Colorado and mailed to Missouri for payment. Imperial Meat Co. v. U. S., C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. Criminal Law  113

Where false affidavits executed in connection with the sale of gold to the mint at San Francisco in the Southern Division of the Northern District of California, were addressed to the superintendent of the mint at San Francisco and were acted upon at San Francisco, offenses of presenting false claims and of conspiring to commit an offense against the United States were triable in the Southern Division of the Northern District of California, though the affidavits were executed in the Northern Division and were allegedly presented there with the gold to a bank for transmission to the mint. Fuller v. U.S., C.C.A.9 (Cal.) 1940, 110 F.2d 815, certiorari denied 61 S.Ct. 29, 311 U.S. 669, 85 L.Ed. 430. Criminal Law  113

Proof of venue in district of trial was sufficient, on prosecution for causing presentation of false claim against United States. Summers v. U.S., C.C.A.4 (Va.) 1926, 11 F.2d 583, certiorari denied 46 S.Ct. 632, 271 U.S. 681, 70 L.Ed. 1149. Criminal Law  737(2)

25. Indictment--Generally

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Evidence that defendant was charged with submitting false federal income tax refund claims after he filed civil suit challenging termination of his employment with Internal Revenue Service was insufficient to raise presumption of prosecutorial vindictiveness; only evidence of vindictiveness was timing of charges, and no individual prosecutor had opportunity to bring vindictive prosecution. U.S. v. Miller, C.A.10 (Okla.) 1991, 948 F.2d 631, certiorari denied 112 S.Ct. 1278, 503 U.S. 912, 117 L.Ed.2d 504, denial of post-conviction relief affirmed 991 F.2d 806, certiorari denied 114 S.Ct. 406, 510 U.S. 954, 126 L.Ed.2d 353. Criminal Law ↻ 37.15(2)

Fact that indictment for making false claims against United States and for filing false income tax returns charged that taxpayer's returns contained statement that estimated federal income tax in certain amount had been paid but returns read payments and credits on declaration of estimated tax of certain amount did not prejudice taxpayer where taxpayer knew what his returns had stated. U. S. v. Lopez, C.A.2 (N.Y.) 1969, 420 F.2d 313. Criminal Law ↻ 1167(1)

An indictment for having fraudulently procured payment of a reward by the United States for the apprehension of a deserter under the Selective Service Act of May 18, 1917, 40 Stat. 76, c. 15, need not state the circumstances surrounding the presentation of the document or voucher which was the basis of defendant's claim, or the nature of any other document accompanying or supporting it. U.S. v. Downey, D.C.R.I.1919, 257 F. 366. United States ↻ 123

Allegation that a certain person was not then and there such a deserter under the Selective Service Act of May 18, 1917, 40 Stat. 76, c. 15, as entitled defendant to payment of a reward, in an indictment for having fraudulently procured payment of the reward for apprehension of such a deserter from the United States, was not a conclusion of law, but a mixed statement of law and fact. U.S. v. Downey, D.C.R.I.1919, 257 F. 366. Indictment And Information ↻ 63; United States ↻ 123

In an indictment for fraudulently procuring payment of a reward by the United States for apprehension of a deserter under the Selective Service Act of May 18, 1917, 40 Stat. 76, c. 15, a description of defendant officer's place of service was not inconsistent with the express allegations of the place of the commission of the offense. U.S. v. Downey, D.C.R.I.1919, 257 F. 366. Indictment And Information ↻ 73(1); United States ↻ 123

26. ---- Conspiracy, indictment

Indictment alleging conspiracy to defraud the United States, the making of false claims for money against the United States, and the concealment of material facts within the jurisdiction of a federal agency sufficiently informed defendants of nature of charge against them. U. S. v. Beasley, C.A.5 (La.) 1977, 550 F.2d 261, rehearing denied 553 F.2d 101, rehearing denied 553 F.2d 100, certiorari denied 98 S.Ct. 427, 434 U.S. 938, 54 L.Ed.2d 297, certiorari denied 98 S.Ct. 195, 434 U.S. 863, 54 L.Ed.2d 138, rehearing denied 98 S.Ct. 496, 434 U.S. 961, 54 L.Ed.2d 323. Indictment And Information ↻ 71.4(3)

An indictment charging a conspiracy to commit an offense against the United States was not bad on ground that it alleged a conspiracy under former § 80 of this title [now this section and § 1001 of this title] which did not cover conspiracy, where upon demurrer the reference to such former section was explained as merely a typographical error and that the conspiracy charged was made an offense by former § 88 of this title [now § 371 of this title]. Smith v. U.S., C.C.A.10 (Okla.) 1944, 145 F.2d 643, certiorari denied 65 S.Ct. 563, 323 U.S. 803, 89 L.Ed. 641. Indictment And Information ↻ 79

Indictment charging conspiracy to defraud the United States by causing false claims against the government to be presented was not defective because of absence of allegation of direct contractual relationship between United States and defendant. U. S. v. Gonzales, D.C.Mass.1944, 56 F.Supp. 995. Conspiracy ↻ 43(10)

Indictment charging that employees of shipyard engaged in making ships for United States Navy Department under

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contracts providing that United States would reimburse shipyard for cost incurred in performing contracts, including cost of labor, conspired to make out false tally sheets on the basis of which they were paid and shipyard was reimbursed, charged offense of conspiracy to defraud United States by causing false claims against government to be presented. U. S. v. Gonzales, D.C.Mass.1944, 56 F.Supp. 995. Conspiracy 43(10)

27. ---- Knowledge and intent, indictment

An indictment which charges a willful attempt by defendant to obtain money from the United States by presenting a false, fictitious, and fraudulent claim, the false, fictitious, and fraudulent character of which was known to him necessarily imports an intent to defraud the government, and such intent need not be specifically alleged. Bridgeman v. U.S., C.C.A.9 (Mont.) 1905, 140 F. 577, 72 C.C.A. 145. United States 123

An indictment is defective which does not state that the accused knew that the claim was false, fictitious, and fraudulent. U.S. v. Reichert, C.C.Cal.1887, 32 F. 142, 12 Sawy. 643.

Indictment, charging conspiracy among shipyard employees to defraud United States by making out false tally sheets on basis of which they were paid and employer pursuant to contract with United States Navy Department was reimbursed by Navy Department for such labor costs, sufficiently alleged knowledge by conspirators that employer would be reimbursed by Navy Department with federal funds so as to charge conspiracy to defraud United States by causing false claims to be presented. U. S. v. Gonzales, D.C.Mass.1944, 56 F.Supp. 995. Conspiracy 43(10)

28. ---- Person or officer to whom claim presented, indictment

In a prosecution under former § 80 of this title [now this section and § 1001 of this title], an indictment which alleged that defendants, who were officers of a corporation, prepared a false claim and voucher, which they submitted to an officer of the United States army, was insufficient, not showing that the officer was clothed with authority to examine and approve the claim and voucher. U.S. v. Christopherson, E.D.Mo.1919, 261 F. 225. United States 123

An indictment, under R.S. § 5438 [now this section and § 1001 of this title] for making and presenting to an officer for approval, a false, fictitious, and fraudulent claim against the War Department of the United States for supplies furnished the cadet mess at West Point, which described such officer as a brigadier general in the army and superintendent of the Military Academy at West Point, and alleged that he was an officer authorized to approve such claim, was sufficient on demurrer to show such authority. U.S. v. Franklin, C.C.S.D.N.Y.1909, 174 F. 161, error dismissed 30 S.Ct. 434, 216 U.S. 559, 54 L.Ed. 615. United States 123

An indictment was sufficiently certain in alleging that such claim was presented to the "third auditor of the treasury department of the United States," and it need not allege that he was an officer in the civil service of the United States. U.S. v. Ingraham, C.C.R.I.1892, 49 F. 155, affirmed 15 S.Ct. 148, 155 U.S. 434, 39 L.Ed. 213.

An averment that the claim, alleged to have been presented to "G.T., the late marshal," etc., was a claim "in favor of the said G.T., the then late marshal," etc., did not render the indictment bad for repugnancy, since the court would take judicial notice that the accounts of deputy marshals are habitually presented to the government in the marshal's name, and the money therefor is paid to him, and by him paid to his deputies. U.S. v. Strobach, C.C.M.D.Ala.1883, 48 F. 902. United States 123

Under R.S. § 5438 [now this section and § 1001 of this title], an indictment averring the presentation of such a claim to "G.T., then late marshal of the United States, he being then and there an officer in the civil service of the United States," was not insufficient or repugnant since a marshal, after the expiration of his term, is still an officer for the purpose of serving process then in his hands, and for settling his accounts with the government. U.S. v.

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Strobach, C.C.M.D.Ala.1883, 48 F. 902.

An averment that the accused, claiming to be a deputy marshal of the United States, presented a claim against the government of the United States, "purporting to have been for services rendered and payments made by said deputy marshal" in a criminal proceeding mentioned, before a certain United States commissioner, sufficiently shows that the services were performed and payments made of the United States, in the defendant's capacity as deputy United States marshal. U.S. v. Strobach, C.C.M.D.Ala.1883, 48 F. 902. United States  123

The omission to allege the name of any officer to whom the account was to be presented is a fatal defect in an indictment. U.S. v. Wallace, E.D.S.C.1889, 40 F. 144. United States  123

It was insufficient to allege that an account due from the United States to C., the United States marshal, was presented to C., as the marshal could not audit or pay a claim against the government due to himself. U.S. v. Wallace, E.D.S.C.1889, 40 F. 144. United States  123

The absence of any averment of authority in the officer to allow and approve the claim which was to be presented to him is a fatal defect. U.S. v. Reichert, C.C.Cal.1887, 32 F. 142, 12 Sawy. 643. See, also, U.S. v. Christopherson, D.C.Mo.1919, 261 F. 225.

Upon an indictment charging the defendant with making, as clerk of a United States court, false claims against the government, it was sufficient to charge a presentation to the "first auditor of the treasury" without naming the person who held such office. U. S. v. Ambrose, C.C.S.D.Ohio 1880, 2 F. 764.

Indictments charging ship welders and counters with presenting fraudulent claims against Navy Department were not demurrable on ground that former § 80 of this title [now this section and § 1001 of this title] did not cover defrauding of a private corporation which had contracted with United States for construction of warships on "cost plus" basis, where indictments were based on that part of such former section which made it a crime to cause to be presented for payment or approval by officer in naval service any fraudulent claim upon the government, knowing such claim to be fraudulent. U.S. v. Brogren, D.C.Mass.1945, 63 F.Supp. 702. United States  123

29. ---- Purpose of presenting claim, indictment

The indictment should charge that the claim was made for payment or approval. U. S. v. Ambrose, C.C.S.D.Ohio 1880, 2 F. 764. Indictment And Information  129(1); United States  123

Indictment was insufficient for failure to allege purpose of defendant. U.S. v. Morrison, E.D.N.Y.1936, 16 F.Supp. 934.

Purpose of presenting false claims to United States or aiding in obtaining payment thereof could not be inferred if not alleged in indictment, should allegation of purpose be necessary. U.S. v. Morrison, E.D.N.Y.1936, 16 F.Supp. 934. United States  123

30. ---- Specification of fraud or falsity, indictment

Indictments charging defendants with violation of this section respecting making of false claims to supply agency of the United States Department of the Army contained sufficient reference to contract documents to clearly show that indictment was for making false claims for payment for what had not been delivered. Imperial Meat Co. v. U. S., C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. United States  123

Indictment for presenting false claim for services was not bad in not stating why claim was fraudulent. Summers v.

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U.S., C.C.A.4 (Va.) 1926, 11 F.2d 583, certiorari denied 46 S.Ct. 632, 271 U.S. 681, 70 L.Ed. 1149. United States  123

In a prosecution under former §§ 80 [now this section and § 1001 of this title] and 88 [now § 371 of this title] of this title, where it was charged that defendants made a false claim for furnishing cans of black pepper, which purported to weigh one-quarter of a pound each, when in truth they did not contain one-quarter of a pound of such pepper, the indictment should have clearly shown the exact facts as they existed, and an indictment which merely alleged that the cans purported to weigh one-quarter of a pound, but did not contain that much pepper, was defective, though not fatally defective, because it was obvious that the can or container must have weighed something. U.S. v. Christopherson, E.D.Mo.1919, 261 F. 225. United States  123

In an indictment under R.S. § 5438 [now this section and § 1001 of this title], for making and presenting to an officer for approval a false, fictitious, and fraudulent claim against the United States, which set out the claim, showing it to be an itemized account, averments that certain sums charged therein "should have been" certain smaller sums stated sufficiently showed wherein the claim is false and fraudulent. U.S. v. Franklin, C.C.S.D.N.Y.1909, 174 F. 161, error dismissed 30 S.Ct. 434, 216 U.S. 559, 54 L.Ed. 615. United States  123

An indictment, under R.S. § 5438, [now this section and § 1001 of this title], for presenting a false claim against the United States, which charged that defendant, as Indian agent, transmitted to the Commissioner of Indian Affairs, with his accounts, a false voucher purporting to be a receipt for money paid out by him, knowing that the same was false and fictitious, in that he had not paid such money, sufficiently alleged wherein the claim was false to apprise the defendant of what he is required to meet. Bridgeman v. U.S., C.C.A.9 (Mont.) 1905, 140 F. 577, 72 C.C.A. 145. United States  123

Counts 6 and 7 of indictment alleging that on or about certain dates defendants at certain place did make and present to a person in the Naval Service of the United States with authority to approve for payment certain claims on or against the United States, a false, fictitious, and fraudulent claim against the United States, the defendants then and there knowing claims to be false, fictitious, and fraudulent, in violation of this section, were legally insufficient for failure to describe or identify the false, fictitious, or fraudulent claim, and to state the particular or particulars wherein the claim was false, fictitious, and fraudulent. U. S. v. Apex Distributing Co., D.C.R.I.1957, 148 F.Supp. 365. United States  123

31. ---- Adherence to statutory language, indictment

Indictment for having presented for payment and approval false claims against government, in substantially the language of former § 80 of this title [now this section and § 1001 of this title], as amended Oct. 23, 1918, was sufficient. Hammert v. U.S., C.C.A.8 (Okla.) 1926, 14 F.2d 827. Indictment And Information  110(3)

Indictment in words of former § 80 of this title [now this section and § 1001 of this title] for presenting false claim, with particulars as to transaction, was sufficient. Summers v. U.S., C.C.A.4 (Va.) 1926, 11 F.2d 583, certiorari denied 46 S.Ct. 632, 271 U.S. 681, 70 L.Ed. 1149. Indictment And Information  110(3)

32. ---- Certainty and particularity, indictment

An indictment for presenting a false claim or voucher against the United States sufficiently describes such claim or voucher, where it sets out the substance of the same with such particularity as to make any judgment in the case a bar to any subsequent prosecution for the same offense. Bridgeman v. U.S., C.C.A.9 (Mont.) 1905, 140 F. 577, 72 C.C.A. 145. United States  123

An indictment under R.S. § 5438 [now this section and § 1001 of this title] had to aver the fraud with sufficient

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particularity to enable the defendant to prepare his defense, and plead the judgment as a bar to a subsequent prosecution. *U.S. v. Goggin*, C.C.E.D.Wis.1880, 1 F. 49, 9 Biss. 269. Indictment And Information ↻ 71.4(4)

The offense under R.S. § 5438 [now this section and § 1001 of this title], was not sufficiently charged in the words of the statute, but the facts constituting it had to be alleged with such particularity as to apprise the accused with reasonable certainty of the nature of the accusation against him. *U.S. v. Green*, C.C.Wis.1879, 26 F.Cas. 32, No. 15257. Pensions ↻ 13

33. ---- Citation of statute, indictment

In prosecution under indictment under this section, failure of indictment to refer specifically to section 2 of this title was not fatal to conviction on theory that physician caused submission of false medicare claims to an agency of the United States when he submitted such claims to private insurance carriers which processed them under contracts with the United States. *U. S. v. Catena*, C.A.3 (Pa.) 1974, 500 F.2d 1319, certiorari denied 95 S.Ct. 621, 419 U.S. 1047, 42 L.Ed.2d 641.

