

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PETER K. NUNEZ
United States Attorney
PHILLIP L.B. HALPERN
Assistant U.S. Attorney
United States Courthouse
940 Front Street, Room 5-N-19
San Diego, California 92189-0150
Telephone: (619) 293-5685

86 OCT 14 F

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

RICHARD P. SULLIVAN,
aka Rick Bradstreet,
Defendant.

Criminal Case No. 86-0386-N

DATE: October 7, 1986
TIME: 2:00 p.m.

GOVERNMENT'S TRIAL MEMORANDUM

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its
counsel, Peter K. Nunez, United States Attorney, and Phillip L.B. Halpern, Assistant
United States Attorney, and hereby submits its trial memorandum of facts and law, with
proposed jury instructions relating to the above-entitled case.

DATED: October 3, 1986.

Respectfully submitted,

PETER K. NUNEZ
United States Attorney



PHILLIP L.B. HALPERN
Assistant U.S. Attorney

STATUS OF THE CASE

A. INDICTMENT

The defendant is charged in a 23-count indictment charging him with: conspiracy to import controlled substances in violation of Title 21, United States Code, Sections 952, 960 and 963 (Count 1); official corruption in violation of Title 18, United States Code, Section 201 (Count 2); making false statements in credit applications in violation of Title 18, United States Code, Section 1014 (Counts 3-6); making false statements in Customs financial disclosure forms in violation of Title 18, United States Code, Section 1001 (Counts 7 and 8); failure to file a currency transaction report in violation of Title 31, United States Code, Sections 103.22 and 103.25 (Count 9); causing the filing of a false currency transaction report in violation of Title 18, United States Code, Sections 1001 and 2 (Count 10); and making false statements to a federal agent in violation of Title 18, United States Code, Section 1001 (Counts 11-23).

B. CUSTODY STATUS

On April 21, 1986, defendant was released from custody on a \$100,000 personal surety bond secured by a \$10,000 deposit and co-signatures of his in-laws.

C. TRIAL STATUS

Trial is scheduled for October 7, 1986, at 9:00 a.m., before the Honorable Leland C. Nielsen, United States District Court Judge for the Southern District of California. The estimated length of the government's case is two to three weeks.

D. INTERPRETER

An interpreter will not be needed.

E. JURY WAIVER

The defendant has not filed a jury waiver.

//

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F. PRETRIAL MOTIONS

Defendant has filed pretrial motions to: (1) suppress his statements made to Agent Rains on January 30, 1986; (2) dismiss the currency counts (9 and 10) based on United States v. Varbel, 780 F.2d 758 (9th Cir. 1986), and United States v. Mouzin, 785 F.2d 682 (9th Cir. 1986); (3) dismiss the false statement to Agent Rains (Counts 11-23) based on United States v. Soledad Medina de Perez, ___ F.2d ___ (9th Cir. September 10, 1986), C.A. No. 85-5121; and (4) to strike surplusage from the indictment. These motions are scheduled to be heard on October 6, 1986, at 2:00 p.m. In addition, defendant has filed motions in limine to: (1) exclude his 1981 taped conversation; and (2) conduct a pretrial "James" hearing into the admissibility of coconspirator statements.

II

STATEMENT OF FACTS

At least as early as 1980, Richard P. Sullivan travelled to south Florida as a Customs patrol officer (CPO) assigned to temporary duty on various Customs special operations. While performing these duties, Sullivan met coconspirator Charles Jordan, a Customs patrol officer assigned as station chief in the Key Largo office. A close friendship developed between the two.

During most of 1980 and the early part of 1981, Sullivan was stationed as a Customs patrol officer in San Diego, California. In late May 1981, Sullivan related to his partner and good friend CPO Steven Fanter that he was bored with his job in San Diego. Sullivan told Fanter that they were both too smart to be working for fools. If Fanter wanted, Sullivan could contact friends in Miami who could help them "run one load." Sullivan stated that they could make enough money for the rest of their lives by doing just one deal.

Fanter, not knowing what to make of Sullivan's conversation, reported the matter to Internal Affairs. Joe Cunha, an Internal Affairs agent, asked Fanter if he could tape a conversation in order to memorialize any criminal propensities that Sullivan might

1 demonstrate. Accordingly, on June 4, 1981, Internal Affairs recorded a conversation
2 between Sullivan and Fanter at the latter's apartment in Chula Vista. See Attachment I.

