P

PERJURY

The American legal system, like most legal systems, relies heavily on the testimony of witnesses. Juries rely on witness testimony to reach verdicts in criminal and civil trials; grand juries rely on witness testimony to investigate crimes and to bring criminal charges; Congress relies on witness testimony in its legislative hearings; and a wide range of administrative agencies rely on witness testimony in making both policy decisions and rulings in specific matters. The decisions of each of these bodies are only as reliable as the witnesses appearing before them. The law making perjury a crime is one effort to encourage witnesses to be truthful.

Perjury at common law

Although false swearing or "bearing false witness" has been considered a spiritual offense since at least biblical times, perjury did not become a secular crime in England until much more recently. In the Middle Ages, witnesses as we know them did not exist. The witnesses were the jurors, and so it was the verdict, not a particular witness, that was either true or false. Correspondingly, it was the jurors, not the witnesses, who would be punished for a "false" or "perjurious" verdict. By the sixteenth century, when the modern trial by an independent and impartial jury began to emerge, perjury by witnesses also came to be punished separately, first by the Court of Star Chamber and later by English common law courts. By the mid-seventeenth century, common law perjury was defined as swearing falsely, under oath, in a judicial proceeding, about a material issue. This same definition of perjury was generally incorporated into early American common law and statutes.

Modern perjury statutes

Each of the fifty states has its own perjury statute, and federal law contains two general perjury provisions (18 U.S.C. §§ 1621, 1623). Although differences abound among these statutes, most modern perjury statutes have four elements: (1) the statement must be made under oath; (2) the statement must be false; (3) the speaker must intend to make a false statement; and (4) the statement must be material to the proceeding. Each element must be proven by the prosecution beyond a reasonable doubt.

Oath. The oath may take many different forms, so long as it contains a solemn declaration to tell the truth. It must, however, be administered by a person legally authorized to do so and in a setting in which the oath is authorized to be administered. The oath can apply both to oral testimony and to written declarations made under the penalties of perjury.

Falsity. To be perjurious, a statement made under oath must be false. Thus, a perjury conviction cannot be based upon a statement that is so vague or ambiguous that it cannot be considered affirmatively false. Similarly, as the Supreme Court held in *Bronston v. United States*, (409 U.S. 352 (1973)), a statement that is misleading, but not actually false, cannot lead to a perjury conviction. In that case, the defendant Bronston had testified under oath in a bankruptcy hearing, during which he was asked whether he had ever had any Swiss bank accounts. Bronston responded that his company had once had a Swiss bank account. Although Bronston's response was liter-

ally true, it was misleading because it suggested that Bronston had not had a personal Swiss bank account, which he had. The Supreme Court nevertheless held that Bronston could not be prosecuted for perjury because his answer, even if deliberately deceptive, was not actually false. While the Court did not condone Bronston's misleading testimony, it reasoned that it was the questioner's responsibility to ensure that Bronston's answers were not ambiguous or nonresponsive.

Intent. To be guilty of perjury, a defendant must do more than make a false statement under oath. The defendant must also intend to do so. Sometimes referred to as "scienter," this intent requirement is expressed in various ways. The federal perjury statutes require the false statement to be made "willfully" or "knowingly." Other state statutes require the statement to be made with an intent to mislead or with a belief that the statement was untrue. The intent requirement means that an "honest mistake" or an unknowing falsehood cannot be perjurious.

Materiality. The final element of most perjury statutes is the requirement that the false statement be "material" to the proceeding in which it is made. To be material, a statement must have the tendency or capacity to influence the court or other body before which the statement is made. Materiality is a broad concept, and a statement will be considered material not only if it directly relates to the matters at issue in the proceeding, but also if it could lead to the discovery of other relevant evidence or if it could enhance (or detract from) the credibility of a witness.

Materiality was traditionally considered to be an issue of law to be decided by the judge presiding over a perjury prosecution. In 1995, however, in addressing the related crime of making an unsworn false statement, the Supreme Court ruled that the materiality of a false statement was an issue for the jury. Shortly thereafter, the Supreme Court applied the same reasoning to the materiality element in perjury prosecutions. Thus, as with the other elements of the crime, the materiality element in a perjury case must be proven by the prosecution to the jury beyond a reasonable doubt.