Indictments charging ship welders and counters with presenting fraudulent claims against Navy Department, which indictments followed language of former § 80 of this title [now this section and § 1001 of this title] and sufficiently stated when, where, and by whom offenses charged were committed, were not demurrable for failure to refer to any statute. *U.S. v. Brogren*, D.C.Mass.1945, 63 F.Supp. 702. Indictment And Information ↻ 108

Indictments charging ship welders and counters with presenting fraudulent claims against Navy Department were not demurrable for failure to refer to violation of any statute or failing to allege that acts charged were contrary to peace and dignity of the United States, since such allegations are matter of form and not of substance. *U.S. v. Brogren*, D.C.Mass.1945, 63 F.Supp. 702. Indictment And Information ↻ 32(3); Indictment And Information ↻ 32(4)

34. ---- Duplicity, indictment

Where government charged only one crime in each count of indictment charging wilfully and knowingly making false statements on claims submitted under Medicaid and Medicare program, fact that there may have been more than one piece of evidence to support each count did not make counts duplicitous. *U. S. v. Adler*, C.A.8 (Mo.) 1980, 623 F.2d 1287. Health ↻ 988

Count of indictment under former § 80 of this title [now this section and § 1001 of this title], charging use of false affidavit to obtain payment of claim and defraud government and count charging presentation of false claim against government and false supporting affidavit, were not duplicitous. *Evans v. U.S.*, C.C.A.4 (S.C.) 1926, 11 F.2d 37.

An indictment is no bad for duplicity because it charges in the same count both the making and the presenting of a false claim against the United States, the gist of the offense being the obtaining, or attempting to obtain, money from the United States by means of a fraudulent claim, and the acts charged being but different steps in the commission of such offense, although either alone is made punishable. *Bridgeman v. U.S.*, C.C.A.9 (Mont.) 1905, 140 F. 577, 72 C.C.A. 145. See, also, *U.S. v. Franklin*, C.C.N.Y.1909, 174 F. 161, error dismissed 30 S.Ct. 434, 216 U.S. 559, 54 L.Ed. 615. Indictment And Information ↻ 125(24)

An indictment which charges that the defendant made, and caused to be made, the false voucher, certificate, or claim, and that he "presented and caused to be presented," was not bad for duplicity because former § 80 of this title [now this section and § 1001 of this title] employed the disjunctive "or" instead of "and." *U.S. v. Hull*, D.C.Neb.1882, 14 F. 324, 4 McCrary 272. Indictment And Information ↻ 125(40)

35. ---- Election between counts, indictment

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Elements of offense of making or presenting false claim to agency of United States differ from elements of offense of making false statement or representation to agency of the United States and acts are intended to be treated as separate and distinct offenses, and refusing to require government to elect between counts of indictment charging both offenses was not error. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Indictment And Information ☞ 132(5)

36. ---- Joinder of offenses and defendants, indictment

Under former § 557 of this title [now rules 8, 13 and 14 of the Federal Rules of Criminal Procedure], it was proper to join in one indictment a count for willfully and unlawfully presenting a fraudulent claim against the United States, and a second count for willfully and unlawfully using a false affidavit in the presentation of the fraudulent claim against the United States. *Ingraham v. U.S.*, U.S.R.I.1894, 15 S.Ct. 148, 155 U.S. 434, 39 L.Ed. 213. Indictment And Information ☞ 129(1); United States ☞ 123

Where original joinder of defendants was proper in prosecution for making or causing to be made false claims upon government, dismissal of conspiracy count would require granting of separate trials on substantive counts only if it appeared that the defendants would be prejudiced by joinder in indictment or by joinder for trial. *Stern v. U. S.*, C.A.2 (N.Y.) 1969, 409 F.2d 819. Criminal Law ☞ 622.7(4)

Under former § 715 of Title 38 [now § 3503 of Title 38] and this section second count of indictment charging defendant real estate dealer with causing false certificate to be made and used by lender knowing that it contained fictitious statements and entries, in a matter within jurisdiction of Veterans' Administration, an agency of United States, for purpose of inducing Veterans' Administration to guarantee a home loan to veteran was not defective for misjoinder of two offenses and properly informed defendant as to specific offense with which he was charged. *U. S. v. Aderman*, C.A.7 (Wis.) 1951, 191 F.2d 980, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691, rehearing denied 72 S.Ct. 552, 342 U.S. 950, 96 L.Ed. 706. Fraud ☞ 69(2); Indictment And Information ☞ 71.4(4); Indictment And Information ☞ 125(2)

37. ---- Separate counts, indictment

In a prosecution against an agent of General Land Office for making and presenting false claims against the United States by means of an itemized statement of expenses, several items of which were alleged to be false, each item could be regarded as a separate claim and violation of former § 80 of this title [now this section and § 1001 of this title] and set forth in separate counts in the same indictment. *Fain v. U.S.*, C.C.A.9 (Ariz.) 1920, 265 F. 473.

The different items of an account might all be included in one count of the indictment, and that it was not necessary that there should be separate counts for each false item. *U. S. v. Ambrose*, C.C.S.D.Ohio 1880, 2 F. 764. Indictment And Information ☞ 129(1); United States ☞ 123

38. ---- Variance with proof, indictment

Where indictment alleged defendant filed claims which were false, fictitious, or fraudulent in specific manner with a federal agency, and evidence proved falsity of claims in another manner, variance between charge and proof was not prejudicial to defendant. *U. S. v. Irwin*, C.A.10 (Colo.) 1981, 654 F.2d 671, certiorari denied 102 S.Ct. 1709, 455 U.S. 1016, 72 L.Ed.2d 133. Criminal Law ☞ 1167(1)

In prosecution of defendant for submitting false claims on government contract, fatal variance did not occur where, although indictment charged that claims were submitted for payment to United States Air Force, proof showed that fraudulent claims were sent to General Services Administration, where they were checked and certified before being forwarded to United States Air Force for payment. *U. S. v. Cook*, C.A.5 (Tex.) 1978, 586 F.2d 572,

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rehearing denied 589 F.2d 1114, certiorari denied 99 S.Ct. 2821, 442 U.S. 909, 61 L.Ed.2d 274. United States 123

Indictment for presenting false claim for payment and statement of claim in evidence did not present a variance, notwithstanding mistake in footing. *Summers v. U.S.*, C.C.A.4 (Va.) 1926, 11 F.2d 583, certiorari denied 46 S.Ct. 632, 271 U.S. 681, 70 L.Ed. 1149. United States 123

Under an indictment based on former § 80 of this title [now this section and § 1001 of this title], charging that defendant as a special agent of the Land Department presented a false and fraudulent claim against the United States for \$45 for expenses incurred, proof showing that the claim presented was for a larger amount, but that \$45 of the amount claimed and covered by voucher was not in fact paid out, was not a fatal variance, where no objection was made to the indictment or evidence. *Fain v. U.S.*, C.C.A.9 (Ariz.) 1920, 265 F. 473. United States 123

An allegation in an indictment for making and presenting a false claim against the United States of the date when the same was made and presented is not an essential part of the description of the offense, and the fact that the paper introduced in support of the charge bears a different date does not constitute a fatal variance. *Bridgeman v. U.S.*, C.C.A.9 (Mont.) 1905, 140 F. 577, 72 C.C.A. 145. United States 123

On an indictment for presenting a false claim against the United States for back pay of a deceased soldier, claimed by the defendant to be his brother, the allegation of the indictment was that the brother was named "Major Dabney," and enlisted under the name of "Gaorge Bowen," whereas the proof was that defendant claimed to be the brother of George Bowen, who served under the name of Major Dabney, but such variance was immaterial and the defendant properly convicted. *U.S. v. Bowen*, D.C.Sup.1877, 10 D.C. 64. United States 123

39. ---- Particular cases sufficient, indictment

Indictment charging that defendant caused to be presented to federal agency for payment three claims for engineering services performed in connection with industrial park project, knowing claims to be false, fictitious or fraudulent, but which did not set forth elements of specific intent and materiality, was sufficient as it set forth the offense in the words of the statute. *U. S. v. Irwin*, C.A.10 (Colo.) 1981, 654 F.2d 671, certiorari denied 102 S.Ct. 1709, 455 U.S. 1016, 72 L.Ed.2d 133. Indictment And Information 110(15)

Indictment for making false claims on government contract was not insufficient because it failed to allege that defendant acted willfully. *U. S. v. Cook*, C.A.5 (Tex.) 1978, 586 F.2d 572, rehearing denied 589 F.2d 1114, certiorari denied 99 S.Ct. 2821, 442 U.S. 909, 61 L.Ed.2d 274. United States 123

Count of indictment charging filing or causing to be filed false claims against the United States and which contained the elements of the charged offense, apprised the defendants of what they must meet and specified the extent of the charges to avoid double jeopardy was sufficient. *U. S. v. Beasley*, C.A.5 (La.) 1977, 550 F.2d 261, rehearing denied 553 F.2d 101, rehearing denied 553 F.2d 100, certiorari denied 98 S.Ct. 427, 434 U.S. 938, 54 L.Ed.2d 297, certiorari denied 98 S.Ct. 195, 434 U.S. 863, 54 L.Ed.2d 138, rehearing denied 98 S.Ct. 496, 434 U.S. 961, 54 L.Ed.2d 323. Indictment And Information 71.4(4)

Indictment was not insufficient to charge making false or fraudulent claim against United States merely because it did not allege intent to defraud United States. *U. S. v. Bandy*, C.A.8 (N.D.) 1970, 421 F.2d 646. United States 123

Indictment for conspiracy to violate this section by presenting claims for education and training allowances to the Veterans Administration knowing them to be false and fraudulent was sufficient. *U. S. v. Chicago Professional Schools, Inc.*, C.A.7 (Ill.) 1961, 290 F.2d 285. Conspiracy 43(6)

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An indictment, charging defendant with having presented a false claim to an agency of the United States for payment, was not defective because of alleged failure to contain certain requirements of § 1001 of this title. *Smith v. U. S.*, C.A.9 (Ariz.) 1951, 188 F.2d 969. United States 123

Counts of indictment were sufficient to charge an offense under former § 80 of this title [now this section and § 1001 of this title] which penalized the presenting of false claims against the United States and aiding in obtaining payment thereof. *Robinson v. U.S.*, C.A.9 (Cal.) 1949, 175 F.2d 4, certiorari denied 70 S.Ct. 75, 338 U.S. 832, 94 L.Ed. 506, rehearing denied 70 S.Ct. 156, 338 U.S. 881, 94 L.Ed. 541, certiorari denied 70 S.Ct. 76, 338 U.S. 832, 94 L.Ed. 506. United States 123

Indictment charging violation of former § 80 of this title [now this section and § 1001 of this title] was sufficient. *U.S. v. Michener*, C.C.A.3 (N.J.) 1945, 152 F.2d 880.

An indictment for having fraudulently procured payment of a reward by the United States for apprehension of a deserter under the Selective Service Act of May 18, 1917, 40 Stat. 76, c. 15, which indictment stated generally that the person apprehended was not such a deserter that his apprehension entitled defendant to reward, cast upon defendant no undue burden in preparing his case, and was sufficient, though not specifically negating each provision of the statute or regulations which might justify the presentation of such a claim against the United States. *U.S. v. Downey*, D.C.R.I.1919, 257 F. 366. Indictment And Information 111(4); United States 123

Indictment charging defendant with making false claims to federal officer would not be dismissed on ground that government improperly utilized its position as insurer to gather evidence to prosecute defendant where fact that Federal Emergency Management Agency reports to the Attorney General when it suspects anyone has defrauded its programs did not make it the prosecutor in such cases. *U.S. v. Prevor*, D.C.Puerto Rico 1984, 583 F.Supp. 259. Indictment And Information 10.1(5)

Indictments charging presentation to Federal Works Agency of false claims for rentals of equipment under contract with Agency were sufficient. *U.S. v. MacEvoy*, D.C.N.J.1944, 58 F.Supp. 83. Fraud 69(2); United States 123

40. ---- Particular cases insufficient, indictment

An indictment, alleging that defendants unlawfully made and presented to director of Civilian Conservation Corps Camp fraudulent claims and vouchers against such camp, was insufficient on demurrers as not alleging that defendants made and presented any claim against the United States government, department or officer thereof, or corporation in which United States was stockholder. *Mookini v. U S*, C.C.A.9 (Hawai'i) 1938, 95 F.2d 960. United States 123

Where defendants were charged under former § 80 of this title [now this section and § 1001 of this title] with feloniously presenting a false claim and voucher to a military officer, a count charging a false claim as to sale of coffee made to the United States was insufficient. *U.S. v. Christopherson*, E.D.Mo.1919, 261 F. 225. United States 123

Counts of indictment charging defendant with making false claims against Government were insufficient for failure to expressly incorporate description of scheme to defraud by omission. *U.S. v. Yejo*, D.Puerto Rico 1986, 634 F.Supp. 630. United States 123

Indictment charging corporation and three of its officers with conspiracy to commit offense against United States denounced by statutes making it offense to make or use false, fraudulent, or fictitious statements in matters within jurisdiction of Department of Army and to knowingly and wilfully make and present false, fictitious and fraudulent