3 During their conversation, Sullivan reveals to Fanter on several occasions that he is
4 "fucking bored." When questioned by Fanter, he replied "bored and fed up! I'm looking
5 for something exciting that's illegal and prosperous." Fanter then outlined the problems
6 with doing a drug deal to make money:

7 FANTER: I worked up at DEA, everytime we did a fucking
8 case, 99 cases out of every 100 they make is because there's
9 an informant somewhere along the line.

10 SULLIVAN: Yeah.

11 FANTER: Somebody playing along both sides. And they'll work with
12 you and next thing they're drawing from you and snitching
13 you off on the other side. There's got to be something if
14 you're careful, you know.

15 SULLIVAN: I know it but I'm just so fucking bored. I'll tell ya, I'm
16 really bored.

17 Fanter then goes on to ask Sullivan if he was serious about having something going in
18 Florida. Sullivan responded that he did not have anything going, but that he would "like
19 to get something going in Florida that would be the place to fucking do it."

20 Following his exchange, their conversation digresses to Sullivan telling Fanter a
21 story concerning a woman he met and how he had utilized his long-time alias, James
22 Richard (Rick) Bradstreet. After this story and associated general conversation, Sullivan
23 talks about an adventure movie where \$5 million was ripped off:

24 SULLIVAN: I was just so fucking excited, I could picture you,
25 me and Charlie and ah, Demetri. Fucking ya I
26 could. Pictured all four of us. . . . I ain't shitting you. . . .

27 * * *

28 But ah, I can picture you, Charlie, Demetri and my-
self fucking pulling that off. I'm serious.

Sullivan continued to expound on his motivation for doing something illegal:

SULLIVAN: You know it's not the money.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FANTER: The excitement.

SULLIVAN: It's the fucking excitement . . . it's not the money, you know.

FANTER: I'll take the money.

SULLIVAN: I'll take the money too, you know. Later on, when the excitement wears off, you want to be able to sit back and order some Mint Juleps, you know. Steve, if you see all these fucking Cubans and Haitians and Colombians running around with fucking gold and diamonds . . .

FANTER: Uh-hum.

SULLIVAN: And more money than they know what to do with. Mercedes Benzes and you and I are fucking scratching it out, 28-29 thousand a year.

On the subject of money, Sullivan added:

SULLIVAN: No. A good annual income is about . . . oh, a thousand dollars a day.

FANTER: Three-hundred and sixty-five thousand a year?

SULLIVAN: Tax-free . . . is a good income.

FANTER: Oh.

SULLIVAN: That'd be a good income.

FANTER: I just could not understand how at all . . . get to that position.

SULLIVAN: Well you . . . you can't earn it.

FANTER: Huh?

SULLIVAN: You can't earn that type of money.

FANTER: You can't . . . you can marry into it.

SULLIVAN: Tough . . . tough.

Finally, Sullivan sums up what his feelings are by telling Fanter that he is just bored with everything, and now it is "a prime time for crime."

Shortly after this conversation, Sullivan traveled to Florida to seek a job as a Customs air officer. He applied for this position with coconspirator Frank Kinney. At

1 that time, Kinney was chief of the Customs Air Support Branch in Homestead, Florida.
2 Kinney offered Sullivan a position, but a hiring freeze prevented him from taking the
3 position.

4 The defendant once again traveled to south Florida as a Customs patrol officer in
5 early 1982. During this assignment he actually lived at Charles Jordan's house and drove
6 his Porsche during off-duty hours. Sullivan was also seen socializing with Jordan on
7 various occasions during early 1982. In May of 1982, Sullivan again applied for a position
8 as an Air Officer In the southeast. And, in late 1982, Sullivan was once again assigned
9 "TDY" to the Air Support Branch in Homestead.

10 In the summer of 1983, Sullivan was promoted from Customs patrol officer to
11 special agent with the United States Customs Service. In addition to his contacts with
12 Jordan, Sullivan also received phone calls from coconspirator (and brother) Robert
13 Dennis Sullivan, aka Jessie Foster, aka John Brian Keresy, aka James Relyea in 1983.^{1/}
14 Phone calls between Sullivan, Jordan and Sullivan during 1984 increased in frequency.

15 In June of 1984, Sullivan traveled to the Federal Law Enforcement Training Center
16 in Glynco, Georgia. On his way, he stopped off at his brother's house in Tallahassee,
17 Florida. At that time, Robert Sullivan introduced his brother to his girlfriend, Barbara
18 Fisher. During the summer of 1984, the defendant had sexual relations with Fisher on
19 several occasions.

