DATE: January 14, 1997

In re:

SSN:

Applicant for Security Clearance

DOHA Case No. 96-0456

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR THE GOVERNMENT

Barry M. Sax, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) dated June 21, 1996, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

On July 10, 1996, Applicant responded to the allegations set forth in the SOR and requested a hearing. The case was assigned accordingly to this Administrative Judge on September 4, 1996, and on September 23, 1996, a hearing was scheduled for October 17, 1996. At the hearing held as scheduled, nine Government exhibits were admitted into evidence and testimony taken from Applicant, his current supervisor and his former manager. A transcript of the hearing was received by this office on December 11, 1996.

FINDINGS OF FACT

After a thorough review of the evidence in the record, and upon due consideration of same, this Administrative Judge renders the following findings of fact:

Applicant is a 29 year old male who has worked for his current employer (company A), a defense contractor, since March 25, 1996. He seeks to retain a Top Secret security clearance which was granted to him on November 9, 1993, by the Defense Industrial Security Clearance Office, for his work with a prior employer.

Following his initial experimentation with marijuana as a sophomore in high school in 1982, Applicant smoked the drug daily until he was caught by school officials in May 1985. On one occasion, Applicant cultivated marijuana. He purchased marijuana at a frequency varying from twice per week to once per month from known drug dealers. On about four occasions, he bought marijuana for friends. On one occasion, he sold a dime bag ($10.00 worth) of the substance. While still in high school, he experimented with other drugs as well. In 1983, he used mescaline on eight occasions as all his friends were using it. In 1984, he used hashish twice, purchasing it both times. On two occasions in 1985, he used "crack" cocaine and heroin once. In January 1986, he relocated to another state where he finished high school. He used marijuana once or twice during these six months.

After graduation, he enlisted in a branch of the United States military where he served from June 24, 1986 to October 24, 1992, when he was granted an honorable discharge. Applicant used marijuana on one occasion while he was in the service.

In conjunction with a request for access to Top Secret/sensitive compartmented information in the military, Applicant on June 25, 1986, executed a Personnel Security Questionnaire (PSQ). In response to inquiry of any illicit substance abuse, purchase and/or sale on his part, Applicant falsely answered "no," as he was not proud of his past drug involvement and wanted to start a new life.[(1)]

On June 27, 1986, Applicant completed a Personnel Security Screening Interview form whereon he denied any possession, sale or use of any dangerous drugs or marijuana.

On October 20, 1986, Applicant was interviewed about his past drug involvement. As reflected in a signed, sworn statement executed during the course of that interview, Applicant admitted use of marijuana daily to weekly to May 1985, successful cultivation of the drug once, purchase anywhere from two bags per week to one bag a month, purchase for, and delivery of, marijuana to friends on four occasions, and use and purchase of hashish twice in 1984. Applicant knowingly concealed from the Defense Investigative Service (DIS) his prior involvement with cocaine, mescaline and heroin. Applicant advised the Agent that he had no intention of using either marijuana or hashish in the future. On February 24, 1987, Applicant was granted his Top Secret security clearance and SCI access.

Following his discharge from the service in October 1992, Applicant went to work as a ---------- for a defense contractor concern. Emotionally distraught over marital difficulties and the ending of a personal relationship which he had gotten into when he and his spouse were having problems, Applicant resumed the use of illegal drugs as he found them an aid to spiritual meditation. While he used marijuana only twice in 1992, after he broke his ankle in January 1993, he began to use cannabis, primarily hashish but at times marijuana. From 1993 to July 1995, Applicant used cannabis between two to five "hits" per night five to seven days per week, to the point of admitted psychological addiction. While he purchased small amounts of hashish during the 1993/94 time frame, a friend usually kept him supplied free of charge.