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claims to Department was insufficient in that it failed to indicate what specific false statements or claims were alleged to have been made or presented or even to indicate transaction or general subject matter in connection with which any false statements or claims were allegedly made or presented and indictment would be dismissed. *U.S. v. Devine's Milk Laboratories, Inc.*, D.C.Mass.1960, 179 F.Supp. 799. Conspiracy ↻ 43(10)

41. Information

Information which charged that petitioner did knowingly, wilfully, unlawfully and feloniously make and present and cause to be made and presented false, fictitious and fraudulent claim well knowing same to be false, fictitious and fraudulent in violation of this section sufficiently charged element of intent. *Swepston v. U. S.*, W.D.Mo.1964, 227 F.Supp. 429. Fraud ↻ 69(2)

42. Bill of particulars

Where indictment charges continuing conspiracy to defraud United States by delivering, grading, selling, etc., inferior products to specified federal departments by obstructing inspections, false grading and weighing, and plan is described and several overt acts are alleged and also charges filing of certain false claims with named federal agency, denial of bill of particulars is not an abuse of discretion. *Nye & Nissen v. U.S.*, C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. Conspiracy ↻ 43(10); Indictment And Information ↻ 121.2(4)

An indictment charging accused with presenting false claims against the government for furnishing fresh chilled Spanish mackerel specified in contract when accused furnished bonito mackerel of inferior grade and lesser value, supplemented by bill of particulars, was sufficient. *Roberts v. U.S.*, C.C.A.4 (Va.) 1943, 137 F.2d 412, certiorari denied 64 S.Ct. 80, 320 U.S. 768, 88 L.Ed. 459. United States ↻ 123; Indictment And Information ↻ 121.5

43. Defenses

Persons charged with making false claims against the United States cannot question constitutional authority of government to conduct operations in connection with which claims were made. *U.S. v. Kapp*, U.S.Okla.1937, 58 S.Ct. 182, 302 U.S. 214, 82 L.Ed. 205. United States ↻ 123

Fact that representative of community organization knew that authorized contractor's claims against United States for installing flame retention burners were false was not defense to charge against contractor of making false claims and did not estop Government from alleging falsity of claims, where contractor was in collusion with representative and ultimate intent of both contractor and representative was to deceive the Minnesota Department of Economic Security and the United States Department of Health and Human Services. *U.S. v. Martin*, C.A.8 (Minn.) 1985, 772 F.2d 1442. United States ↻ 123

It was no defense to a prosecution under former § 80 of this title, [now this section and § 1001 of this title], for presenting false claims against the United States or conspiring to do so, etc., that the army officer to whom the false claim was presented certified that the articles set out in the voucher and claim had been received by him in the quality and quantity specified. *U.S. v. Christopherson*, E.D.Mo.1919, 261 F. 225. United States ↻ 123

Defendant, charged with making false claim and false statement to agency of United States government, as participant in conservation reserve program could not assert that operations of conservation reserve program were illegal or unconstitutional in view of fact that he voluntarily put himself in position to obtain benefits from program and did obtain them. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Constitutional Law ↻ 42.1(1)

Participant in conservation reserve program charged with making false claim and false statement to government

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agency in connection with certification to agency that he had complied with requirements of program and that application showed correct amount due was in no position to assert that operations of conservation reserve program were illegal or unconstitutional in view of participant's having obtained benefits from program. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72 . Constitutional Law ↩ 42.1(1)

Government is entitled to expect that participant in conservation reserve program making application for payment will act honestly in certifying compliance with requirements of program and correctness of amount claimed to be due, and fact that form on which defendant made certification contained no warning that he would be subject to criminal prosecution for false certification did not deprive defendant of due process of law. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72 . Constitutional Law ↩ 257

Defendant charged in one count with filing a false income tax return and in a second count with making a false claim upon the United States for refund of taxes withheld could not avoid responsibility on ground that any attempt to obtain money fraudulently was made against defendant's employer and not the government, where defendant did actually receive refund of withheld taxes to which he was not entitled. *U.S. v. Mandile*, E.D.N.Y.1954, 119 F.Supp. 266. Internal Revenue ↩ 5280

District court could preclude defendant charged with presenting fraudulent claims against United States from offering defense of duress based upon alleged domestic abuse by her husband, where defendant, who was armed police officer whose criminal acts occurred over course of four years, did not show lack of opportunity to escape, and she failed to document threat of force at time of her fraudulent acts. *U.S. v. Lorenzo*, C.A.2 (N.Y.) 2002, 52 Fed.Appx. 553, 2002 WL 31819590, Unreported. Criminal Law ↩ 38

44. Double jeopardy

Defendant charged with food stamp fraud could be convicted under federal fraudulent claims statute even if he did not present false claim directly to government agency; accordingly, fraudulent claims statute did not require proof of fact that was not required by Food Stamp Act, and conviction under both sections violated double jeopardy. *U.S. v. Hebeke*, C.A.6 (Ohio) 1996, 89 F.3d 279, certiorari denied 117 S.Ct. 496, 519 U.S. 999, 136 L.Ed.2d 388. Double Jeopardy ↩ 139.1

In absence of clearly manifested congressional intent not to authorize multiple punishments, punishing defendant both for making false claim against government and for making false statement in matter within jurisdiction of United States probation office did not violate double jeopardy, even assuming that convictions were based on single act of lying to probation office employee about defendant's assets, in connection with his request for appointed counsel in separate criminal proceeding. *U.S. v. Allen*, C.A.4 (N.C.) 1993, 13 F.3d 105. Double Jeopardy ↩ 139.1

Prosecution on charge of making false statements to a government agency concerning quantity of grain in storage was not barred by a determination favorable to defendant on issue of guilty knowledge in earlier criminal prosecution brought by government involving a different elevator, notwithstanding collateral estoppel claim that instant prosecution wrongly required defendant to "run the gantlet" a second time, where issue of guilty knowledge as to transactions involved in instant case was not actually determined in prior prosecution. *U. S. v. Addington*, C.A.10 (Kan.) 1973, 471 F.2d 560. Judgment ↩ 751

45. Limitations

R.S. § 1044, former § 582 of this title [now § 3282 of this title], which provided for limitations of three years [now five years], was applicable to the offense mentioned in R.S. § 5438 and Act March 2, 1863, embodied in part in

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former § 80 of this title [now this section and § 1001 of this title]. *Greene v. U.S.*, C.C.A.5 (Ga.) 1907, 154 F. 401, 85 C.C.A. 251, certiorari denied 28 S.Ct. 261, 207 U.S. 596, 52 L.Ed. 357. See, also, 1872, 14 Op.Atty.Gen. 54.

Upon an indictment charging the defendant with presenting a pension certificate obtained by fraud to a pension agent, and alleging that the grounds stated in the affidavit, upon which the application was sustained before the commissioner of pensions, and the defendant's name entered upon the list of pensioners, and the certificate issued, were all false, fictitious, and fraudulent, the court said that although the fraud in obtaining the entry of the name upon the pension roll and in obtaining the issuance of the certificate was within the statute of limitations, yet every time the defendant made a claim upon the genuine certificate, he committed one of the offenses described in former § 80 of this title [now this section and § 1001 of this title], namely, he presented a claim to the government for payment which was false and fraudulent, and which he knew, according to the language of the indictment, to be false and fraudulent. *U.S. v. Coggin*, C.C.E.D.Wis.1880, 3 F. 492, 9 Biss. 416.

The Wartime Suspension of Limitations Act, § 3287 of this title, providing in part that when United States is at war, the running of any statute of limitations applicable to any offense committed in connection with the disposition of any real or personal property of the United States shall be suspended until three years after determination of hostilities as proclaimed by President, applied to offense of causing veteran employed by corporations of which defendant was president and treasurer to make a false statement in application for certain government surplus property, to effect that property was not to be sole by veteran when, in fact, it was procured for purpose of sale and was sold by veteran to corporations. *U S v. Epstein*, E.D.Pa.1953, 119 F.Supp. 946. Criminal Law ☞ 151.1

Section 3287 of this title applied only to offenses committed prior to Presidential Proclamation of December 31, 1946, and indictment under this section and §§ 371 and 1001 of this title for offense committed after such date, but more than three years prior to return of indictment, was barred by three year statute of limitations. *U. S. v. Peoples Sav. Bank in Providence*, D.C.R.I.1952, 102 F.Supp. 439. See, also, *U.S. v. Riley*, D.C.R.I.1952, 102 F.Supp. 440. Criminal Law ☞ 151.1

46. Discovery

In prosecution for making false statements to a government agency concerning quantities of grain in storage, rejection of request for a trial transcript of earlier federal prosecution on similar charges against defendant involving a different elevator was not error, even though request was made in light of trial court's determination that defendant was an indigent and unable to provide for his own defense, where different times and separate operations were involved in earlier prosecution and prior record did not furnish a basis for defenses urged in subsequent prosecution. *U. S. v. Addington*, C.A.10 (Kan.) 1973, 471 F.2d 560. Criminal Law ☞ 429(2)

In prosecution of nursing home administrator for submitting false claims to Medicare, defendant was not entitled to discovery from government of evidence regarding corporate practice of nursing home in documenting Medicare charges, absent showing that information was material; defendant did not tie hypothetical argument that he merely estimated costs in accordance with nursing home policy to facts of case, and therefore theory did not create reasonable probability that he did not know claim he submitted was false. *U.S. v. Uphoff*, D.Kan.1995, 907 F.Supp. 1475. Criminal Law ☞ 700(3)

47. Challenges to jurors

The offenses described in R.S. § 5438 [now this section and § 1001 of this title] were not felonies, and a party indicted therefor was not entitled, under R.S. § 819, former § 424 of Title 28 [now § 1870 of Title 28], to challenge more than three jurors. *U. S. v. Daubner*, E.D.Wis.1883, 17 F. 793. Jury ☞ 136(5)

48. Request for recess

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Denial of defendant's request for recess, made after government had rested and defense had opened its case, in prosecution for alleged filing of fraudulent income tax refund claims, to subpoena witnesses from New York to support alibi defense that he was not in North Dakota at time in question was not abuse of discretion where evidence which witnesses could have offered was immaterial and motion came too late to show reasonable diligence; and court acted properly in refusing to receive letters from such proposed witnesses to establish such where there was failure of foundation for their introduction. *Bandy v. U.S.*, C.A.8 (N.D.) 1961, 296 F.2d 882, certiorari denied 82 S.Ct. 849, 369 U.S. 831, 7 L.Ed.2d 796. Criminal Law ↻ 444; Criminal Law ↻ 595(4); Criminal Law ↻ 598(7)

49. Burden of proof

By alleging that a certain person was not a deserter under the Selective Service Act of May 18, 1917, 40 Stat. 76, c. 15, the United States, in a prosecution for having fraudulently procured a reward from it for apprehension of such a deserter, assumed the burden to show that the person named did not come within the description of a person or deserter for whose apprehension and delivery a reward was legally payable. *U.S. v. Downey*, D.C.R.I.1919, 257 F. 366. United States ↻ 123

In war fraud action by Federal Government against munitions manufacturer, burden of proof rested upon plaintiff. *U.S. v. U.S. Cartridge Co.*, E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. United States ↻ 122

50. Admissibility of evidence--Generally

Where one defendant's entire defense to charges of conspiracy and defrauding government through filing false medicare claims for optical devices was that trained optometrist who had been in optical business for 35 years might not understand what types of eyewear were eligible for medicare, testimony of official of health care financing agency and of health and human services special agent concerning scope of medicare coverage for prosthetic eyewear was admissible. *U.S. v. Gold*, C.A.11 (Fla.) 1984, 743 F.2d 800, certiorari denied 105 S.Ct. 1196, 469 U.S. 1217, 84 L.Ed.2d 341. Criminal Law ↻ 338(1)

In prosecution resulting in convictions for making false claims to federal agency, for illegally converting funds of the agency to defendant's own use, and for conspiracy, defendant, who had operated secretarial services school and who had secured student financing through federal programs, was not entitled to introduce into evidence interdepartmental government memorandum stating that "the [Guaranteed Student Loan] program is not intended to provide gifts of funds to educational institutions for use as they see fit without being held accountable for those funds," contrary to claim that such memorandum showed that other schools acted in same manner as defendant's school did and that defendant could therefore believe that he was acting properly in his use of federal funds. *U. S. v. Wehling*, C.A.5 (Tex.) 1982, 676 F.2d 1053, rehearing denied 683 F.2d 1373. *Colleges And Universities* ↻ 9.25(2); United States ↻ 123

Evidence of federal and state income tax liabilities of defendant charged with fraud was properly refused, where offer was intended to show that testimony was inherently implausible, as it would have required inference that defendant made no net profit from alleged fraudulent scheme but evidence would have as much suggested defendant's lack of business acumen as witness' lack of credibility. *Corey v. U. S.*, C.A.1 (Mass.) 1965, 346 F.2d 65, certiorari denied 86 S.Ct. 253, 382 U.S. 911, 15 L.Ed.2d 162. *Witnesses* ↻ 331.5

In prosecution for presenting to Veterans' Administration a claim for servicemen's indemnity as widow of certain person when defendant in fact knew she was not his widow, testimony by Government witness, that defendant did not tell him that she was divorced from another person to whom she had been married was improperly admitted. *Jackson v. U.S.*, C.A.5 (Ala.) 1958, 250 F.2d 897. Criminal Law ↻ 407(1)

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In prosecution for conspiracy to defraud the United States and for presenting false claims to a federal agency, by padding pay rolls of subcontractor, ultimately paid by War Shipping Administration when prime contractor on cost plus basis was reimbursed for payments made to subcontractor pursuant to invoices submitted by subcontractor, error in admitting in evidence testimony of witness who prepared a "schedule" as basis for testimony that unsupported invoices had been submitted to prime contractor, which schedule was based only on testimony of employees the witness considered reliable, as determined from a comparison by witness of employee's testimony and statements previously made by employees, was not corrected by cautionary statement of trial judge that jury should determine whether employees told the truth. *U. S. v. Ward*, C.C.A.3 (Pa.) 1948, 169 F.2d 460. Criminal Law ☞ 1169.5(2)

Fact that civil case was pending against defendant to recover penalties and money paid pursuant to conservation reserve program could not properly be disclosed to jury in prosecution for making false claim and false statement in certification of compliance with program requirements for purpose of making jury believe that defendant would be sufficiently punished by civil action. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Criminal Law ☞ 338(7)