20 While the defendant was in training, he was in constant communication with his
21 brother. In addition, the defendant traveled down to south Florida to visit with Charles

22 //

23
24 _____
25 ^{1/} Robert Dennis Sullivan is the brother of Richard Sullivan. He was serving a
26 sentence for aggravated assault under his real name when he escaped from the state
27 penitentiary at Saint Albans, Vermont. Since that time, he has lived under a variety of
28 aliases traveling around the United States as a member of the Outlaws motorcycle gang.
At the present, he is also wanted for failing to appear on burglary charges in Pasco
County, Florida. He is also the subject of a homicide investigation relating to an
incident in Mississippi. (Hereinafter he will be referred to as Robert Sullivan.)

1 Jordan on several occasions. However, more significant is the fact that Robert Sullivan
2 and Charles Jordan started communicating with each other by telephone.

3 In mid-1984, Robert Sullivan asked Barbara Fisher to steal \$5,000 from her
4 employer in order to get funds to purchase drugs. Sullivan explained that he needed the
5 money to buy drugs from friends of the defendant who were Customs agents in south
6 Florida. Fisher refused to give Robert Sullivan all the money, instead supplying him with
7 enough money to travel to North Miami and promising to send the rest. When Robert
8 Sullivan arrived in North Miami, Fisher refused to send him any more. In order to avoid
9 paying his room fee, Sullivan climbed out of his hotel window at the Holiday Inn. He
10 then returned to Tallahassee and threatened Fisher in order to get the money.

11 In response to his threats, Fisher stole the \$5,000 and gave it to Robert Sullivan.
12 He then went down to meet with defendant's contacts who, instead of supplying him with
13 marijuana as originally planned, were able to get cocaine. Subsequently, he and Fisher
14 traveled to Miami, frequently staying in the Howard Johnson's in North Miami Beach, to
15 purchase narcotics. Sullivan's source of cocaine was a light-skinned Cuban called "Fred"
16 who drove a black Mercedes two-seater sports car with a hard top. Sullivan and Fisher
17 would contact Fred by calling a beeper number and dialing in a code that he supplied
18 them with. They then would arrange to meet in the North Miami area a short time
19 later.^{2/}

20 While still at the Federal Law Enforcement Training Center, the defendant was
21 heard to brag that his brother was a member of "the Outlaws" motorcycle gang who he
22 partied with. Richard Sullivan asserted that he knew more about motorcycle gangs than
23

24 _____
25 ^{2/} During this time period, phone tolls show that Sullivan called at least three
26 beepers in the North Miami Beach area that were also called by Charles Jordan.
27 Further, phone tolls reveal numerous calls from Sullivan to a number identified by
28 coconspirator Samuel Edwards as belonging to a Cuban cocaine dealer called "Fred" who
"dealt" with Charles Jordan. This number was supplied to agents of the Federal Bureau
of Investigation shortly after Edwards was arrested. See infra.

1 his instructor at the academy. The defendant's comments resulted in his being
2 interviewed at the academy by Customs Agent Van Keuren. During this interview he
3 stated, among other things, that his only contact with his brother was over the phone
4 once or twice a year. He also stated that he had no knowledge of his brother's
5 whereabouts. Moreover, Sullivan has been heard to tell friends that his brother was "on
6 the other side" of the law.^{3/}

7 In late 1984, Fisher became concerned about being arrested along with Sullivan due
8 to the large amount of cocaine they were dealing. On several occasions, Sullivan told
9 her she did not have to worry because Rick was behind him and blood is thicker than
10 water. Finally, despite frequent beatings and threats of reprisals against her family,
11 Fisher left Sullivan in January of 1985.^{4/}

12 In late 1984, Jordan was also in contact with coconspirator Samuel Edwards.
13 Edwards was a former Customs pilot who also was friends with coconspirator Frank
14 Kinney. Jordan approached Edwards to fly a load of 600 pounds of marijuana from
15 Jamaica to Tamiami airport in south Florida. For his part in this smuggling venture
16 Jordan paid Edwards \$10,000.

17 In January of 1985, Edwards was contacted by coconspirator Randy Fink, a
18 professional narcotics trafficker. Fink told Edwards he was interested in smuggling a
19 load of marijuana into the south Florida area. Edwards, in turn, contacted Jordan to see
20 if he could assure that the load got by the federal authorities. Jordan informed Edwards
21 that the south Florida area was too hot, but that he would contact Frank Kinney to see
22

23 ^{3/} Despite these statements, the trial proof will show Sullivan has been in
24 constant contact with his brother and has seen him in person several times in 1984, once
in Atlanta in 1985, and again in San Diego in 1985.