On May 19, 1993, he executed a PSQ on which he responded affirmatively to the questions on the form regarding illegal drug use, purchase and sale, and reported use of marijuana and hashish between 1982 and May 1985: marijuana use varying from one to ten joints per day to spans of a month or more without any use; experimental use of hashish; and purchase and cultivation of marijuana for personal use only. Applicant did not list his ongoing cannabis usage since January 1993 or his past involvement with cocaine, heroin, and mescaline because he feared loss of his employment and security clearance.

On September 23, 1993, Applicant was interviewed by a DIS Special Agent. Where he had been using cannabis regularly since January 1993, Applicant felt he could not deny drug use completely. As reflected in a signed, sworn statement, Applicant told the Agent that he had been involved with illegal drugs only once since May 1985 which was on September 8, 1993, when his sister-in-law provided him a tobacco cigarette laced with hashish. He stated that he would never smoke it again as long as it was illegal. Applicant was granted his Top Secret security clearance on November 9, 1993.

On April 6, 1994, Applicant was reinterviewed by DIS concerning his drug use, alcohol use, and possible falsification of his PSQ. Applicant reiterated the circumstances of his last reported use of hashish in September 1993, explaining that

it had been approximately eight years since he last used marijuana or hashish and he was curious of the drug's possible effects on him. Applicant related he realized this drug use was a mistake. He informed the Agent of his belief that marijuana should be legalized, but stated he would not use marijuana as long as it is illegal.

Aware that illegal drug use was incompatible with his holding a security clearance, Applicant, in addition to his ongoing abuse of cannabis, used cocaine twice in the summer of 1994, and ecstasy and LSD twice each during the period 1994 to spring 1995. The drugs were offered to him by friends.

On January 8, 1996, Applicant was interviewed by a Special Agent assigned to a branch of military intelligence. During that interview, Applicant admitted that he smoked marijuana and hashish on New Years eve 1992 while on a trip, and he brought a small bag back with him. He indicated that after breaking his ankle in January 1993, he realized the meditative qualities of smoking and ingested primarily hashish two to three hits daily, abstaining when his supply ran out until he was resupplied at no cost by a friend. Applicant stated that he purchased hashish two to three times. Applicant also disclosed experimentation with ecstasy in the winter of 1994, cocaine twice during the summer of 1994, and "acid" twice in the spring of 1995. He reported that he stopped using illegal drugs in June 1995 and declared no intent of future involvement. Applicant intentionally did not report his prior involvement in high school with cocaine, mescaline or heroin or his sale of marijuana.

On March 15, 1996, Applicant was interviewed in conjunction with a scheduled polygraph examination. Scared by the polygraph request, Applicant resolved to set the record straight. During the pre-examination phase, Applicant was forthcoming about the extent of his illicit drug involvement. He denied any illegal drug use since July 1995 and indicated he had no future intent of any drug use.

Since his last use of drugs in July 1995, Applicant has been in the presence of others using cannabis on one occasion in April/May 1996 and been offered cannabis once. He did not use drugs on either occasion.

In May 1996, Applicant was apprehended for drunk driving. During the June to August 1996 time frame, Applicant went through an alcoholic/drug abuse prevention three day course, and attended a self-awareness group for six days and six Alcoholics Anonymous meetings. The experience reinforced his commitment to abstain from illegal drugs.

Applicant's former and current supervisor recommend him for a position of trust. Neither individual has noted any negative impact on Applicant's work performance and they regard him as a trustworthy and dependable employee.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the seriousness, recency, frequency and motivation for an applicant's conduct; the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; the age of the applicant; the absence or presence of rehabilitation, the potential for coercion or duress, and the probability that the conduct will or will not recur in the future. *See* Directive 5220.6, Section F.3. and Enclosure 2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

DRUG INVOLVEMENT

Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to

protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

(a) drugs, materials and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

(b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include:

(1) any drug abuse

(2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution

Conditions that could mitigate security concerns include:

(1) the drug involvement was not recent

(2) the drug involvement was an isolated or infrequent event

PERSONAL CONDUCT

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

(2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities

(3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination

(5) a pattern of dishonesty or rule violations

Conditions that could mitigate security concerns include:

None.