51. ---- Conspiracy, admissibility of evidence

Where defendant's participation in conspiracy to present false claims to Government had already been proved at time co-conspirator took witness stand, and since conversation between defendant and co-conspirator took place during course of conspiracy and was in furtherance of its purposes, such conversation was properly admissible against defendant. *U. S. v. Tyminski*, C.A.2 (N.Y.) 1969, 418 F.2d 1060, certiorari denied 90 S.Ct. 1523, 397 U.S. 1075, 25 L.Ed.2d 810. Criminal Law ☞ 423(1)

In prosecution for conspiring to commit an offense against United States or to defraud United States by conspiring to have a third party make a false claim against government, evidence relating to payment by third party to each of defendants of \$250 on October 22 was not objectionable on ground that conspiracy had terminated by virtue of third party's having submitted a valid, nonfraudulent invoice on October 14, 1958. *U. S. v. Strycker*, E.D.Wis.1960, 182 F.Supp. 677. Conspiracy ☞ 45; Fraud ☞ 69(4)

52. ---- Collateral circumstances, admissibility of evidence

In prosecution for presenting false claims against the government for furnishing fresh chilled Spanish mackerel when accused furnished bonito mackerel of an inferior grade and lesser value, testimony of chief commissary steward at Naval Training Station that he received from accused money as "cumshaw" on fish orders was properly admitted, since, in cases involving fraud, collateral circumstances prior and subsequent, not too remote in time, are admissible. *Roberts v. U.S.*, C.C.A.4 (Va.) 1943, 137 F.2d 412, certiorari denied 64 S.Ct. 80, 320 U.S. 768, 88 L.Ed. 459. Criminal Law ☞ 338(1)

53. ---- Handwriting specimens, admissibility of evidence

Testimony of handwriting expert comparing defendant's own signature with those on forms submitted to the government and concluding that it was highly probable that the signatures were those of defendant sustained finding that defendant made the false statements and claim at issue. *U.S. v. Parsons*, C.A.10 (N.M.) 1992, 967 F.2d 452. Evidence ☞ 573

In prosecution for making false claims against the United States, Government met its burden of making prima facie showing of connection between defendant and false income tax returns admitted as evidence through expert's authentication testimony that handwriting on forms matched exemplar of defendant's handwriting, in conjunction with fact that defendant's name and address were listed as place to send refund checks. *U.S. v. Blackwood*, C.A.9

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(Cal.) 1989, 878 F.2d 1200. Criminal Law ⚡ 444

Prior warning that handwriting specimens taken from defendant might be used against her in criminal case was not essential to admissibility of such specimens in prosecution for making fraudulent claims against United States. *Bryant v. U. S.*, C.A.5 (Ala.) 1957, 244 F.2d 411. Criminal Law ⚡ 404.85

54. ---- Hearsay evidence, admissibility of evidence

In prosecution for presenting false claims against government and for conspiracy to commit such offense, extrajudicial statements made by co-defendant to F.B.I. were hearsay and improperly admitted, since they had effect of supporting twice over in writing, all testimony of co-defendant at trial concerning defendant's activities. *U. S. v. Toner*, C.A.3 (Pa.) 1949, 173 F.2d 140. Criminal Law ⚡ 422(1)

In prosecution for presenting false claims against government and for conspiracy to commit such offense, admission in evidence of extra-judicial statements made by co-defendant to F.B.I. was error, where co-defendant admitted that he had perjured himself in making one of statements, notwithstanding charge that statements were not to be used as evidence against defendant and limited use for purpose of impeachment of co-defendant as witness. *U. S. v. Toner*, C.A.3 (Pa.) 1949, 173 F.2d 140. Criminal Law ⚡ 673(4)

In prosecution for fraudulently receiving compensation from the United States as the unmarried widow of war veteran, evidence that accused denied having publicly entered into any valid marriage with man who was alleged to be accused's husband was inadmissible as "self-serving declaration" and as not constituting part of "res gestae". *Lane v. U. S.*, C.C.A.9 (Ariz.) 1944, 142 F.2d 249. Criminal Law ⚡ 364(.5); Criminal Law ⚡ 413(1)

55. ---- Identification of defendant, admissibility of evidence

In prosecution for making fraudulent claims for income tax refunds, district court did not err in refusing to suppress post office employee's in-court identification of defendant as person who leased post office box to which fraudulent refunds were to be sent where court found that in-court identification was independently made and not brought about by any improper display of photographs. *U. S. v. Bode*, C.A.8 (Mo.) 1982, 668 F.2d 1004. Criminal Law ⚡ 339.10(11)

56. ---- Knowledge and intent, admissibility of evidence

Testimony of defendant physician's former employees that defendant allegedly altered test results in one patient's file, altered hospital records before Medicare audit, destroyed originals of consultation letters to doctors placed in patient files, instructed staff to schedule tests for certain complaints automatically before he had even seen patients, instructed technician to list tennis lessons he gave defendant in electromyography (EMG) log book because technician was paid same amount for tennis lesson as for administering EMG was extrinsic act evidence admissible in prosecution for submitting fraudulent Medicare claims to United States and fraudulent claims for medical services to private insurers; evidence was relevant to prove defendant's intent to commit charged crime and to show his ability and experience to execute fraudulent scheme. *U.S. v. Hooshmand*, C.A.11 (Fla.) 1991, 931 F.2d 725. Criminal Law ⚡ 371(1)

In prosecution of ophthalmologist charged with billing Medicare for laser treatments which were not performed or not necessary, testimony of two former patients not mentioned in indictment was admissible for purpose of showing "intent," and district court did not abuse its discretion in deciding that probative value of evidence outweighed its prejudicial effect. *U.S. v. Campbell*, C.A.6 (Ohio) 1988, 845 F.2d 1374, certiorari denied 109 S.Ct. 259, 488 U.S. 908, 102 L.Ed.2d 248. Criminal Law ⚡ 371(1)

In prosecution under this section, evidence of prior crimes may be introduced to establish design, motive and intent

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on part of defendant, but convincingness of such evidence is a factor that should be weighed in decision to admit same. U. S. v. Cole, C.A.4 (Va.) 1974, 491 F.2d 1276. Criminal Law ↪ 371(1); Criminal Law ↪ 371(12); Criminal Law ↪ 372(1)

In prosecution for presenting false claims against the United States and aiding in obtaining payment thereof, rejecting an exhibit showing defendant's willingness to remain in the Marine Corps or as being in line for promotion was not an abuse of discretion since it did not show lack of intent to commit the offense charged. Robinson v. U.S., C.A.9 (Cal.) 1949, 175 F.2d 4, certiorari denied 70 S.Ct. 75, 338 U.S. 832, 94 L.Ed. 506, rehearing denied 70 S.Ct. 156, 338 U.S. 881, 94 L.Ed. 541, certiorari denied 70 S.Ct. 76, 338 U.S. 832, 94 L.Ed. 506. United States ↪ 123

In prosecution for defrauding the United States by means of pay-roll padding on particularly named ships, testimony with regard to operations of defendants through their business name, if admissible, could be used only to present circumstance from which jury could find guilty knowledge. U. S. v. Ward, C.C.A.3 (Pa.) 1948, 168 F.2d 226. United States ↪ 123

57. ---- Materiality, admissibility of evidence

Defendant's false statements in income tax returns, claiming black taxes in amount of \$43,209, were "material" to tax refund claims, for purposes of conviction for making false claims to government. U.S. v. Foster, C.A.5 (Tex.) 2000, 229 F.3d 1196, certiorari denied 121 S.Ct. 1202, 531 U.S. 1197, 149 L.Ed.2d 116. Internal Revenue ↪ 5263.30

Materiality is not an element under the false claims statute. U.S. v. Parsons, C.A.10 (N.M.) 1992, 967 F.2d 452. United States ↪ 123

Contrary to contention of defendant, charged with filing false claim against United States, that he was not permitted to show that actions serving as basis for indictment were not of such substantial nature as to justify terminating soil bank contract or assessing civil penalty against him and, thus, could not serve as basis for an indictment, the record, including fact that court permitted defendant to argue at length that any violations of contract by him had been trivial, immaterial and insubstantial, showed that defendant was in fact given opportunity to prove that any acts of noncompliance were immaterial, unknowing, and not intended to defraud government. Johnson v. U. S., C.A.8 (Mo.) 1969, 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Criminal Law ↪ 1119(2)

On trial of defendant for having, as special agent of the Land Department, presented false and fraudulent claims for expenses, evidence that regulations respecting expenses in other departments of the service were disregarded in practice was properly excluded as immaterial. Fain v. U.S., C.C.A.9 (Ariz.) 1920, 265 F. 473. United States ↪ 123

58. ---- Opinion evidence, admissibility of evidence

Absent charge under portion of aiding and abetting statute applying to defendants who willfully cause act to be done which if directly performed by defendant would be offense against United States, tax preparer could not be convicted of 19 counts of offense of presenting false claims to federal Government where Government failed to offer any proof that taxpayers in question committed some offense themselves against federal Government; traditional aiding and abetting required proof of underlying offense by taxpayers. U.S. v. Motley, C.A.7 (Ind.) 1991, 940 F.2d 1079. Internal Revenue ↪ 5263.55

In prosecution arising from scheme to defraud the Government by mischarging labor hours that employees worked on government contracts, trial court did not abuse its discretion by admitting testimony of expert regarding amount of direct labor costs which were improperly shifted to overhead accounts, where expert was completely candid

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about method he used in making calculations and admitted that he could not, from defendant's records, verify portion of figures he used in calculations. *U.S. v. Systems Architects, Inc.*, C.A.1 (Mass.) 1985, 757 F.2d 373, certiorari denied 106 S.Ct. 139, 474 U.S. 847, 88 L.Ed.2d 115. Criminal Law 486(2)

In prosecution for presenting false claims against the United States Maritime Commission, permitting Commission auditors to state their conclusions that certain items were improperly charged to the Commission, basing their opinions, not on what records revealed, but on matters entirely dehors the documents and on statements allegedly made to the auditors by persons not on witness stand and who, in certain instances, were wholly unidentified was error. *U.S. v. Michener*, C.C.A.3 (N.J.) 1945, 152 F.2d 880. Criminal Law 486(4)

59. ---- Records and vouchers, admissibility of evidence

In prosecution for making fraudulent claims for income tax refunds, district court did not abuse its discretion by admitting Internal Revenue Service account transcripts where such evidence was neither irrelevant nor highly prejudicial. *U. S. v. Bode*, C.A.8 (Mo.) 1982, 668 F.2d 1004. Criminal Law 430

In false claims prosecution wherein factual outline presented by evidence showed plundering of the federal government for defendants' own benefit and benefit of their employer by creating false sales, overcharging, making unauthorized substitution of items and using inflated price lists, district court was within its discretion in admitting summary charts through testimony of special agent. *U. S. v. John Bernard Industries, Inc.*, C.A.8 (N.D.) 1979, 589 F.2d 1353. Criminal Law 400(8)

Admission of records of corporation which had supplied meat to defendant corporation which was being prosecuted, along with officer and employee, for making false claims to supply agency of United States Department of the Army and admission of subpoenaed records of defendant corporation to show purchases of beef, all for purpose of showing that defendant corporation had not purchased enough choice meat to fulfill government contracts, and consequently must have used some inferior grade meat was not error. *Imperial Meat Co. v. U. S.*, C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. Criminal Law 436(1)

In prosecution under this section, exclusion of vouchers other than those mentioned in the indictment, which tended to show a course of action followed by defendant and other officers at school in name of which claim had been presented, was not error. *Smith v. U. S.*, C.A.9 (Ariz.) 1951, 188 F.2d 969. Criminal Law 356; Fraud 69(4)

In prosecution of former treasurer of corporation for presenting false claims against the United States Maritime Commission, where at conclusion of government's case trial judge admitted all of corporate records which were present in court room consisting of multitude of documents, some of which had been referred to specifically, others of which had not been mentioned and a great portion of which related to contracts not in issue, and many of which contained notations and remarks completely unauthenticated, admission of the files en masse was reversible error. *U.S. v. Michener*, C.C.A.3 (N.J.) 1945, 152 F.2d 880. Criminal Law 663; Criminal Law 1169.1(10)

In prosecution for conspiracy to defraud the United States, for whom employer was building three vessels, by making false claims as to amount of work done, contracts between employer and the United States under which the vessels were being built and employer's bookkeeping records and vouchers were properly admitted in evidence, particularly where the defendants' rights were adequately protected by the charge. *McGunnigal v. U. S.*, C.C.A.1 (Mass.) 1945, 151 F.2d 162, certiorari denied 66 S.Ct. 267, 326 U.S. 776, 90 L.Ed. 469. Criminal Law 432; Criminal Law 434

60. ---- Relevancy, admissibility of evidence

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In prosecution for filing applications for supplemental security income under false and fraudulent names and social security numbers, evidence of several previous false claims and break-ins in which defendant was involved was admissible as relevant to jury's evaluation of defendant's insanity defense. *U.S. v. Ruster*, C.A.9 (Cal.) 1983, 712 F.2d 409. Criminal Law 🔑 369.2(3.1)

Trial court, in prosecution of defendant for filing a false claim against the United States and for making false statements to a department or agency of United States, properly refused to permit defendant to show that the government was seeking to cancel conservation contract and assess penalties in a pending civil proceeding, in view of fact that defendant's purpose in submitting such evidence was to cause the jury to believe that defendant would be sufficiently punished in the civil proceeding. *Johnson v. U. S.*, C.A.8 (Mo.) 1969, 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. United States 🔑 123

In prosecution for fraudulently receiving compensation from the United States as the unmarried widow of war veteran, offered proof in substantiation of defense that accused was not married, that her alleged husband threatened to expose accused to federal government for having received widow's compensation unless accused would turn over to him all of her property, and that accused refused to do so was irrelevant. *Lane v. U. S.*, C.C.A.9 (Ariz.) 1944, 142 F.2d 249. Armed Services 🔑 50

On the trial of a defendant charged with having, as Indian agent, made and presented a false claim and voucher against the United States, knowing the same to be false and fictitious, testimony that it was a custom or practice of other Indian agents to sign and forward their accounts and vouchers as the same were prepared by the clerks, without reading them, was irrelevant, and properly excluded. *Bridgeman v. U.S.*, C.C.A.9 (Mont.) 1905, 140 F. 577, 72 C.C.A. 145. United States 🔑 123

61. Corroboration of evidence

Evidence that defendant's fingerprints appeared on one of money orders involved in series of related transactions which formed basis for charge under this section concerning false, fictitious or fraudulent claims constituted corroboration of testimony of accomplice. *Hankins v. U. S.*, C.A.9 (Cal.) 1967, 384 F.2d 713. Criminal Law 🔑 511.4