25 ^{4/} During June of 1984, Robert Sullivan was staying in a dilapidated "Green
26 house" in Tallahassee. After being introduced to "Rick's contacts," his lifestyle changed
27 drastically. Among other things, Fisher and Sullivan rented a condominium in Atlanta,
stayed frequently in hotels and leased a storage locker to keep drugs and other
28 possessions they were accumulating.

1 admissible against all other conspirators. United States v. Murray, 492 F.2d 178, 187
2 (9th Cir. 1973), cert. denied, 419 U.S. 854 (1974); United States v. Piampiano, 271 F.2d
3 273, 275 (2d Cir. 1959); see United States v. Anderson, 642 F.2d 281, 285 (9th Cir. 1981)
4 (coconspirator statement admissible, since they induced continuing participation in
5 conspiracy).

6 As a predicate to the admission into evidence of statements made by a co-
7 conspirator, the government must introduce proof from a source other than the
8 statement sought to be introduced of the existence of the conspiracy. United States v.
9 Testa, 548 F.2d 847 (9th Cir. 1977); United States v. Cruz, 536 F.2d 1264 (9th Cir. 1976);
10 United States v. Dixon, 562 F.2d 1138 (9th Cir. 1977), cert. denied, 435 U.S. 927
11 (1978).^{21/} This independent evidence need only establish a prima facie case, not compel
12 a finding beyond a reasonable doubt; nor need it be unchallenged evidence. Moreover,
13 the substantiality of the independent evidence establishing the defendant's complicity in
14 the conspiracy need only be slight if existence of the conspiracy is clearly established.
15 United States v. Arbelaez, 719 F.2d 1453, 1458 (9th Cir. 1983), cert. denied sub nom.,
16 Ponce de Leon v. United States, 467 U.S. 1255 (1984); United States v. Rabb, 752 F.2d
17 1320, 1325 (9th Cir. 1984), cert. denied, ___ U.S. ___, 105 S.Ct. 2027 (1985); United
18 States v. Silverman, 771 F.2d at 1198.

19 A conspirator need not join a conspiracy at its inception. Each person joining a
20 conspiracy is taken to adopt, and is bound by, the prior acts and statements made by other
21 conspirators in furtherance of the common objective. United States v. Montgomery, 440
22 F.2d 694, 696 (9th Cir. 1971), cert. denied, 404 U.S. 884 (1971). The government need
23

24 _____
25 ^{21/} Circumstantial evidence may be considered and the court should view it
26 collectively and not in isolation. United States v. Callaway, 524 F.2d 609 (9th Cir. 1975),
27 cert. denied, 424 U.S. 967 (1976); United States v. Silverman, 771 F.2d 1193, 1198 (9th
28 Cir. 1985). Furthermore, the fact that a defendant is linked to a criminal conspiracy
only by circumstantial evidence does not preclude the admission of a coconspirator's
statements against him. United States v. Castanon, 453 F.2d 932 (9th Cir.), cert. denied,
406 U.S. 922 (1972).

1 not prove that each participant in the conspiracy knew the identity and function of all of
2 his alleged coparticipants or that each participant was aware of all of the details of the
3 criminal enterprise. United States v. Smith, 609 F.2d 1294, 1297 (9th Cir. 1979); United
4 States v. Kearney, 560 F.2d 1358, 1362 (9th Cir.), cert. denied, 434 U.S. 971 (1977);
5 United States v. Baxter, 492 F.2d 150, 158 (9th Cir. 1973), cert. denied, 414 U.S. 801
6 (1974).

7 Evidence of the acts and statements of one coconspirator during and in furtherance
8 of the conspiracy is admissible against each coconspirator whether or not they were
9 present at the time or even aware of the acts or statements. United States v. Tille, 729
10 F.2d 615, 620-622 (9th Cir. 1984), cert. denied, ___ U.S. ___, 105 S.Ct. 156 (1984);
11 United States v. Arbelaez, 719 F.2d at 1459; United States v. Masen, 658 F.2d 1263,
12 1270 (9th Cir. 1981); United States v. Roselli, 432 F.2d 879, 894 (9th Cir. 1970), cert.
13 denied, 401 U.S. 924 (1971); Rule 801(d)(2)(E), Federal Rules of Evidence.^{22/} This
14 includes liability for substantive offenses in the conspiracy. United States v. Arbelaez,
15 719 F.2d at 1459. Moreover, a minor or subordinate participant in a criminal conspiracy
16 is equally liable with those who originated and dominated it. United States v. Little, 753
17 F.2d 1420, 1498 (9th Cir. 1984); Sabari v. United States, 333 F.2d 1019, 1021 (9th Cir.
18 1964); Hernandez v. United States, 300 F.2d 114, 122 (9th Cir. 1962).