Perjury prosecutions

Perjurious testimony or declarations can be given in a wide variety of contexts. Perjury prosecutions, however, most often result from false testimony given in a criminal trial or before a grand jury. Less frequently, a perjury prosecution will be based on false testimony given in a civil trial. In rare cases, false testimony in a civil deposition can lead to a perjury prosecution. Under federal law and in most states, perjury is a felony.

In many cases, perjury charges are brought when a prosecution for other criminal conduct is not possible—for example, when the defendant has already been acquitted of the other criminal conduct, or the statute of limitations on that conduct has expired, or there simply is not enough evidence of the other criminal conduct. The perjury conviction of Alger Hiss in 1950 is perhaps the most famous modern example of such a prosecution. Although Hiss was never charged with spying, he was prosecuted for perjury for lying to the federal grand jury that was investigating the spying allegations.

Related offenses

Subornation. Willfully procuring another person to commit perjury was traditionally considered to be a separate offense called subornation of perjury. This separate offense is largely superfluous, however, because one who causes or induces another to commit a crime is punishable under general principles of accomplice liability or solicitation. Although some states and the federal government still recognize subornation as a separate offense, the Model Penal Code recommends that the separate offense be eliminated.

False statement. Federal law (18 U.S.C. § 1001) makes it a crime to make a false statement to the government. The elements of this offense are substantially similar to the elements of perjury. The statement must be false, it must be made "knowingly and willfully," and it must be material. Unlike with perjury, the statement need not be made under oath; however, it must be made in a matter within the jurisdiction of the executive, legislative, or judicial branches of the federal government. The jurisdictional element is construed broadly and includes not only false statements made directly to the government (for example, statements to an F.B.I. agent about an ongoing investigation), but also false statements made indirectly to the government (for example, statements to a defense contractor that will be relied upon by the government).

A few states have enacted general laws against making false statements to public officials

or agencies, but most of those laws are limited to written statements, and some require that the statement be made after written notice that a false statement is punishable as a crime.

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See also COUNSEL: ROLE OF COUNSEL; JURY: LEGAL ASPECTS; OBSTRUCTION OF JUSTICE.

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POLICE: HISTORY

Throughout the history of civilization, societies have sought protection for their members and possessions. In early civilizations, members of one's family provided this protection. Richard Lundman has suggested that the development of formal policing resulted from a process of three developmental stages. The first stage involves *informal policing,* where all members of a society share equally in the responsibility for providing protection and keeping order. The second stage, *transitional policing,* occurs when police functions are informally assigned to particular members of the society. This stage serves as a transition into *formal policing,* where specific members of the community assume formal responsibility for protection and social control. Lundman suggests that the history of police involved a shift from informal to formal policing. Indeed, as societies have evolved from *mechanical* (members share similar beliefs and values but meet their basic needs independently) to *organic* (members are dependent upon one another as a result of specialization) societies, social control became more complex. Whereas there was little need for formal, specialized policing in mechanical societies, organic societies require more specialization to ensure public order.

Over time, organic societies developed into states and governments. A *state* is defined as "a political creation that has the recognized authority to use and maintain a monopoly on the use of force within a clearly defined jurisdiction," while a *government* is a "political institution of the state that uses organization, bureaucracy, and formality to regulate social interactions" (Gaines et al., p. 1). The origins of formal policing began with the organization of societies into states and governments.

The form of government heavily influences the structure of police organizations. As Langworthy and Travis have argued, "since all police systems rely on state authority, the source of state power ultimately represents the basis of police authority as well" (p. 42). Different forms of government have established different types of police forces. Shelley suggests that there are four different models of policing (i.e., communist, Anglo-Saxon, continental, and colonial) that differ based on their sources of legitimacy, organizational structure, and police function. The present author suggests that the communist model of policing obtains legitimacy through the communist political party, is organized as a centralized, armed militarized force, and performs the functions of crime control and enforcement of state ideology. The continental and colonial models have similar organizational structures and functions as the communist model, however the continental model obtains its legitimacy through the central government while the colonial model establishes legitimacy through the colonial authority. In comparison, the Anglo-Saxon model obtains legitimacy through local governments and is based in law. This model is organized as a decentralized force that is armed in some countries (United States) and not in oth-