62. Suppression of evidence

Fact that taxpayer was coconspirator of defendant, who had certain evidence, that had been seized in absence of search warrant when he was arrested, suppressed, did not entitle taxpayer, who was charged with making false claims against United States and with filing false income tax returns, to have same evidence suppressed. *U. S. v. Lopez*, C.A.2 (N.Y.) 1969, 420 F.2d 313. Criminal Law 🔑 394.5(2)

63. Weight and sufficiency of evidence--Generally

There was insufficient evidence that clinic employee made and presented Medicare claim forms to support her conviction for making false claims to the Government; there was no evidence of payment to employee, as would have supported inference that she did the billing, and co-worker testified that she had done majority of the billing and did not realize there was different billing code for nonoffice visits. *U.S. v. Kline*, C.A.10 (Colo.) 1990, 922 F.2d 610. Health 🔑 989

Although proof of fraud may be accomplished by circumstantial evidence, fraud may not be proved by building inference on inference. *U.S. v. U.S. Cartridge Co.*, E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. Evidence 🔑 54

In war fraud action by Federal Government against munitions manufacturer, evidence of irregular act standing

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alone, even if fraudulent, in process of manufacturing ammunition, could not make case under this section. *U.S. v. U.S. Cartridge Co.*, E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. United States 122

64. ---- Conspiracy, weight and sufficiency of evidence

Evidence in prosecution for conspiracy to defraud government through filing false medicare claims, including evidence that defendant was regional manager for corporate optical center, that defendant repeatedly brushed aside warnings from center employees that company's medicare billing practices were inconsistent with those of other optometrists in the area, and that defendant refused to listen when an employee confessed that she had been doing illegal things with medicare billing, was sufficient to support conviction. *U.S. v. Gold*, C.A.11 (Fla.) 1984, 743 F.2d 800, certiorari denied 105 S.Ct. 1196, 469 U.S. 1217, 84 L.Ed.2d 341. Conspiracy 47(6)

Evidence indicating that defendant was the chairman of the board of the nonprofit corporation to which the United States Department of Agriculture was caused to reimburse for nonperformed services under a special summer food service program for children, was involved in selection of personnel, helped to set up program, attended meetings, and visited offices of corporations several times during summer was sufficient to sustain conviction of conspiracy to defraud United States and of filing false claims against the United States. *U. S. v. Buigues*, C.A.2 (N.Y.) 1978, 568 F.2d 269. Conspiracy 47(6); United States 123

Evidence sustained conviction for conspiracy to violate this section by presenting claims to education and training allowances to the Veterans Administration knowing them to be false and fraudulent. *U. S. v. Chicago Professional Schools, Inc.*, C.A.7 (Ill.) 1961, 290 F.2d 285. Conspiracy 47(6)

Evidence sustained verdict finding that defendant had presented false claims against government for stevedoring work and had conspired to commit such offense. *U. S. v. Toner*, C.A.3 (Pa.) 1949, 173 F.2d 140. United States 123; Conspiracy 47(6)

Evidence supported conviction of corporate defendant, its president, and three supervisory employees on charge of conspiring to defraud the federal government in its prosecution of the war by defective production of bombs and grenades, by misrepresentations of munitions to government inspectors, by employment of schemes to avoid compliance with specifications, and by presentment of false claims to federal government. *U.S. v. Antonelli Fireworks Co.*, C.C.A.2 (N.Y.) 1946, 155 F.2d 631, certiorari denied 67 S.Ct. 49, 329 U.S. 742, 91 L.Ed. 640, rehearing denied 67 S.Ct. 182, 329 U.S. 826, 91 L.Ed. 701. Conspiracy 47(6)

In prosecution for conspiracy to defraud the United States, for whom employer was building three vessels, by making false claims as to amount of work done, evidence sustained finding that there was one general conspiracy as alleged, and not several separate ones. *McGunnigal v. U. S.*, C.C.A.1 (Mass.) 1945, 151 F.2d 162, certiorari denied 66 S.Ct. 267, 326 U.S. 776, 90 L.Ed. 469. Conspiracy 47(6)

In prosecution for conspiracy to defraud the United States, for whom employer was building three vessels, by making false claims as to amount of work done, evidence sustained finding that defendants knew that fictitious labor charges would be reflected in higher costs to the United States and that United States would ultimately be the victim of their fraud. *McGunnigal v. U. S.*, C.C.A.1 (Mass.) 1945, 151 F.2d 162, certiorari denied 66 S.Ct. 267, 326 U.S. 776, 90 L.Ed. 469. Conspiracy 47(6)

In prosecution for conspiring to commit an offense against the United States and for presenting false claims concerning the source of gold and time of its production in connection with sale of gold to the mint at San Francisco, evidence sustained conviction. *Fuller v. U.S.*, C.C.A.9 (Cal.) 1940, 110 F.2d 815, certiorari denied 61 S.Ct. 29, 311 U.S. 669, 85 L.Ed. 430. Conspiracy 47(6); United States 34

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65. ---- Knowledge and intent, weight and sufficiency of evidence

There was sufficient evidence that ambulance transport service provider and its employee knowingly engaged in double billing for mileage when patients were double hauled to support their convictions for filing false Medicare claims, despite defendants' contention that there was no national policy against such billing, in light of evidence that administrator of state's Medicare claims had policy against double billing mileage, that administrator informed providers of policy, and that defendants intentionally misled administrator by way they submitted claims. *U.S. v. Patient Transfer Service, Inc.*, C.A.8 (Ark.) 2005, 413 F.3d 734, rehearing and rehearing en banc denied. Health  989

Evidence was sufficient to establish that defendant who owned surety and defendant who owned construction contractor knew that reimbursement claim submitted to Air Force for two contract bonds were false claims, as required to support convictions for submitting false claims to United States and conspiring to defraud United States; evidence indicated that defendants never planned on cashing contractor's bond premium checks and engaged in scheme to defraud government by allowing underfunded contractor to receive contract job through reimbursed bond premiums. *U.S. v. Upton*, C.A.5 (Tex.) 1996, 91 F.3d 677, certiorari denied 117 S.Ct. 1818, 520 U.S. 1228, 137 L.Ed.2d 1027. Conspiracy  47(6); United States  123

In prosecution of physician on numerous counts in connection with submitting medical insurance claims, evidence, which included testimony that physician submitted claim forms containing misrepresentations about the existence of other insurance on part of patient for whom claims were submitted, physician's testimony that the misrepresentations resulted from his carelessness, and evidence that entitlement to payment turned on nonexistence of other insurance, was sufficient for jury to conclude that misrepresentations were made intentionally and had tendency to induce government to act, supporting conviction on counts charging physician with submitting false claim to agency of United States. *U.S. v. Alexander*, C.A.4 (Va.) 1984, 748 F.2d 185, certiorari denied 105 S.Ct. 3501, 472 U.S. 1027, 87 L.Ed.2d 632. United States  123

In prosecution for making fraudulent claim against agency of the United States, jury was permitted to infer intent to defraud from finding that defendant had submitted claim with guilty, actual knowledge that it was false. *U. S. v. Rifin*, C.A.8 (Mo.) 1978, 577 F.2d 1111. United States  123

Proof of knowledge on part of corporate president, who was owner of 50% of corporation stock and in full time active charge thereof, was sufficient to sustain his conviction along with that of corporation and defendant employee for making of false claim to supply agency of the United States Department of the Army. *Imperial Meat Co. v. U. S.*, C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. United States  123

Evidence of defendant corporate employee's knowledge was sufficient to sustain his conviction along with corporate defendant and defendant officer for making of false claims to supply agency of the United States Department of the Army. *Imperial Meat Co. v. U. S.*, C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. United States  123

The mere fact that false vouchers, other than those mentioned in the indictment for presenting false claim to an agency of the United States, had been paid, was not evidence that the agency of the government knew that they were false at the time of payment. *Smith v. U. S.*, C.A.9 (Ariz.) 1951, 188 F.2d 969. United States  123

Evidence that participant in conservation reserve program certified that he had and would continue to comply with requirements of program and that amount claimed due was correct and that participant knew that he was not to take land out of program by developing it and that he was not to tear up or break cover on land and that participant did proceed with development established that defendant had knowledge of falsity of certification at time he made certification. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct.

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63, 396 U.S. 822, 24 L.Ed.2d 72. Fraud ↻ 69(5)

Evidence supported finding that defendant participant in conservation reserve program was aware that statements in certification of compliance with requirements of program and of correctness of amount shown due on application were false on date made. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Fraud ↻ 69(5)

66. ---- Particular cases sufficient, weight and sufficiency of evidence

Even if materiality was an element of the offense under the false claims statute, the evidence was sufficient to support defendants' convictions; it was reasonable for the jury to conclude that the contents of Verification of Employment (VOE) and Verification of Deposit (VOD) forms were material to the decision of the Federal Housing Administration of the Department of Housing and Urban Development (HUD/FHA) as to whether to pay particular insured mortgage claims, though neither the applicable regulations governing approval by a lender of a loan, nor the regulations governing the submission of a claim, specifically require that a VOE or VOD form be used or submitted. *U.S. v. Logan*, C.A.6 (Tenn.) 2001, 250 F.3d 350, rehearing en banc denied, certiorari denied 122 S.Ct. 216, 534 U.S. 895, 151 L.Ed.2d 154, certiorari denied 122 S.Ct. 468, 534 U.S. 997, 151 L.Ed.2d 384. United States ↻ 123

Evidence that officer of corporate defendant that serviced fire extinguishers for Army instructed employees to put a sticker on fire extinguishers indicating that six-year maintenance had been done, when actually it had not been performed, if employees had trouble in servicing extinguishers, and that defendant subsequently billed United States for servicing extinguishers was sufficient to support conviction under False Claims Act. *U.S. v. Abbott Washroom Systems, Inc.*, C.A.10 (Colo.) 1995, 49 F.3d 619. United States ↻ 123

Evidence that government employee marked fire extinguishers that were sent to defendant for servicing, that some of the extinguishers were returned unopened, even though servicing would have required them to be open, and that defendant billed government for services performed supported conviction under False Claims Act. *U.S. v. Abbott Washroom Systems, Inc.*, C.A.10 (Colo.) 1995, 49 F.3d 619. United States ↻ 123

Evidence that a doctor submitted claims for Medicare reimbursement during period of time in which he was out of country was sufficient to support the doctor's convictions for mail fraud, theft of government property and making a false claim; jury could properly reject doctor's defense of coverage by another physician. *U.S. v. Siddiqi*, C.A.2 (N.Y.) 1992, 959 F.2d 1167, opinion after remand 98 F.3d 1427. False Pretenses ↻ 49(4); Fraud ↻ 69(5); Postal Service ↻ 49(11)

Evidence was sufficient to support physician's convictions for fraudulently billing Medicare for consultation; Medicare reimbursers' definition of consultation as request for services by physician or agency was not vague and there was overwhelming evidence that defendant knew and understood claim procedures and terms. *U.S. v. Hooshmand*, C.A.11 (Fla.) 1991, 931 F.2d 725. Health ↻ 989

Evidence was sufficient to sustain defendant physician's conviction for submitting false electromyography (EMG) billing to Medicare insurers; patients generally remember pain of EMG unless they have severe nerve problems and each of patient witnesses who testified about test performed on them by defendant and his technicians did not recall procedures normally required for EMGs and none of them had nerve damage so severe as to render them incapable of feeling or recalling pain associated with EMG test and there was also testimony that defendant ordered his staff to schedule tests on patients and mark EMGs on charge sheets before he had even examined patients. *U.S. v. Hooshmand*, C.A.11 (Fla.) 1991, 931 F.2d 725. Health ↻ 989

Evidence was sufficient to sustain conviction of former civilian employee of the United States Army for making false claim to the Army, and making false statements to government officials, in connection with his reporting of

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expenses of transfer; defendant's initial submission to the Army of claims for expenses incurred by him and his family culminating in false statements in an attempt to conceal and perpetuate initial fraud were knowing violations of law, and his shifting excuses supported finding that requisite intent to defraud was present. *U.S. v. Haddon*, C.A.7 (Ill.) 1991, 927 F.2d 942. Fraud ☞ 69(5)

Evidence supported defendant's conviction on two counts of submitting false, fictitious and fraudulent travel vouchers to his employer, Indian Health Services, to obtain temporary quarters allowance available to defendant as relocating government employee; defendant wanted to rent house for six months but structured lease agreement to avoid ineligibility for allowance and defendant submitted photocopy of alleged rent check that landlord never received. *U.S. v. Allery*, C.A.8 (Minn.) 1990, 905 F.2d 204, rehearing denied, certiorari denied 111 S.Ct. 531, 498 U.S. 990, 112 L.Ed.2d 541. Fraud ☞ 69(5)

Evidence was sufficient to sustain convictions of two defendants for wilfully causing false statements and representations to be made to the Department of Agriculture purporting to establish existence of farm management contract rather than lease agreement, presenting to the Department a claim for payment of milk subsidies on behalf of alleged lessor knowing that it was not actually engaged in milk production on qualifying date, knowingly and wilfully making false writing representing management contract to have been effective since qualifying date for milk subsidies, and conspiring to knowingly use false material statements to influence eligibility for milk subsidies. *U.S. v. Whittington*, C.A.5 (La.) 1986, 783 F.2d 1210, rehearing denied 786 F.2d 644, certiorari denied 107 S.Ct. 269, 479 U.S. 882, 93 L.Ed.2d 246. Conspiracy ☞ 47(6); Fraud ☞ 69(5); United States ☞ 123

Evidence in prosecution for defrauding the Government by mischarging labor hours that employees worked on government contracts, including testimony of witnesses who worked for company that they were directed by officers to make alterations and misbookings, and testimony that defendants were directly involved in preparation of overhead submissions made to Government which contained rates that were inflated through the mischarges, was sufficient to sustain convictions. *U.S. v. Systems Architects, Inc.*, C.A.1 (Mass.) 1985, 757 F.2d 373, certiorari denied 106 S.Ct. 139, 474 U.S. 847, 88 L.Ed.2d 115. Fraud ☞ 69(5)

Testimony by handwriting expert as to authorship of writing on tax forms, as well as other evidence, was sufficient to support convictions for filing fraudulent tax returns and for intimidating witness. *U. S. v. Scott*, C.A.5 (Ala.) 1981, 659 F.2d 585, certiorari denied 103 S.Ct. 121, 459 U.S. 854, 74 L.Ed.2d 105. Internal Revenue ☞ 5303

Evidence that a subcontractor and its president submitted false resumés of subcontractor's employees to contractor with knowledge that contractor, which paid the claims, would seek reimbursement for the payment of the invoices from an agency of the United States was sufficient to support convictions for presentation of false claims to an agency of the United States even if government got its "money's worth" for services performed by subcontractor; because the resumés were false, the claims that they were used to justify were also false. *U. S. v. Blecker*, C.A.4 (Va.) 1981, 657 F.2d 629, certiorari denied 102 S.Ct. 1016, 454 U.S. 1150, 71 L.Ed.2d 304. United States ☞ 123