19 //

20
21
22 ^{22/} The government is not required to specify the exact time or place of the
23 conspiracy's formation, United States v. Ledesma, 499 F.2d 36, 42 (9th Cir.), cert.
24 denied, 419 U.S. 1024 (1974); Toliver v. United States, 224 F.2d 742, 744 (9th Cir. 1955),
25 and its evidence is not limited to acts and statements occurring during the time covered
26 by the indictment, Heike v. United States, 227 U.S. 133, 145 (1913); United States v.
27 Ledesma, 499 F.2d at 43; United States v. Dennis, 183 F.2d 201, 231 (2d Cir. 1950), aff'd
28 on other grounds, 341 U.S. 494 (1951); cf. United States v. Avila-Macias, 577 F.2d 1384,
1388 (9th Cir. 1978) (conspirator's statements admissible against coconspirators even
though no conspiracy charged in indictment); United States v. Johnson, 463 F.2d 216, 217
(9th Cir.), cert. denied, 409 U.S. 1028 (1972); United States v. Ziperstein, 601 F.2d 281,
294 (7th Cir. 1979), cert. denied, 444 U.S. 1031 (1980) (statements by unindicted
coconspirators admissible against indicted coconspirator).

1 It is the government's position that the statement of facts contained in this pretrial
2 memorandum provides the court with an adequate basis to exercise its discretion and
3 admit the evidence against all defendants subject to a motion to strike. United States v.
4 Kenny, 645 F.2d 1323, 1334 (9th Cir.), cert. denied, 454 U.S. 828 (1981); United States v.
5 Batimana, 623 F.2d 1366, 1368 (9th Cir.), cert. denied, 449 U.S. 1038 (1980); United
6 States v. Vargas-Rios, 607 F.2d 831, 836-837 (9th Cir. 1979). Once the court has
7 determined that there is a prima facie showing that the conspiracy existed and the
8 defendant was a member, the statements are then submitted to the jury along with all
9 the other evidence to determine guilt beyond a reasonable doubt. United States v.
10 Kenny, 645 F.2d at 1336. The jury does not review the court's determination that the
11 statements are admissible, and it would therefore be inappropriate to instruct it further
12 on any preliminary question. United States v. Lutz, 621 F.2d 940, 946 (9th Cir. 1980)
13 (specifically criticizing Devitt & Blackmar Instruction § 27.06 (3d Ed. 1977)); United
14 States v. Geise, 597 F.2d 1170, 1197-1198 (9th Cir.), cert. denied, 444 U.S. 979 (1979);
15 United States v. Santiago, 582 F.2d 1128, 1133 (7th Cir. 1978).

16 The declarations of coconspirators Robert Sullivan, Charles Jordan, and Samuel
17 Edwards are, therefore, admissible because they were made in furtherance of the
18 conspiracy, and there is overwhelming independent proof of the existence of the
19 conspiracy and of the defendant's participation in it. United States v. Mouzin, 785 F.2d
20 682, 692 (9th Cir. 1986); United States v. O'Connor, 737 F.2d 814, 820 (9th Cir. 1984),
21 cert. denied, ___ U.S. ___, 105 S.Ct. 1198 (1985); United States v. Dixon, supra; United
22 States v. Ellsworth, 481 F.2d 864, 871 (9th Cir. 1973). These statements are clearly
23 admissible as these coconspirators had a vital stake in the success of the entire venture
24 and the statements were made to facilitate planned future deliveries and assure
25 continued participation. United States v. Mason, 658 F.2d at 1270; United States v.
26 Whitten, 706 F.2d 1000, 1018 (9th Cir. 1983). And, the government can, as outlined in
27
28

1 this pretrial memorandum, make more than a prima facie case of conspiracy between the
2 defendant and his coconspirators based on proof apart from any hearsay declaration.^{23/}

3 C. THE 13 COUNTS CHARGING DEFENDANT'S SEPARATE
4 FALSE STATEMENTS ARE NOT MULTIPLICITOUS

5 Defendant is charged in Counts 11 through 23 with violation of Title 18, United
6 States Code, Section 1001. Although defendant has raised no objection pretrial, he may
7 claim during trial that his separately made false statements constitute one offense. Any
8 such claim would not be supported by the case law. It is clear that different false
9 statements made during one interview may properly support different counts in an
10 indictment.