CRIMINAL CONDUCT

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

(1) any criminal conduct; regardless of whether the person was formally charged

(2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None.

* * *

Under the provisions of Executive Order 10865 and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the Applicant.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of those who testified, this Judge concludes that the Government has established its case with regard to Criteria H, E and J.

With respect to Criterion H, Applicant presents a history of heavy illicit substance abuse during two distinct periods: in high school from 1982 to 1985 and more recently from late 1992/early 1993 to July 1995. Applicant's recent drug abuse is particularly troubling for it continued while he was in possession of a Top Secret security clearance and in known contravention of Department of Defense policy. Illegal substance abuse is incompatible with retention of a security clearance due to the obvious potential for impairment when one is under the influence.

In assessing the current security significance of Applicant's abuse of controlled dangerous substances, this Administrative Judge must consider the adjudicative guidelines pertaining to drug involvement set forth in Enclosure 2 to the Directive. Disqualifying conditions (DC) 1. and 2. are both apposite. Between 1982 and May 1985, Applicant used marijuana daily; purchased it repeatedly both for himself and for friends, and cultivated and sold it one time each. He also ingested the hallucinogen mescaline on eight occasions and experimented with hashish, heroin and crack cocaine. His involvement with illicit substances thereafter was limited to at most three occasions total until late 1992. Although he used marijuana only twice during that fall, he resumed regular cannabis use in January 1993. Over the next two and a half years, Applicant abused primarily hashish to the point of psychological addiction and abused cocaine, ecstasy and LSD two times each.

Of the corresponding mitigating conditions (MC), Applicant's involvement with mescaline and heroin was confined to his high school days and therefore sufficiently remote in time to apply MC 1. in his favor. Applicant's abuses of cocaine, LSD and ecstasy over the period fall 1994 to spring 1995 are contrasted by their recency. Under the Directive, the

security concerns raised by such drug abuse may be overcome if the abuse is infrequent (MC 2.). While the abuse of such dangerous drugs is not condoned, especially where it occurred in knowing disregard of Department of Defense policy proscribing such abuse, there is found little probability, if any, of recurrence given he ingested each no more than twice. Subparagraphs 1.g., 1.h., 1.i., 1.j., and 1.k. are therefore concluded in Applicant's favor.

Applicant's extensive abuse of cannabis (both marijuana and hashish) is regarded as much more serious. For the most part, Applicant was a daily abuser of marijuana from 1982 to May 1985. He managed to remain abstinent, with the exception of one occasion, throughout his tenure in the service from June 1986 to October 1992. However, only three months after his discharge, he began to use hashish at the rate of two to five hits per night, abstaining only when he had exhausted his supply. Applicant became psychologically addicted to cannabis, finding it an aid to meditation. He ceased using cannabis in July 1995 due to fear caused by the mounting investigations into his personal background. His extensive abuse of cannabis is subject to mitigation provided there is demonstrated intent not to use any drugs in the future (MC 3.) or satisfactory completion of a drug rehabilitation program (MC 4.). Following a recent drunk driving offense in May 1996, Applicant attended an alcohol/drug abuse prevention three day course, six meetings of a self-awareness group and six Alcoholics Anonymous sessions. This does not qualify as a drug rehabilitation program of the type contemplated in the Directive. MC 3. is therefore the only factor with potential applicability.