Evidence was sufficient to convict medical laboratory corporation and its owner of mail fraud and of filing false claims with the United States in connection with laboratory services performed for patients covered by the medicare or medicaid programs, in that claims were submitted for blood tests at rates payable for tests performed on manual equipment where in fact that the tests were done on automated equipment, for which a lower reimbursement rate applied. *U. S. v. Precision Medical Laboratories, Inc.*, C.A.2 (N.Y.) 1978, 593 F.2d 434. Postal Service ☞ 49(11); United States ☞ 123

Defendants were not to be relieved of criminal responsibility on ground that they had begun employment in operation which was already breaking the law, in view of ample evidence that both particular defendants became aware of criminal activity and joined in it without bringing it to attention of law enforcement officers. *U. S. v. John Bernard Industries, Inc.*, C.A.8 (N.D.) 1979, 589 F.2d 1353. Criminal Law ☞ 31

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In prosecution for making false statements to a government agency concerning quantities of grain in storage, of making false claims to government for storage charges, and of aiding and abetting in commission of offenses, there was sufficient evidence in record to establish that defendant associated himself with wrongful venture, that he participated in it as something he wished to bring about, and that he sought by his actions to make it succeed. *U. S. v. Addington*, C.A.10 (Kan.) 1973, 471 F.2d 560. Fraud ↩ 69(5); United States ↩ 123

Evidence, including fact that participant in conservation reserve program applied for and accepted payment while knowing that he had lost control over a portion of the reserved land by selling it, justified finding that the participant knew that the claim was false and that he intended to defraud the government, and the participant's submission of the payment application did constitute the submitting of a false claim within meaning of this section proscribing the filing of a false, fictitious or fraudulent claim against the United States. *Johnson v. U. S.*, C.A.8 (Mo.) 1969, 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. United States ↩ 121; United States ↩ 123

Evidence was sufficient to sustain conviction for filing a false claim against the Army. *U. S. v. Mastro*, C.A.3 (Pa.) 1958, 257 F.2d 808, certiorari denied 79 S.Ct. 49, 358 U.S. 830, 3 L.Ed.2d 68. United States ↩ 123

In prosecution for making fraudulent claims against United States, evidence was sufficient to establish defendant's guilt even if handwriting specimens obtained by postal inspector were excluded on ground that it compelled defendant to be witness against herself. *Bryant v. U. S.*, C.A.5 (Ala.) 1957, 244 F.2d 411. Fraud ↩ 69(5); United States ↩ 123

Evidence was sufficient to sustain conviction, under this section, of carbine cartridge clip manufacturer of presenting to the United States a fraudulent claim for payment in connection with sale of the clips on ground that manufacturer's general foreman had willfully caused a large quantity of defective clips to be included in clips sold to the government. *U. S. v. Milton Marks Corp.*, C.A.3 (Pa.) 1957, 240 F.2d 838. United States ↩ 123

Evidence sustained conviction of chief petty officer in United States navy for knowingly presenting false and fraudulent claim for travel allowance for his dependents to disbursing officer of United States naval air station. *Smith v. U.S.*, C.A.6 (Tenn.) 1954, 214 F.2d 305. United States ↩ 123

Evidence sustained conviction of real estate dealer for conspiracy to make and use a false certificate for purpose of inducing Veterans' Administration to guarantee a mortgage home loan to a veteran, and for causing false certificate to be made and used by lender, knowing that it contained fictitious statements and entries, in a matter within jurisdiction of Veterans' Administration for purpose of inducing the Veterans' Administration to guarantee loan to veteran. *U. S. v. Aderman*, C.A.7 (Wis.) 1951, 191 F.2d 980, certiorari denied 72 S.Ct. 366, 342 U.S. 927, 96 L.Ed. 691, rehearing denied 72 S.Ct. 552, 342 U.S. 950, 96 L.Ed. 706. Conspiracy ↩ 47(6); Fraud ↩ 69(5)

Evidence supported conviction of making and presenting to Veterans' Administration a subsistence allowance claim containing false and fraudulent statements that defendant had a minor daughter living with her mother in foreign country. *Humes v. U. S.*, C.A.10 (Colo.) 1951, 186 F.2d 875. United States ↩ 123

Evidence sustained conviction for presenting false claims against the United States and aiding in obtaining payment thereof. *Robinson v. U.S.*, C.A.9 (Cal.) 1949, 175 F.2d 4, certiorari denied 70 S.Ct. 75, 338 U.S. 832, 94 L.Ed. 506, rehearing denied 70 S.Ct. 156, 338 U.S. 881, 94 L.Ed. 541, certiorari denied 70 S.Ct. 76, 338 U.S. 832, 94 L.Ed. 506. United States ↩ 123

Evidence supported conviction of both packing company and its president of filing false claims for government subsidies with Defense Supplies Corporation relating to side payments for meat over and above ceiling price received by president and not reported, and also relating to false grading, false weights and false quantities, which caused false subsidy claims to be presented. *U.S. v. Empire Packing Co.*, C.A.7 (Ill.) 1949, 174 F.2d 16, certiorari

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denied 69 S.Ct. 1534, 337 U.S. 959, 93 L.Ed. 1758. Corporations ↻ 324; United States ↻ 123

Evidence that defendants induced potato grower to innocently file false claim and certificate with county Agricultural Conservation Association, and Commodity Credit Corporation for reimbursement for deterioration of potatoes mortgaged to Commodity Credit Corporations, which potatoes had been stored in warehouse of one of defendants, and that defendants thereafter secured the potatoes and sold them for human consumption and government received nothing from its loan to potato grower, supported conviction. *Boushea v. U. S.*, C.A.8 (Minn.) 1949, 173 F.2d 131. United States ↻ 123

Evidence sustained conviction of filing false claims with a government agency. *Nye & Nissen v. U.S.*, C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. United States ↻ 123

Evidence sustained conviction of presenting false claims against the government for furnishing fresh chilled Spanish mackerel as specified in contract when accused furnished bonito mackerel of inferior grade and lesser value. *Roberts v. U.S.*, C.C.A.4 (Va.) 1943, 137 F.2d 412, certiorari denied 64 S.Ct. 80, 320 U.S. 768, 88 L.Ed. 459. United States ↻ 123

Proof of altering of Commodity Credit Corporation cotton producer's notes authorized conviction of accused under former § 80 of this title [now this section and § 1001 of this title] even though actual presentment of such a claim was not involved. *Spivey v. U.S.*, C.C.A.5 (Ala.) 1940, 109 F.2d 181, certiorari denied 60 S.Ct. 1079, 310 U.S. 631, 84 L.Ed. 1401. United States ↻ 123

Statement of defendant participant in conservation reserve program that he had complied with and would comply with all requirements under program and that amount shown to be due was correct was not mere conclusion of law or legal opinion and would support conviction for making false claim and false statement to agency of United States. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Fraud ↻ 68.10(3); United States ↻ 121

Evidence was sufficient to support conviction of participant in conservation reserve program for making false claim and statement to agency of government in connection with certification of compliance with requirements of program and of correctness of amount shown to be due on application. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Fraud ↻ 69(5); United States ↻ 123

67. Witnesses--Competency

In prosecution for presenting to Veterans' Administration a claim for servicemen's indemnity as widow of a certain person when, in fact, defendant knew she was not his widow, Government witness, who stated that he was married to defendant and so far as he knew they had never been divorced, was incompetent to testify without defendant's consent. *Jackson v. U.S.*, C.A.5 (Ala.) 1958, 250 F.2d 897. Witnesses ↻ 62

68. --- Examination of witnesses

Issue of relationship of witness with his former wife was irrelevant to issues with which trial was legitimately concerned in prosecution for presenting false claims to the Internal Revenue Service, forging a United States treasury check and uttering and publishing the same treasury check with the forged endorsement, and restriction of such examination was not error. *Carter v. U.S.*, C.A.9 (Cal.) 1967, 373 F.2d 911. Criminal Law ↻ 338(1)

In prosecution under this section, refusing to permit defendant to cross-examine a witness for government as to

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internal affairs of corporation, in name of which claim was presented, for purpose of testing credibility of witness was not error. *Smith v. U. S.*, C.A.9 (Ariz.) 1951, 188 F.2d 969. Witnesses ↻ 330(1)

The trial judge had right to examine witnesses in prosecution for presenting false claims to the United States and conspiring to do so. *U.S. v. Breen*, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546. Witnesses ↻ 246(2)

In prosecution for presenting false claims to United States in connection with contracts for supplying equipment for projects of Works Progress Administration by representing that higher wages had been paid employees than were actually paid, action of trial judge in asking defendant if witnesses who had testified that they had been paid less than he had said testified falsely was not error. *U.S. v. Breen*, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546. Witnesses ↻ 246(2)

Refusal to permit defendant's counsel to inquire of government's witnesses concerning pending civil action to recover from defendant money paid under conservation contract for purpose of showing bias and prejudice in criminal prosecution for making false claim and statement in certification as to compliance with requirements of program was not prejudicial error, the government witnesses having no personal interest in outcome of pending civil case. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Criminal Law ↻ 1170(1)

69. ---- Exclusion from courtroom, witnesses

In prosecution for presenting claims for refunds of income taxes in names of fictitious persons, refusal to exclude certain witnesses from courtroom during the giving of testimony by other witnesses upon request made on second day of trial was not an abuse of discretion. *Hanson v. U.S.*, C.A.9 (Cal.) 1959, 271 F.2d 791. Criminal Law ↻ 665(4)

70. ---- Expert witnesses

Defendant charged with filing fraudulent income tax refund claims was not deprived of fair trial or due process of law in assertedly not being allowed sufficient time or opportunity to retain services of own handwriting expert to establish that he had not filed claims in question where defendant made no request before conviction for appointment, but, after his motion for early trial had been granted, declined to accept court's offer made, six days before trial, for appointment of expert at government expense. *Bandy v. U.S.*, C.A.8 (N.D.) 1961, 296 F.2d 882, certiorari denied 82 S.Ct. 849, 369 U.S. 831, 7 L.Ed.2d 796. Constitutional Law ↻ 268(3); Witnesses ↻ 2(3)

In prosecution for conspiracy to defraud United States, and for presenting false claims to a federal agency by padding pay rolls of subcontractor, ultimately paid by War Shipping Administration when prime contractor on cost plus basis was reimbursed for payments made to subcontractor pursuant to invoices submitted by subcontractor, testimony of expert, who prepared a "schedule" as basis for his testimony, that unsupported invoices had been submitted to prime contractor, which schedule was based only on testimony of employees the expert considered reliable, as determined by expert from a comparison of employee's testimony and statements previously made by employees, was a prejudicial invasion of the province of jury to determine credibility. *U. S. v. Ward*, C.C.A.3 (Pa.) 1948, 169 F.2d 460. Criminal Law ↻ 486(4)

In trial for making and presenting fraudulent claims against United States, district court did not abuse its discretion in refusing to allow expert testimony regarding effects of alleged domestic abuse by defendant's husband, where defendant failed to proffer facts supporting her claim that she was acting under duress when she committed frauds in question. *U.S. v. Lorenzo*, C.A.2 (N.Y.) 2002, 52 Fed.Appx. 553, 2002 WL 31819590, Unreported. Criminal Law ↻ 474.4(3)

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71. ---- Striking testimony, witnesses

It was incumbent upon trial judge to satisfy himself as to whether witness, testifying in prosecution of defendants for making false claims to supply agency of United States Department of the Army, was using reports made by witness to his superiors only to refresh his recollection, when defendants moved to strike testimony made with aid of reports. *Imperial Meat Co. v. U. S.*, C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. Criminal Law ¶ 696(1)

Defendants could not object to overruling of their motion to strike testimony of witness who had used reports made to his superiors during his testimony when defendants had failed to make proper objection to use of the reports. *Imperial Meat Co. v. U. S.*, C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. Criminal Law ¶ 696(5)

Refusal to strike testimony of witness, who used reports not offered in evidence, made to superior officers during testimony in prosecution of defendants for making false claims to supply agency of United States Department of the Army, was proper after trial judge had satisfied himself that reports were being used only to refresh witness' recollection. *Imperial Meat Co. v. U. S.*, C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. Criminal Law ¶ 696(1)

72. Self incrimination

Serving of subpoena on defendant corporate officer, who along with corporation and another employee were being prosecuted for making false claims to supply agency of United States Department of the Army, requiring production of corporate records did not require defendant to incriminate himself. *Imperial Meat Co. v. U. S.*, C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. Witnesses ¶ 298

Defendant charged with having filed false and fraudulent claims with the United States would not be compelled to give handwriting exemplars displaying selected phrases allegedly germane to the prosecution. *U. S. v. Green*, S.D.Ind.1968, 282 F.Supp. 373. Criminal Law ¶ 393(1)

73. Questions for jury

Whether term "payment" in federal acquisition regulation concerning government's reimbursement of contractor's bond premium payments was ambiguous was question of law for court, not question of fact for jury in prosecution for conspiracy to defraud United States and submitting false claim to United States. *U.S. v. Upton*, C.A.5 (Tex.) 1996, 91 F.3d 677, certiorari denied 117 S.Ct. 1818, 520 U.S. 1228, 137 L.Ed.2d 1027. Conspiracy ¶ 48.1(3); United States ¶ 123

In prosecution for making false claims against United States and for conspiracy to commit fraud against the United States, issues of credibility were for jury to resolve. *U. S. v. John Bernard Industries, Inc.*, C.A.8 (N.D.) 1979, 589 F.2d 1353. Criminal Law ¶ 742(1)

In prosecution for making fraudulent claim against agency of the United States, evidence was sufficient for jury to find either that defendant did not act out of genuine misconception of the law or that his belief in legality of his conduct was so unreasonable or impermissible that it did not constitute justifiable excuse for his conduct. *U. S. v. Rifen*, C.A.8 (Mo.) 1978, 577 F.2d 1111. United States ¶ 123

Jury is properly permitted to consider defendant's acts pursuant to conspiracy to defraud the United States in the sale of eggs, butter and cheese, for the purpose of determining defendant's intent in connection with count charging filing of false claims against United States. *Nye & Nissen v. U.S.*, C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari

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granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. Criminal Law  371(3)

In prosecution for submitting false claims to United States Treasury Department and conspiring to do so in connection with contracts for supplying equipment for projects of Works Progress Administration, whether one of defendants, who was an old man, although president of one of companies to which contracts were awarded, knew that vouchers and certificates signed by him were false was for jury. U.S. v. Breen, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546. Conspiracy  48.1(3); United States  123

