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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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15	UNITED STATES OF AMERICA,)	No. CR 034-0095-WBS
16	Plaintiff,)	DEFENDANT AMR MOHSEN'S PROPOSED
17	v.)	JURY INSTRUCTIONS
18	AMR MOHSEN,)	
19	Defendant.)	Hon. William B. Shubb
20	_____)	

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21 Defendant Amr Mohsen, by and through his attorneys, Bruce Locke
22 and John Balazs, submit the following attached proposed jury
23 instructions concerning the conspiracy, perjury, subornation of
24 perjury, and obstruction of justice charges in the first part of the
25 trial. With respect to these charges, the defense has previously
26 submitted a proposed instruction defining materiality as it is used in
27 the instructions on the elements of these counts. With respect to mail
28 fraud as charged in counts 11-18, the defense agrees with the proposed

CONSPIRACY

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2 The defendant Amr Mohsen is charged in count one of the Indictment
3 with conspiring to obstruct justice by fabricating a notebook and to
4 commit perjury with respect to the notebook in violation of Section
5 1621 and 1503 of Title 18 of the United States Code. In order to be
6 found guilty of that charge, the government must prove each of the
7 following elements beyond a reasonable doubt:

8 First, beginning on or about March 29, 1998, and ending on or
9 about May 10, 2000, there was an agreement between two or more persons
10 to commit perjury and to obstruct justice as to a material matter in a
11 pending judicial proceeding before the district court;

12 Second, the defendant became a member of the conspiracy knowing
13 its objective and intending to accomplish it and;

14 Third, one of the members of the conspiracy performed at least one
15 overt act for the purpose of carrying out the conspiracy, with all of
16 you agreeing on a particular overt act that you find was committed.

17 I shall discuss with you briefly the law relating these elements.

18 A conspiracy is a kind of criminal partnership--an agreement of
19 two or more persons to commit one or more crimes. The crime of
20 conspiracy is the agreement to do something unlawful; it does not
21 matter whether the crime agreed upon was committed.

22 For a conspiracy to have existed, it is not necessary that the
23 conspirators made a formal agreement or that they agreed on every
24 detail of the conspiracy. It is not enough, however, that they simply
25 met, discussed matters of common interest, acted in similar ways, or
26 perhaps helped one another.

27 In this case, the government has charged two crimes as objects of
28 the conspiracy, obstruction of justice and perjury. In order to

1 convict, you must all unanimously agree that the defendant agreed to
2 commit at least one of the crimes alleged in the indictment as an
3 object of the conspiracy, that is, either obstruction of justice or
4 perjury.

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26 Ninth Circuit Model Instr. 8.16; *United States v. Buckley*, 192 F.3d
27 708, 710 (7th Cir. 1999) (Posner, J.); see also Defense Proposed
28 Instruction on Obstruction of Justice, *infra*.

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PERJURY

The defendant Amr Mohsen is charged in counts Two, Three and Four of the Indictment with perjury in violation of Section 1621 of Title 18 of the United States Code. In order for the defendant to be guilty of those charges, the government must prove each of the following elements beyond a reasonable doubt.

First, the defendant testified under oath as alleged in the indictment;

Second, the testimony was false;

Third, the defendant acted willfully, that is deliberately and with knowledge that the testimony was false, and

Fourth, the false testimony was material to the pending judicial proceeding before the district court.

The testimony of one witness is not enough to support a finding that the testimony of defendant Amr Mohsen was false. There must be independent corroborative evidence--either the testimony of another person or other independent evidence--which tends to support the testimony of falsity. The other evidence, standing alone, need not convince you beyond a reasonable doubt that the testimony was false. But after considering all the evidence on the subject, you must be convinced beyond a reasonable doubt that the testimony was false.

Ninth Circuit Model Instr. 8.110; *United States v. Davis*, 548 F.2d 840, 843-44 (9th Cir. 1977).

SUBORNATION OF PERJURY

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2 The defendant Amr Mohsen is also charged in count Ten of the
3 Indictment with subornation of perjury in violation of Section 1622 of
4 Title 18 of the United States Code. In order for the defendant to be
5 found guilty of that charge, the government must prove each of the
6 following elements beyond a reasonable doubt:

7 First, the defendant persuaded his brother Aly Mohsen to testify
8 falsely;

9 Second, Aly Mohsen testified falsely under oath as alleged in the
10 indictment;

11 Third, Aly Mohsen knew the testimony was false; and

12 Fourth, the false testimony was material to the pending judicial
13 proceeding before the district court.

14 The testimony of one witness is not enough to support a finding
15 that the testimony of Aly Mohsen was false. There must be independent
16 corroborative evidence--either the testimony of another person or other
17 independent evidence--which tends to support the testimony of falsity.
18 The other evidence, standing alone, need not convince you beyond a
19 reasonable doubt that the testimony was false. But after considering
20 all the evidence on the subject, you must be convinced beyond a
21 reasonable doubt that the testimony was false.

OBSTRUCTION OF JUSTICE

The defendant Amr Mohsen is charged in count 19 of the Indictment with obstruction of justice in violation of Section 1503 of Title 18 of the United States Code. In order for each defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, there was a judicial proceeding before a federal district court;

Second, the defendant knew of the pending judicial proceeding and endeavored to influence, obstruct and impede the district court in that proceeding by creating a fraudulent 1988 Notebook and falsely backdating certain entries in the 1988 Notebook and thereafter falsely testifying under oath that he actually created the entries on the dates reflected in the fabricated 1988 Notebook;

Third, the defendant knew at the time that the fraudulent notebook, if it is determined to be fraudulent, and the false testimony, if it is determined to be false, would in fact be presented to the court in that pending case as a truthful document and statement;

Fourth, that the fraudulent notebook, the backdated entries, and the false testimony concerning the notebook were material to the pending judicial proceeding before the district court.

Fifth, the defendant's act was done corruptly, that is, the defendant acted knowingly and dishonestly, with the specific intent to influence, obstruct and impede the district court in that proceeding.

18 U.S.C. Sec. 1503; *United States v. Buckley*, 192 F.3d 708, 710 (7th Cir. 1999) (Posner, J.)

When obstruction takes the form, as in this case, of perjury or other lying, see, e.g., *United States v. Dunnigan*, 507

1 U.S. 87, 93-94, . . . (1993): *United States v. Norris*, 300
2 U.S. 564, 574 . . . (1937); *United States v. Hach*, 162
3 F.F.3dd 937, 948-49 (7th Cir. 1998); *United States v. Molina*,
4 172 F.3d 1048, 1058 (8th Cir. 1999); U.S.S.G. § 3C1.1 and
5 Application Note 4, the materiality of the lie becomes a
6 focus of inquiry because a lie that is immaterial to the
7 justice process is not a potential interference with it. See
8 *United States v. Barrett*, 324 App. D.C. 188, 111 F.3d 947,
9 953 (D.C. Cir. 1997); *United States v. Surasky*, 976 F.2d 242,
10 246 n. 5 (5th Cir. 1992). But because the offense is one of
11 attempting rather than succeeding in obstructing justice, all
12 that is required for a lie to be material is that it could,
13 to some reasonable probability, affect the outcome of the
14 process (here, the sentence).
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