Applicant submits that he does not intend to use any illegal drugs in the future. Applicant has made similar statements in the past and nevertheless resumed drug use. On October 20, 1986, Applicant advised a Government representative that he had no intent to use hashish or marijuana in the future. His stated intent on that occasion is viewed as credible, given his abstention until 1992. On September 23, 1993 and again on April 6, 1994, he declared an intent not to use any marijuana or hashish in the future. Yet, at the time, he was actively using hashish. In light of these blatantly false statements, it is all the more important that his recently stated intent be confirmed by positive action. Applicant's abstention from any illegal drug involvement since July 1995 augurs favorably as does the fact that he has not had any contact with his drug supplier since May 1995. However, fifteen months abstention provides inadequate assurance against relapse in this case in light of the extent of Applicant's abuse over the 1993 to July 1995 time frame and the fact that Applicant as recently as April/May 1996 was in the presence of others using drugs. While he did not use any illicit substances on that occasion, he apparently stayed with them and talked while they used drugs. This Administrative Judge is also concerned by Applicant's stated belief that marijuana should be legalized. Inasmuch as the risk of future marijuana or hashish use cannot be precluded, subparagraphs 1.a. and 1.e. are resolved against him. An adverse finding is also warranted as to subparagraph 1.l. where Applicant continued to use illegal drugs after he was granted his Top Secret security clearance. Despite the regular nature of his abuse of hashish, he obtained most of the cannabis used recently from a friend free of charge. Nor is there any evidence of cultivation or sale of marijuana since 1985. Accordingly, subparagraphs 1.b., 1.c., 1.d., and 1.f., in contrast, are resolved in Applicant's favor.

The concerns engendered by his extensive drug abuse are compounded by his failure to be forthright with the Department of Defense about that drug involvement. Applicant deliberately misrepresented his illicit drug history on a June 25, 1986 PSQ, a June 27, 1986 Personnel Security Screening Interview form, a May 19, 1993 PSQ and in sworn statements executed in conjunction with subject interviews on October 20, 1986, September 23, 1993, April 6, 1994,[(2)] and January 8, 1996. Applicant engaged in repeated falsification as he feared loss of his employment and security clearance. Information concerning illegal drug use, purchase and sale clearly has the potential for influencing an agency's investigative and adjudicative decisions. DC 1. under the personal conduct guidelines is pertinent to his intentional omissions of relevant drug abuse from his two PSQs and his Personnel Security Screening Interview form. His false statements made to Government investigators on four separate occasions over a ten year time frame also fall within the ambit of Criterion E. DC 2. applies to that conduct. His intentional concealment of the true extent of his drug history on a total of seven separate occasions, moreover, constitutes a sufficient pattern of dishonest conduct to warrant consideration of DC 5.

None of the four potentially mitigating conditions under the personal conduct criteria apply in his favor. Applicant denied any illegal drug involvement on the two forms completed in June 1986. When provided the opportunity to set the record straight during a face-to-face interview of October 20, 1986, Applicant revealed his prior marijuana and hashish involvement, but concealed his abuse of the more dangerous drugs of cocaine, heroin and mescaline. A regular abuser of primarily hashish since January 1993, Applicant reported on his May 1993 PSQ marijuana and hashish use only to May 1985. During a subsequent interview of September 1993, he falsely described his recent drug use as limited to a one-

time use of marijuana which occurred earlier that month. He reiterated the same information to DIS on April 6, 1994, and falsely denied any intent of future use. When interviewed by a Special Agent on January 8, 1996, Applicant revealed much of his recent abuse of hashish, cocaine, LSD and ecstasy, but elected not to report his high school experimentation with dangerous drugs such as heroin, crack cocaine and mescaline. The information not disclosed on these seven occasions was pertinent to a determination of Applicant's judgment and reliability. The recency and repetition of the falsehoods preclude consideration of MC 2. With his recent disclosures of March 15, 1996, and his testimony at the hearing, the Government has been fully apprised of the extent of his drug use. This belated candor comes too late to fall within MC 3. While Applicant testified at his hearing that his initial falsification was due to bad advice, he admitted on October 20, 1986, that he lied because he was not proud of his past. There is no evidence that Applicant in good faith relied on the advice of an authorized person which is required for mitigation under MC 4. In any event, Applicant continued to misrepresent his past to the Government to as recently as January 8, 1996.

