

## 57. Article 131—Perjury

### a. *Text of statute.*

**Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—**

**(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or**

**(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, subscribes any false statement material to the issue or matter of inquiry; is guilty of perjury and shall be punished as a court-martial may direct.**

### b. *Elements.*

#### (1) *Giving false testimony.*

(a) That the accused took an oath or affirmation in a certain judicial proceeding or course of justice;

(b) That the oath or affirmation was administered to the accused in a matter in which an oath or affirmation was required or authorized by law;

(c) That the oath or affirmation was administered by a person having authority to do so;

(d) That upon the oath or affirmation that accused willfully gave certain testimony;

(e) That the testimony was material;

(f) That the testimony was false; and

(g) That the accused did not then believe the testimony to be true.

#### (2) *Subscribing false statement.*

(a) That the accused subscribed a certain statement in a judicial proceeding or course of justice;

(b) That in the declaration, certification, verification, or statement under penalty of perjury, the accused declared, certified, verified, or stated the truth of that certain statement;

(c) That the accused willfully subscribed the statement;

(d) That the statement was material;

(e) That the statement was false; and

(f) That the accused did not then believe the statement to be true.

### c. *Explanation.*

(1) *In general.* “Judicial proceeding” includes a trial by court-martial and “course of justice” includes a preliminary hearing conducted under Article 32. If the accused is charged with having committed perjury before a court-martial, it must be shown that the court-martial was duly

constituted.

#### (2) *Giving false testimony.*

(a) *Nature.* The testimony must be false and must be willfully and corruptly given; that is, it must be proved that the accused gave the false testimony willfully and did not believe it to be true. A witness may commit perjury by testifying to the truth of a matter when in fact the witness knows nothing about it at all or is not sure about it, whether the thing is true or false in fact. A witness may also commit

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perjury in testifying falsely as to a belief, remembrance, or impression, or as to a judgment or opinion. It is no defense that the witness voluntarily appeared, that the witness was incompetent as a witness, or that the testimony was given in response to questions that the witness could have declined to answer.

(b) *Material matter.* The false testimony must be with respect to a material matter, but that matter need not be the main issue in the case. Thus, perjury may be committed by giving false testimony with respect to the credibility of a material witness or in an affidavit in support of a request for a continuance, as well as by giving false testimony with respect to a fact from which a legitimate inference may be drawn as to the existence or nonexistence of a fact in issue.

(c) *Proof.* The falsity of the allegedly perjured statement cannot be proved by circumstantial evidence alone, except with respect to matters which by their nature are not susceptible of direct proof. The falsity of the statement cannot be proved by the testimony of a single witness unless that testimony directly contradicts the statement and is corroborated by other evidence either direct or circumstantial, tending to prove the falsity of the statement. However, documentary evidence directly disproving the truth of the statement charged to have been perjured need not be corroborated if: the document is an official record shown to have been well known to the accused at the time the oath was taken; or the documentary evidence originated from the accused—or had in any manner been recognized by the accused as containing the truth—before the allegedly perjured statement was made.

(a) *Oath.* The oath must be one recognized or authorized by law and must be duly administered by one authorized to administer it. When a form of oath has been prescribed, a literal following of that form is not essential; it is sufficient if the oath administered conforms in substance to the prescribed form. “Oath” includes an affirmation when the latter is authorized in lieu of an oath.

(b) *Belief of accused.* The fact that the accused did not believe the statement to be true may be proved by testimony of one witness without corroboration or by circumstantial evidence.

(3) *Subscribing false statement.* See subparagraphs (1) and (2), above, as applicable. Section

1746 of title 28, United States Code, provides for subscribing to the truth of a document by signing it expressly subject to the penalty for perjury. The signing must take place in a judicial proceeding or course of justice—for example, if a witness signs under penalty of perjury summarized testimony given at an Article 32 preliminary hearing. It is not required that the document be sworn before a third party. Section 1746 does not change the requirement that a deposition be given under oath or alter the situation where an oath is required to be taken before a specific person.

d. *Lesser included offense.* Article 80—attempts.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specifications.*

(1) *Giving false testimony.*

In that \_\_\_\_\_ (personal jurisdiction data), having taken a lawful (oath) (affirmation) in a (trial by \_\_\_\_\_ court-martial of \_\_\_\_\_) (trial by a court of competent jurisdiction, to wit: \_\_\_\_\_ of \_\_\_\_\_) (deposition for use in a trial by \_\_\_\_\_ of \_\_\_\_\_) (\_\_\_\_\_ ) that he/she would (testify) (depose) truly, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about 20\_\_\_\_, willfully, corruptly, and contrary to such (oath) (affirmation), (testify) (depose) falsely in substance that \_\_\_\_\_, which (testimony) (deposition) was upon a material matter and which he/she did not then believe to be true.

(2) *Subscribing false statement.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about 20\_\_\_\_, in a (judicial proceeding) (course of justice), and in a (declaration) (certification) (verification) (statement) under penalty of perjury pursuant to section 1746 of title 28, United States Code, willfully and corruptly subscribed a false statement material to the (issue) (matter of inquiry), to wit: \_\_\_\_\_, which statement was false in that \_\_\_\_\_, and which statement he/she did not then believe to be true.