Where there was substantial evidence in support of verdict of guilty in prosecution for presenting false claims to United States Treasury Department and conspiring to do so in connection with contracts for supplying equipment for projects of Works Progress Administration, case was properly submitted to jury. U.S. v. Breen, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546. Conspiracy  48.1(3); United States  123

In prosecution for conspiring to commit an offense against United States or to defraud United States by conspiring to have a third party make a false claim against government, credibility of witnesses eas a matter for the jury. U. S. v. Strycker, E.D.Wis.1960, 182 F.Supp. 677. Conspiracy  48.1(3); Criminal Law  742(1)

74. Argument of counsel

Defendant charged with submitting false claims to Federal Crop Insurance Corporation was prejudiced by prosecutor's misstatements of fact during closing argument that defendant admitted that he had planted hybrid corn seeds on dates contended by government and by expert's false testimony that he had personally contacted another grower regarding its crop yields in area, where government's position was that defendant's low crop yield was not due to drought but to defendant's substandard farming practices, timing of planting was crucial to yield, expert's testimony did not disclose other grower's low yields and drought claims, and evidence of guilt was close. U.S. v. Catton, C.A.7 (Ill.) 1996, 89 F.3d 387. Criminal Law  706(2); Criminal Law  719(1); Criminal Law  1171.3; Criminal Law  1171.8(1)

Prosecutor's closing argument in prosecution for conspiring to defraud and defrauding the United States by overbilling government agency on cost-plus contracts that tax money was involved, although unprofessional and improper, was harmless where court sustained objection and gave appropriate cautionary instruction and evidence against defendants was strong. U. S. v. Smyth, C.A.5 (Tex.) 1977, 556 F.2d 1179, rehearing denied 557 F.2d 823, certiorari denied 98 S.Ct. 190, 434 U.S. 862, 54 L.Ed.2d 135. Criminal Law  1171.1(3)

In prosecution for violation of National Housing Act, former § 1731(a) of Title 12, for presenting false claims and for conspiracy arising out of a loan to an indigent family solicited by defendants ostensibly for repairs, it was proper for U.S. attorney to refer to in his opening remarks, and later to adduce evidence concerning, a prior loan transaction of a similar nature, in which also only a small percentage of proceeds of loan was used for repairs, to establish defendants' purpose. U.S. v. Uram, C.C.A.2 (N.Y.) 1945, 148 F.2d 187. Criminal Law  371(1); Criminal Law  703

75. Judicial conduct

Cumulative effect of judicial intrusions, which were made in prosecution charging violations of this section and section 1001 of this title, prohibiting the making of false, fictitious and fraudulent statements or claims to the Government, and which tended to portray the defense attorneys as evasive and hypertechnical when, in fact, a detailed inquiry into the actual operation of various regulations was plainly necessary and appropriate, was so

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pervasive and prejudicial as to require reversal. *U. S. v. Cole*, C.A.4 (Va.) 1974, 491 F.2d 1276. Criminal Law ☞ 1166.22(3)

76. Instructions

Evidence supported giving of "deliberate ignorance" instruction, even though physician accused of having submitted false claims to government by requesting compensation for medical services he did not perform on civilian patients at army hospital asserted that he had made no secret of his billing processes; physician had not raised legitimacy of his billing practices with army officer associated with hospital with whom he had negotiated contract for services, indicating desire not to confirm whether his billing practices were improper. *U.S. v. Custodio*, C.A.10 (Colo.) 1994, 39 F.3d 1121, denial of post-conviction relief affirmed 141 F.3d 965, certiorari denied 119 S.Ct. 243, 525 U.S. 906, 142 L.Ed.2d 200. Criminal Law ☞ 772(5); United States ☞ 123

In chiropractor's trial for submitting false Medicare claims, false statements as to whether diagnostic tests were ordered by medical doctor and whether tests performed were medically necessary were material, and thus no harm resulted from any error caused by trial court's instructions to jury on materiality, regardless of whether materiality was element of offense of submitting false claims; at no time relevant to case did Medicare program authorize payment for diagnostic tests furnished or ordered by chiropractor, and claims should not have been honored if claims adjusters had realized that defendant was chiropractor and furnished or ordered tests to be billed. *U.S. v. White*, C.A.11 (Fla.) 1994, 27 F.3d 1531. Health ☞ 980; Health ☞ 992

District court's instruction on counts of making false claims to Department of Commerce in reports in connection with minority business development center did not allow jury to convict defendant of offense not charged in indictment, notwithstanding defendant's contention that instruction omitted specific allegations in indictment; court properly set forth elements of offense and correctly paraphrased language of relevant statute, court predicated conviction on factual basis that satisfied essential elements of offense, and there was little or no variance between allegations in indictment and evidence introduced at trial. *U.S. v. Boutte*, C.A.5 (Tex.) 1994, 13 F.3d 855, rehearing denied, certiorari denied 115 S.Ct. 71, 513 U.S. 815, 130 L.Ed.2d 27. Criminal Law ☞ 814(5)

Ample evidence justified "conscious avoidance" instruction in Medicaid prosecution, where physician deliberately avoided familiarizing himself with rules, conditions, and law controlling his Medicaid claims submissions, and provider agreement imposed duty on physician to closely monitor revolving Medicaid requirements as outlined in manual, and conform his billing practices thereto. *U.S. v. Nazon*, C.A.7 (Ind.) 1991, 940 F.2d 255, post-conviction relief denied 936 F.Supp. 563. Criminal Law ☞ 772(5); Health ☞ 992

Absent allegation that clinic employee caused co-worker to submit false Medicare claims, Government was not entitled to instruction on that theory. *U.S. v. Kline*, C.A.10 (Colo.) 1990, 922 F.2d 610. Criminal Law ☞ 814(19)

Trial court's failure to give instruction concerning taxpayer's good faith reliance upon expert advice was not reversible error in tax fraud case, where trial court instructed jury that Government was required to prove specific intent beyond reasonable doubt. *U.S. v. Dorotich*, C.A.9 (Hawai'i) 1990, 900 F.2d 192. Internal Revenue ☞ 5319

Allegedly false, exculpatory statement that defendant had heard of only one of seven allegedly fictitious companies did not justify instruction on consciousness of guilt in prosecution for participation in scheme to defraud United States and Massachusetts by filing false claims for unemployment benefits, where jury could find that exculpatory statement was false only if it had already believed evidence directly establishing defendant's guilt, where intent was not an issue, and where defendant made no claim of innocence due to ignorance about criminality of his conduct. *U.S. v. Littlefield*, C.A.1 (Mass.) 1988, 840 F.2d 143, certiorari denied 109 S.Ct. 155, 488 U.S. 860, 102 L.Ed.2d 126. Criminal Law ☞ 778(10)

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Specific intent charge, as given in prosecution for making false claims for tax refunds, was not incomplete for failure to state that defendant could not be guilty as result of mismanagement, carelessness or someone else's wrongful intent, particularly in view of instruction that good-faith reliance on accountant in preparing tax returns was a defense. U.S. v. Austin, C.A.5 (Tex.) 1985, 774 F.2d 99. Internal Revenue ☞ 5317

In prosecution for making and presenting fraudulent tax refund checks to Treasury Department, jury instruction that knowledge of falsehood element may be inferred from "proof that the defendant deliberately closed his eyes or her eyes to what would otherwise have been obvious to him or her" was not erroneous. U.S. v. Holloway, C.A.6 (Mich.) 1984, 731 F.2d 378. Fraud ☞ 69(7)

Where venue instruction tendered by defendant mistakenly stated burden of proof required to establish venue as proof beyond reasonable doubt, rather than preponderance of evidence, instruction was properly rejected by court in prosecution for presenting fraudulent tax returns. U. S. v. Massa, C.A.7 (Ind.) 1982, 686 F.2d 526. Criminal Law ☞ 830

An intent to defraud the Government is not an element of offense of submitting a "false" claim to department of United States, and thus court did not err in failing to instruct that intent to defraud was essential element of false claim allegedly occurring when executive director of a halfway house for federal prisoners allegedly submitted claim for full per day allowance without making appropriate deductions for amounts which had been collected from prisoners. U. S. v. Milton, C.A.9 (Or.) 1979, 602 F.2d 231. Fraud ☞ 68.10(1); Fraud ☞ 69(7)

Concepts of "reckless disregard" and "conscious purpose" were not required to be stated conjunctively in charge on scienter necessary to convict under this section and section 1341 of this title. U. S. v. Precision Medical Laboratories, Inc., C.A.2 (N.Y.) 1978, 593 F.2d 434. United States ☞ 123; Postal Service ☞ 48(4.3)

In light of trial court's inclusion of mistake and accident in its charge, together with its standard instructions on presumption of innocence and burden of proof with definition of reasonable doubt, it did not err in prosecution for submitting false claims on government contract, in refusing to give requested instructions on mistake of fact. U. S. v. Cook, C.A.5 (Tex.) 1978, 586 F.2d 572, rehearing denied 589 F.2d 1114, certiorari denied 99 S.Ct. 2821, 442 U.S. 909, 61 L.Ed.2d 274. Criminal Law ☞ 829(4)

In prosecution for violation of this section, trial court properly instructed jury that this section may be violated by submission of false claim, fictitious claim or fraudulent claim, if, in each instance, defendant acted with knowledge that claim was false or fictitious or fraudulent and with consciousness that he was doing something which was either wrong or which violated the law; court therefore properly refused instructions proffered by defendant which implied that defendant should be found innocent unless jury found that, in submitting false claims, defendant acted with purpose to either cheat Government or to unjustly benefit himself or his company. U. S. v. Maher, C.A.4 (Va.) 1978, 582 F.2d 842, certiorari denied 99 S.Ct. 1019, 439 U.S. 1115, 59 L.Ed.2d 73. United States ☞ 123

In prosecution for fraudulently causing false claims to be submitted to an agency of the United States, instruction referring to claims relating to a "matter within the jurisdiction of the United States" did not constitute plain error on theory that it was broader than the literal requirement that the claim be made to an agency of the United States where, in the context of other instructions, it did not appear that the jury could have been misled and where, in any event, issue on trial was one of fraudulent intent and it was "inconceivable" that jury which resolved credibility issues against defendant would not also have found that defendant caused the fraudulent claims to be submitted to an agency of the United States. U. S. v. Catena, C.A.3 (Pa.) 1974, 500 F.2d 1319, certiorari denied 95 S.Ct. 621, 419 U.S. 1047, 42 L.Ed.2d 641. Criminal Law ☞ 1038.1(4)

In prosecution for presenting false claims to defense department, court's charge that invoice submitted for payment was "claim" within meaning of this section was proper. U. S. v. Wertheimer, C.A.2 (N.Y.) 1970, 434 F.2d 1004. United States ☞ 123

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Court's charge revealed no obvious error of sufficient magnitude to warrant inference of serious miscarriage of justice in trial of defendant for knowingly making and presenting false, fictitious and fraudulent claims to department of the Army. *Corey v. U. S.*, C.A.1 (Mass.) 1965, 346 F.2d 65, certiorari denied 86 S.Ct. 253, 382 U.S. 911, 15 L.Ed.2d 162. Criminal Law ↪ 1172.1(1)

Instruction stating that in order to find defendant corporation guilty of making of false claim to supply agency of the United States Department of the Army it was necessary to find that either individual defendants or both were guilty and that criminal acts of individual defendants were committed while they were acting as officers or employees of corporation within scope of their employment was applicable under the proof, and giving of instruction was not error. *Imperial Meat Co. v. U. S.*, C.A.10 (Colo.) 1963, 316 F.2d 435, certiorari denied 84 S.Ct. 57, 375 U.S. 820, 11 L.Ed.2d 54. Corporations ↪ 534

In prosecution for fraud and conspiracy to defraud United States Veterans' Administration by presenting false tuition claims for veteran's training, failure to charge that where circumstances proved are just as consistent with honesty and good faith as with an alleged deceitful intent, the inference of fraud is not warranted because fraud cannot be imputed from circumstances that are consistent with truth and fair dealings was not error, where trial judge repeatedly told jury that government had burden of establishing guilt beyond a reasonable doubt. *U.S. v. Kelinson*, C.A.2 (N.Y.) 1953, 205 F.2d 600. Criminal Law ↪ 829(9)

In prosecution for presenting false claims against the United States and aiding in obtaining payment thereof instructions taken as a whole were adequate and free from prejudicial error. *Robinson v. U.S.*, C.A.9 (Cal.) 1949, 175 F.2d 4, certiorari denied 70 S.Ct. 75, 338 U.S. 832, 94 L.Ed. 506, rehearing denied 70 S.Ct. 156, 338 U.S. 881, 94 L.Ed. 541, certiorari denied 70 S.Ct. 76, 338 U.S. 832, 94 L.Ed. 506. Criminal Law ↪ 822(1)

In prosecution for presenting false claims against government, charge that fact that co-defendant pleaded guilty was not evidence against defendant but that jury could consider that one of two conspirators did plead guilty and make such use of evidence as they thought fit, was reversible error. *U. S. v. Toner*, C.A.3 (Pa.) 1949, 173 F.2d 140. Criminal Law ↪ 793; Criminal Law ↪ 1172.1(2)

In prosecution for presenting false claims against government, request of accused's counsel to discuss before jury the reason why accused did not testify, was properly denied where counsel stated that he wished to explain that accused would have to admit that he had paid money to government agent and that accused would thereby be prejudiced. *Roberts v. U.S.*, C.C.A.4 (Va.) 1943, 137 F.2d 412, certiorari denied 64 S.Ct. 80, 320 U.S. 768, 88 L.Ed. 459. Criminal Law ↪ 721(1)

In prosecution for presenting false claims to United States and conspiring to do so, statement by trial judge, in attempted definition of term "reasonable doubt," that it was something to be distinguished from an ordinary doubt, where no exception was taken thereto, was not reversible error on ground that it confused jury. *U.S. v. Breen*, C.C.A.2 (N.Y.) 1938, 96 F.2d 782, certiorari denied 58 S.Ct. 1061, 304 U.S. 585, 82 L.Ed. 1546. Criminal Law ↪ 1038.1(5)

In a prosecution under former § 80 of this title [now this section and § 1001 of this title] a refusal to give a charge to the effect that evidence of good character may in and of itself be sufficient to create a reasonable doubt, where without it none would exist, was not error, though the request contained a correct statement of the law, where it appeared that the accusation had been amply proved by the government, and the defendant introduced only colorable evidence as to his good character, and the charge given to the effect that the jury had a right to consider the good character of the defendant in determining his guilt or innocence, and consider whether a man of good character would commit that kind of offense, was sufficient in connection with the charge that the prosecution must prove the offense beyond a reasonable doubt. *Kalmanson v. U.S.*, C.C.A.2 (N.Y.) 1923, 287 F. 71.

