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## 911. Materiality

Amended section 1001 (1996) expressly includes materiality as an element under each of the three clauses in subsection (a). This resolves a conflict among the courts on that issue. See, e.g., *United States v. Corsino*, 812 F.2d 26 (1st Cir. 1987); *United States v. Elkin*, 731 F.2d 1005 (2d Cir. 1984).

After *United States v. Gaudin*, 115 S.Ct. 2310 (1995), materiality is an issue to be determined by the jury. *Gaudin*, held that it was error for a trial court to refuse to submit the question of materiality to the jury in a prosecution under the first prong of 18 U.S.C. § 1001, overturning lower court cases holding that materiality was a legal question for the court. The Supreme Court held that if materiality is an element of the offense, that element must be submitted to the jury, and the jury must find materiality beyond a reasonable doubt to convict. *Gaudin* is probably not limited to 18 U.S.C. § 1001, but may apply to any other offenses in which the materiality of a false statement is an element of the offense, such as 18 U.S.C. §§ 1005, 1006, 1014 (false statements to various financial institutions); 1542 (false statement to obtain passport); 1621 and 1623 (perjury); and 26 U.S.C. § 7206 (false statements on a tax return). This list is illustrative, not exhaustive. See *United States v. Gaudin*, 28 F.3d 943, 955 (9th Cir. 1994) (Kozinski, J., dissenting)(collecting statutes possibly affected by the new ruling), *aff'd*, 115 S.Ct. 2310 (1995).

Although in *Gaudin* the Court did not explicitly hold that materiality was an element of each branch of 18 U.S.C. § 1001, the majority view is that the element of materiality pervades the entire statute. See generally *United States v. Adler*, 633 F.2d 1287, 1291 (8th Cir. 1980)(the majority view is that the element of materiality pervades the entire statute). Nor did the *Gaudin* court define "materiality," under 18 U.S.C. § 1001, noting that the parties had agreed to a definition. In *Gaudin* the parties agreed to the definition from *Kungys v. United States*, 485 U.S. 759, 770 (1988), a denaturalization case under 8 U.S.C. § 1451 in which the Supreme Court noted that the Federal courts have long displayed a quite uniform understanding of the materiality concept embodied in statutes criminalizing false statements to public officials, including 18 U.S.C. § 1001. Specifically, the Court stated that "[t]he most common formulation of that understanding is that a concealment or misrepresentation is material if it has a natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it was addressed." 485 U.S. at 770 (citations and internal quotation marks omitted).

To establish materiality as an element, it is sufficient that the statement have the capacity or a natural tendency to influence the determination required to be made. See *Id.*; *United States v. Lueben*, 838 F.2d 751, 754 (5th Cir. 1988); *United States v. Allen*, 892 F.2d 66, 67 (10th Cir. 1989). One often cited test for materiality appears in *United States v. Weinstock*, 231 F.2d 699, 701 (D.C. Cir. 1956):

"Material" when used in respect to evidence is often confused with "relevant," but the two terms have wholly different meanings. To be "relevant" means to relate to the issue. To be "material" means to have probative weight, i.e., reasonably likely to influence the tribunal in making a determination required to be made. A statement may be relevant but not material.

For example, a passport applicant's false statements as to name, identity, and citizenship were material to the State Department's decision as to whether to grant a passport. *United States v. Ramos*, 725 F.2d 1322 (11th Cir. 1984).

Thus, the test for materiality under 18 U.S.C. § 1001 is not whether the false statement actually influenced a government function, but whether it had the capacity to influence. *Lueben*, 838 F.2d at 754; *United States v. Lichenstein*, 610 F.2d 1272, 1278 (5th Cir. 1980). *Weinstock* held that "the issue to which the false statement is material need not be the main issue; it may be a collateral issue. And it need not bear directly upon the issue but may merely augment or diminish the evidence upon some point. But it must have some weight in the process of reaching a decision." 231 F.2d at 703.

Materiality is best shown by the testimony of a witness, generally those who make the decisions on the application or statements in the particular case, concerning the influence that defendant's allegedly false statement might have had on the ultimate result of the transaction. Such a witness may be an expert witness or a fact witness, or both.

[cited in [USAM 9-42.001](#)]

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