The Government can ill afford individuals dictating the timing and extent of disclosures. The repeated nature and recency of Applicant's deliberate misrepresentations are not overcome by his unblemished record with respect to handling classified information. Although the Government is now aware of Applicant's drug history, there is no assurance that Applicant will not act in his self-interest in the future if faced with a personally disadvantageous situation. Subparagraphs 2.a.(1), 2.a.(2), 2.a.(3), 2.a.(4), 2.b.(1), 2.b.(2), 2.b.(3), 2.c.(1), 2.c.(2), 2.c.(3), 2.c.(4), 2.d.(1), 2.d.(2), 2.e.(1), 2.e.(2), 2.e.(3), 2.e.(4), 2.f.(1), 2.f.(2), 2.g.(1),2.g.(2), 2.g.(3), 2.g.(4), 2.g.(5), and 2.h.(1) are resolved against Applicant.

Inasmuch as Applicant's falsifications on his security clearance application forms and in his signed, sworn statements taken during subject interviews with Government agents constitute felonious violations of federal law pursuant to Title 18, Section 1001 of the United States Code,[(3)] the adjudicative guidelines pertaining to criminal conduct must also be considered when evaluating his record of deliberate misrepresentations. Although Applicant has never been formally charged for this criminal conduct, it is actionable under Criterion J. DC 1. and 2. under the adjudicative guidelines pertaining to criminal conduct must be considered. His pattern of felonious criminal behavior extends from June 1986 to January 1996. It was too recent and repeated to be mitigated under C 1. or 2. of the policy. Whereas his conduct was knowing and willful, MC 3. (person was pressured or coerced) does not apply. Applicant's record of criminal conduct may nonetheless be mitigated where the factors leading to the violation are not likely to recur (MC 4.) or there is clear evidence of successful rehabilitation (MC 5.). Applicant's subsequent candor on March 15, 1996 and during his hearing is favorable, but too recent to enable the affirmative finding of successful reform. Subparagraph 3.a. is thus also concluded against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Criterion H: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: Against the Applicant

Paragraph 2. Criterion E: AGAINST THE APPLICANT

Subparagraph 2.a.(1): Against the Applicant

Subparagraph 2.a.(2): Against the Applicant

Subparagraph 2.a.(3): Against the Applicant

Subparagraph 2.a.(4): Against the Applicant

Subparagraph 2.b.(1): Against the Applicant

Subparagraph 2.b.(2): Against the Applicant

Subparagraph 2.b.(3): Against the Applicant

Subparagraph 2.c.(1): Against the Applicant

Subparagraph 2.c.(2): Against the Applicant

Subparagraph 2.c.(3): Against the Applicant

Subparagraph 2.c.(4): Against the Applicant

Subparagraph 2.d.(1): Against the Applicant

Subparagraph 2.d.(2): Against the Applicant

Subparagraph 2.e.(1): Against the Applicant

Subparagraph 2.e.(2): Against the Applicant

Subparagraph 2.e.(3): Against the Applicant

Subparagraph 2.e.(4): Against the Applicant

Subparagraph 2.f.(1): Against the Applicant

Subparagraph 2.f.(2): Against the Applicant

Subparagraph 2.g.(1): Against the Applicant

Subparagraph 2.g.(2): Against the Applicant

Subparagraph 2.g.(3): Against the Applicant

Subparagraph 2.g.(4): Against the Applicant

Subparagraph 2.g.(5): Against the Applicant

Subparagraph 2.h.(1): Against the Applicant

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant testified at his hearing that he initially responded no on bad advice, that he had been told before he went into the military he was told to respond negatively to any drug use. (Transcript, p. 55). In a signed, sworn statement dated October 20, 1986, Applicant admitted he intentionally lied on his application because he was not proud of his drug use and wanted to start a new life.

2. The Government did not allege falsification of this sworn statement which was entered into the record without any objection as Government Exhibit 7. This Administrative Judge is not free to ignore the information, as under the Directive, each personal security clearance decision must be a fair and impartial common sense determination based on consideration of all the relevant and material information. DoD 5220.6, paragraph F.3.

3. 18 U.S.C. §1001 provides in pertinent part: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a. . .material fact. . .shall be fined not more than $10,000 or imprisoned not more than five years, or both."