On an indictment charging the defendant, a colored woman, with making a fraudulent claim upon the government

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for pay and bounty which she claimed to be due to her as the widow of a colored soldier, said to have been killed during the civil war, the court charged the jury that although they might be of the opinion that no marriage between the parties had been shown that would satisfy the requirements of the law, yet if they believed that the defendant (who seemed to be an ignorant colored woman), by reason of any cohabitation or alliance between her and the deceased soldier in good faith supposed she had been his wife and was his widow and was entitled to the pay and bounty due to him at his death, then they ought to acquit her. U.S. v. Route, E.D.Mo.1887, 33 F. 246.

Where indictment containing statements relied upon in count charging making of false statement to agency of United States was twice read to jury and evidence of government focused throughout trial on statement set forth in indictment and there was no indication that government was relying upon or attempting to prove different statement, there was no confusion as to what statement jury was required to find false in order to convict defendant, and failure to specify in instructions statement alleged to have been made was not error. U. S. v. Johnson, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72 . Fraud ↻ 69(2)

Instructions that false statement in certification to government agency should be found to be material if it had natural tendency to influence or was capable of influencing agency to which it was made was sufficient and did not permit finding of guilty if statement was false without requiring falsity to be material. U. S. v. Johnson, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72 . Fraud ↻ 69(7)

In prosecution for presenting false claims against government for stevedoring work and for conspiracy to commit such offense, charge that it was a violation of law to pay government funds out as tips was proper. U.S. v. Toner, E.D.Pa.1948, 77 F.Supp. 908, reversed 173 F.2d 140. United States ↻ 123

77. Verdict

Requirement that verdicts be consistent was limited to conspiracy convictions and did not apply when corporate defendant was convicted of violating False Claims Act and codefendant who was one of its officers was acquitted. U.S. v. Abbott Washroom Systems, Inc., C.A.10 (Colo.) 1995, 49 F.3d 619. Criminal Law ↻ 878(4)

Verdict of guilty of filing false claims with a government agency does not disregard or go beyond instructions that one who aids, abets, counsels, commands, induces or procures the commission of an act is as responsible for that act as if he committed it directly. Nye & Nissen v. U.S., C.C.A.9 (Cal.) 1948, 168 F.2d 846, certiorari granted 69 S.Ct. 81, 335 U.S. 852, 93 L.Ed. 400, affirmed 69 S.Ct. 766, 336 U.S. 613, 93 L.Ed. 919. United States ↻ 123

78. Directed verdict

Former U.S. Army General and his civilian secretary were entitled to a judgment of acquittal on counts of indictment charging them with having falsified certain government travel vouchers for trips outside Viet Nam during tour of duty in Viet Nam where verdicts on such counts were, of necessity, based on sheer speculation and conjecture, and it was fundamental that jury should not have been asked to determine an issue which could only be decided in such fashion. U. S. v. Cole, C.A.4 (Va.) 1974, 491 F.2d 1276. Fraud ↻ 69(5)

79. Sentence--Generally

For purposes of defendant's sentencing for submitting a false claim for an income tax refund, which government had charged under general statute covering fraudulent claims against the United States, applicable sentencing guidelines provision was provision for tax offenses, rather than provision for financial fraud. U.S. v. Brisson, C.A.7 (Ill.) 2006, 448 F.3d 989. Sentencing And Punishment ↻ 653(12)

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Court's finding of \$100,000 loss in sentencing defendant on plea of guilty to charge involving Medicare and Medicaid fraud was clearly erroneous; record did not reveal what percentage of loss calculations stemmed from defendant's criminal activity, as opposed to his civil violations, and only evidence of loss directly attributable to criminal conduct was stipulated amount of \$2,000. *U.S. v. Abud-Sanchez*, C.A.10 (N.M.) 1992, 973 F.2d 835. Social Security And Public Welfare ☞ 18

District court did not improperly rely upon allegedly inaccurate calculation of loss in imposing sentence on convictions for presenting false insurance claims to an agency of the United States, and theft of government property having a value in excess of \$100; district court acknowledged that exact amount of money which defendant fraudulently exacted from agency was essentially unascertainable. *U.S. v. Marrero*, C.A.5 (Tex.) 1990, 904 F.2d 251, rehearing denied 909 F.2d 1479, certiorari denied 111 S.Ct. 561, 498 U.S. 1000, 112 L.Ed.2d 567. Sentencing And Punishment ☞ 84

Condition on defendant's sentence which forbade her from communicating with prisoners was valid in light of conduct of defendant, who was convicted for her part in a conspiracy in which prison inmates filed false tax returns and she cashed the refund checks generated by the false returns, and became involved in the scheme only by virtue of her extended correspondence with inmates; however, condition that defendant could communicate by mail only with her relatives, legal counsel or other recognized counselors during period of her incarceration was not valid in that it imposed a restriction on defendant which did not bear a logical relationship to the criminal conduct in which defendant had engaged and therefore was not reasonably related to achieving rehabilitation and protecting the public. *U.S. v. Holloway*, C.A.6 (Mich.) 1984, 740 F.2d 1373, certiorari denied 105 S.Ct. 440, 469 U.S. 1021, 83 L.Ed.2d 366. Sentencing And Punishment ☞ 30

Imposition of consecutive sentences on counts charging theft of government property and false claims against government was neither double jeopardy nor infraction of this section. *U.S. v. Coachman*, C.A.D.C.1984, 727 F.2d 1293, 234 U.S.App.D.C. 194. Sentencing And Punishment ☞ 571; Double Jeopardy ☞ 139.1

Where defendant was found guilty on five counts charging presenting false claims to defense department, court was authorized to impose consecutive sentences totaling more than six months. *U. S. v. Wertheimer*, C.A.2 (N.Y.) 1970, 434 F.2d 1004. Sentencing And Punishment ☞ 566

A sentence of a defendant without previous criminal record to imprisonment for five years and a fine of \$5,000 for conspiracy to violate this section by presenting false claims for education and training allowances to the Veterans Administration, which was within the maximum which could be imposed under said section was not invalid as cruel and unusual and forbidden by U.S.C.A.Const. Amend. 8. *U. S. v. Chicago Professional Schools, Inc.*, C.A.7 (Ill.) 1961, 290 F.2d 285. Sentencing And Punishment ☞ 1487; Sentencing And Punishment ☞ 1560

Charges of filing separate false claims for income tax refunds stated separate crimes upon which consecutive sentences could be imposed, although defendant may have had but one overall scheme to defraud government. *Swepton v. U.S.*, C.A.8 (Mo.) 1961, 289 F.2d 166, certiorari denied 82 S.Ct. 689, 369 U.S. 812, 7 L.Ed.2d 612. Sentencing And Punishment ☞ 538

80. ---- Vacation of sentence

Defendant who pleaded guilty with advice of counsel to indictment charging presentation of false claims for refund of income taxes was not entitled to vacation of sentence on the ground that he had been convicted as result of an illegal arrest, that he had not been taken before United States Commissioner for preliminary examination and setting of bail while in state custody and that he had been interviewed by agents of internal revenue service while in custody of state authorities for a separate violation of state law. *Davis v. U. S.*, C.A.9 (Cal.) 1965, 347 F.2d 374. Criminal Law ☞ 1450

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81. Civil penalties

Attempt by government to assess civil penalties against participant in conservation program for false certification of compliance with requirements of program, coupled with indictment and conviction for making false claim and false statement to governments agency, did not subject defendant to cruel and unusual punishment or to excessive fines and did not constitute bill of attainder. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Constitutional Law 82.5; Sentencing And Punishment 1566; Fines 1.3

Application of this section and § 1001 of this title prohibiting making of false claims and statements against agency of United States would not defeat purpose of Soil Bank Act former § 1801 et seq. of Title 7, by subjecting participant in conservation reserve program to criminal penalties for making false certification of compliance with requirements of program and of correctness of amount claimed to be due in application. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Fraud 68.10(3); United States 121

Mere fact that Soil Bank Act, former § 1801 et seq. of Title 7, in providing civil penalties makes no additional provision by way of criminal sanctions does not render ineffective this section and § 1001 of this title prohibiting making of false claims or statements to agency of United States and would not preclude prosecution for making false certificate of compliance with requirements of conservation reserve program. *U. S. v. Johnson*, W.D.Mo.1968, 284 F.Supp. 273, affirmed 410 F.2d 38, certiorari denied 90 S.Ct. 63, 396 U.S. 822, 24 L.Ed.2d 72. Fraud 68.10(3)

82. Mistrial

Where government witnesses did not testify in accordance with statements previously made to F.B.I. agents, and, while prosecution for presenting false claims to a department or agency of the United States was in progress, district judge, on his own motion, issued bench warrants for the witnesses charging them with perjury, and such action was publicized in newspapers having general circulation in area from which jurors were taken, and no instruction was given jury against possible prejudice from reading newspaper articles, court should have granted a mistrial, on ground that newspaper publicity tended to prejudice any juror who read it against defendant. *Briggs v. U.S.*, C.A.6 (Tenn.) 1955, 221 F.2d 636. Criminal Law 867

Where government witnesses did not testify in accordance with statements previously made to F.B.I. agents, and, while prosecution for presenting false claims to a department or agency of the United States was in progress, district judge, on his own motion, issued bench warrants for the witnesses charging them with perjury, and such action was publicized in newspapers having general circulation in area from which jurors were taken, trial judge should have taken such steps as were considered necessary by him to rebut presumption that defendant was prejudiced by newspaper articles, and, if trial judge was not convinced that presumption had been rebutted, trial judge should have declared a mistrial. *Briggs v. U.S.*, C.A.6 (Tenn.) 1955, 221 F.2d 636. Criminal Law 633(1); Criminal Law 867

Where government witnesses did not testify in accordance with statements previously made to F.B.I. agents, and, while prosecution for presenting false claims to a department or agency of the United States was in progress, district judge, on his own motion, issued bench warrants for the witnesses charging them with perjury, and such action was publicized in newspapers having general circulation in area from which jurors were taken, defendant did not waive right to mistrial because defendant replied in the negative when asked by trial judge if defendant wanted judge to question jurors as to whether they read the newspaper articles and as to whether articles might have prejudiced them. *Briggs v. U.S.*, C.A.6 (Tenn.) 1955, 221 F.2d 636. Criminal Law 867

83. New trial

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Allegation in motion for new trial of defendant, convicted for knowingly making and presenting false, fictitious and fraudulent claims to Department of the Army, that there was need to examine under oath person who allegedly participated in witness' frauds, without supporting affidavit indicating specific testimony sought, presented no ground for new trial. *Corey v. U. S.*, C.A.1 (Mass.) 1965, 346 F.2d 65, certiorari denied 86 S.Ct. 253, 382 U.S. 911, 15 L.Ed.2d 162. Criminal Law ¶ 958(1)

Evidence which was either known or could readily have been discovered before trial, probative at most to impeach witness' testimony as to minor collateral matter, was not such as to require new trial of defendant convicted for knowingly making and presenting false, fictitious and fraudulent claims to Department of the Army. *Corey v. U. S.*, C.A.1 (Mass.) 1965, 346 F.2d 65, certiorari denied 86 S.Ct. 253, 382 U.S. 911, 15 L.Ed.2d 162. Criminal Law ¶ 942(1)

84. Review

Reviewing court had jurisdiction, under collateral order doctrine, to consider denial of motion to dismiss indictment based on claim by defendant, who was former member of Senate, that conviction under False Claims Act for receiving improper reimbursement from Senate for out-of-town lodgings would be possible only if court interpreted Senate rules which would violate separation of powers doctrine. *U.S. v. Durenberger*, C.A.D.C.1995, 48 F.3d 1239, 310 U.S.App.D.C. 388. Criminal Law ¶ 1023(8)

Even if prosecution of defendant for filing income tax returns of others should have been had under section 1001 of this title pertaining to making a false, fictitious or fraudulent statement, rather than under this section pertaining to making a false, fictitious or fraudulent claim against United States, defendant's conviction was not subject to reversal, where there was nothing to indicate that defendant was misled or confused by statutory reference in each count. *Kercher v. U.S.*, C.A.8 (Mo.) 1969, 409 F.2d 814. Criminal Law ¶ 1167(1)

Sentencing of chief petty officer in United States navy for knowingly presenting a false and fraudulent claim for travel allowances for his dependents to disbursing officer of the United States naval air station was matter for trial court within limits of applicable statute, and would not be reviewed by Court of Appeals. *Smith v. U.S.*, C.A.6 (Tenn.) 1954, 214 F.2d 305. Criminal Law ¶ 1158(1)

In prosecution under this section, where certain regulations and a pamphlet offered in evidence had not been marked for identification or been incorporated in record, and particular section or sections thereof which defendant deemed material and relevant had not been pointed out, either in the trial court or Court of Appeals, the correctness of exclusion of evidence could not be determined. *Smith v. U. S.*, C.A.9 (Ariz.) 1951, 188 F.2d 969. Criminal Law ¶ 1120(9)

On appeal from a conviction under this section, judicial notice could not be taken of certain governmental regulations and pamphlet where no proper reference had been made to them in the record. *Smith v. U. S.*, C.A.9 (Ariz.) 1951, 188 F.2d 969. Criminal Law ¶ 304(10)

Requirement that defendant, who had falsely represented to Veteran's Administration Medical Center that she was trained and licensed in profession of nursing, reimburse the Government for wages she earned in four-year period was direct consequence of conviction of filing false statements and false claims and defendant should have been advised of reimbursement obligation before she was permitted to enter guilty plea; lack of admonition as to restitution required that restitution provision be set aside notwithstanding fact that defendant did not object during sentencing or raise matter on direct appeal. *U.S. v. Lott*, E.D.Va.1986, 630 F.Supp. 611, affirmed 795 F.2d 82. Criminal Law ¶ 273.1(4)

85. Reversal

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Statement by government counsel during pre-trial hearing, opening and closing argument constituted sufficient notice to defendant that government's theory behind prosecution of defendant for filing false claims with an agency of the United States was that the claims submitted were false because they purportedly represented amount due for work which in fact had not been performed, and therefore since sufficient evidence on that theory was presented at trial, defendant was not entitled to reversal on basis that his conviction was predicated on a theory not tried or submitted to the jury. U. S. v. Irwin, C.A.10 (Colo.) 1981, 654 F.2d 671, certiorari denied 102 S.Ct. 1709, 455 U.S. 1016, 72 L.Ed.2d 133. Criminal Law  1134(6)

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