11 It is well settled that an indictment is not multiplicitous if each count requires
12 proof of a fact which the other does not. Blockburger v. United States, 284 U.S. 299,
13 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932); United States v. Kennedy, 726 F.2d 546,
14 547-548 (9th Cir.), cert. denied, ___ U.S. ___, 105 S.Ct. 365, 83 L.Ed.2d 301 (1984). In
15 determining whether a count requires proof of a fact which the other does not, "[t]he
16 elements of the offense are determinative, even if there is substantial overlap in their
17 proof." United States v. Solomon, 753 F.2d 1522, 1527 (9th Cir. 1985). It is clear from
18 an examination of the instant indictment that each count requires proof of quite
19 different facts. See United States v. Tyrone, 451 F.2d 16, 17 (9th Cir. 1971), cert.
20 denied, 405 U.S. 1075 (1972); see also United States v. Doulin, 538 F.2d 466, 471 (2d
21 Cir.), cert. denied, 429 U.S. 895 (1976).

22 In United States v. Bennett, 702 F.2d 833 (9th Cir. 1983), defendant Bennett was
23 indicted with accomplices and charged with, among other things, 49 counts of making
24 false statements to the United States Department of Labor in violation of Title 18,

25 _____
26 ^{23/} It has long been the rule that the hearsay conspiracy exception in no way
27 violates the Sixth Amendment rights of a coconspirator. United States v. Inadi, ___ U.S.
28 ___, 106 S.Ct. 1121, 1129 (1986); Duhon v. Evans, 400 U.S. 74 (1970).

1 United States Code, Section 1001. Defendant was the secretary-treasurer of a local
2 teamsters union. The overall scheme of his criminal conduct involved defrauding the
3 government of CETA funds whereby he received kickbacks.

4 The United States Attorney charged defendant Bennett in Counts 2-45 with
5 submitting certain misleading invoices and in Counts 46-50 with submitting close-out
6 reports that were summations of the same misleading invoices. In light of the above,
7 defendant Bennett argued that the indictment was multiplicitous in that it charged him
8 for the same offense in several counts. The trial court rejected defendant's argument
9 and the Ninth Circuit affirmed. Relying on United States v. UCO Oil Co., 546 F.2d 833
10 (9th Cir. 1976), cert. denied, 430 U.S. 966 (1977), the appellate court held that each
11 count charged a separate offense under Title 18, United States Code, Section 1001,
12 because each falsity made or submitted constituted a separate offense. Id. at 835.

13 This rule is consistent with the rule applied to violations of Title 18, United States
14 Code, Section 1014, making false statements in loan applications. In United States v.
15 Kennedy, 726 F.2d 546 (9th Cir. 1984), cert. denied, ____ U.S. ____, 105 S.Ct. 365,
16 defendant was charged in an indictment with three counts of making false statements to
17 a federally insured lender. Defendant asserted that the counts were multiplicitous
18 because all of the documents that he submitted repeated the same false statement and
19 they were all executed for the same purpose, to wit, to obtain a \$350,000 line of credit.
20 Defendant's argument was rejected by the trial court and by the Ninth Circuit.^{24/}

21 The law is clear that the making of one false statement by a defendant does not
22 give him, in essence, "immunity," from making further false statements. A defendant is
23 //

24
25
26 ^{24/} The rule is equally applicable in a grand jury context. See United States v.
27 Roberts, 783 F.2d 767 (9th Cir. 1985) (upholding multiple counts for false statements
28 during a single grand jury proceeding). See also United States v. Molinares, 700 F.2d 647,
652-653 (11th Cir. 1983), and United States v. Stanfa, 685 F.2d 85, 88 (3d Cir. 1982).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

responsible and accountable for each false statement that he makes. Accordingly, the government respectfully submits that any motion regarding multiplicity be denied.

VIII

JURY INSTRUCTIONS

The government's proposed initial jury instructions are attached to this trial memorandum. The government respectfully requests the court to give whatever general instructions it deems appropriate.