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Judicial Misconduct Complaints №01-16-90036,01-16-90041

To:[1]
Florence Pagano
Asst. Cir. Exec. for Legal Affairs
Circuit Executive Office
Moakley Court House, Suite 3700
1 Courthouse Way
Boston, MA 02110
(617)748-9376
Florence_Pagano@ca1.uscourts.gov

December 3, 2016

Dear Ms. Pagano:

This letter is a **re-issuance** of my *previous three* letters to you (dated Nov. "20/22," Nov. 28, Dec. 1), **completely consolidating and replacing those three letters** (now, please ignore/discard/destroy those three). This letter is my *final* word in this forum (unless requested/invited otherwise) on the topic of **criminal activity (public corruption)**[2] by the judges involved in my case (initially broached in RehApx ℘8ƒ‡ι∗), collecting all my thoughts on this matter together into this one place, for everyone's convenience.

This letter must of course be promptly transmitted to the appropriate members of the Judicial Council.

Sincerely yours,

Walter E. Tuvell

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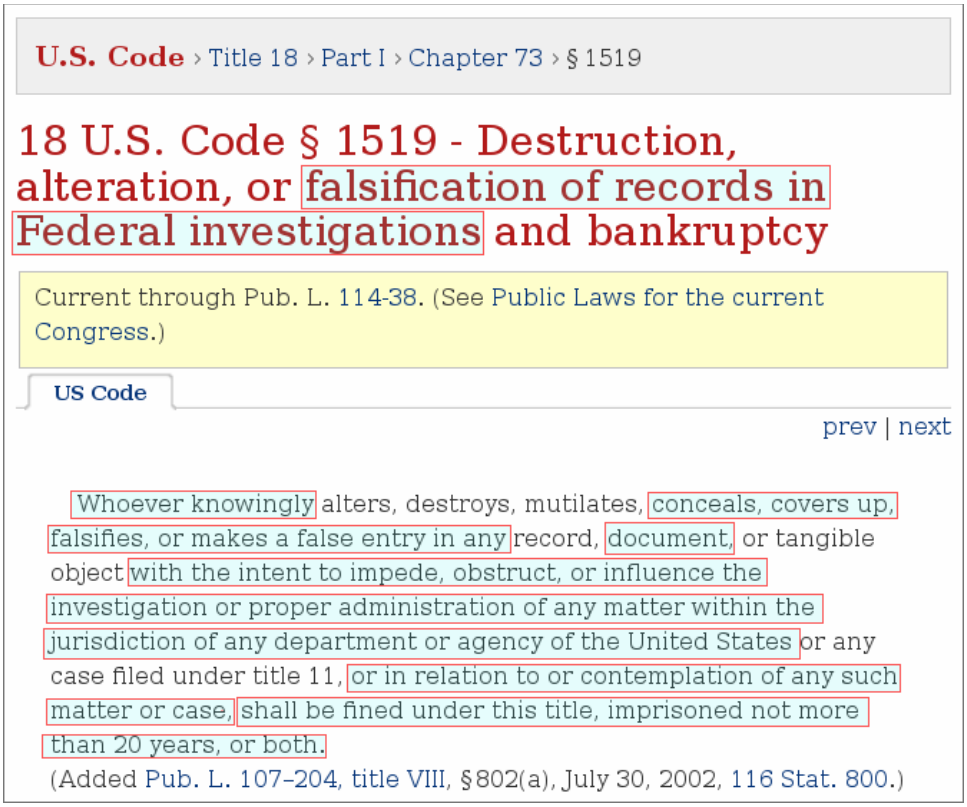
1 • Delivered by both email and U.S. mail.

2 • While judges (public servants) generally enjoy "judicial immunity" from ***civil*** liability for damages from acts committed within the scope of their jurisdiction (e.g., esp., 42 USC §1983), nobody enjoys immunity against ***criminal*** charges: U.S. Const Amend XIV §1 (Equal Protection Clause [for me, against abuses by rogue judges], see my *Petition for Writ of Certiorari* ℘4); 18 USC §242 (Deprivation of Rights Under Color of Law, ℘9 *infra*); *Mireles v. Waco,* 502 U.S. ℘9–15 (1991), ℘10ƒ1; *Nixon v. Fitzgerald,* 457 U.S. ℘731–799 (1982), ℘766, emphasis added: **"[even] when performing a judicial function, … [judges and justices] are subject to criminal liability".** See also ℘9ƒ11, ℘24ƒ27 *infra.*

18 USC §1519 — Obstruction Of Justice: Falsification Of Records; Concealment (Cover-Up)



U.S. Code › Title 18 › Part I › Chapter 73 › § 1519

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code

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Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

(Added Pub. L. 107–204, title VIII, §802(a), July 30, 2002, 116 Stat. 800.)

Originally, §1519 was passed by Congress into law as part of the Sarbanes-Oxley Act ("SOX"), enacted in 2002, and incorporated into 18 USC Title 1 Chapter 73 **("Obstruction of Justice").** While SOX overall is generally thought-of in terms of corporate wrong-doing (fraud, corruption), §1519 itself is intended to have a broader scope, and has no such restriction.[3]

Most of the provisions of §1519 are clearly satisfied in my case, and for those no further analysis is needed. For example, in my case, the judges have ***obviously*** **"falsified/concealed/covered-up[4] the record,"** as I have *alleged/proved* throughout the materials I've submitted to the Judicial Council. Namely: (i) the district judge lied/falsified the district court's Opinion ("Op"); and then (ii) all subsequent judges (now including the Supreme Court, but not the Judicial Council [yet]) have blindly adopted/supported/

3 • Nevertheless, my case does have that nexus if it were needed, because the defendant is a corporation, IBM, charged with serious civil rights violations.

4 • Various terms are used widely, more-or-less synonymously, with **"concealment"** — such as **cover-up, whitewash** and **misprision.** See definitions on ℘5 *infra;* and see 18 USC §4, *Misprision of Felony,* ℘4 *infra.*

swallowed/**concealed/covered-up** that falsified Op, despite *knowing*[5] full-well its falsity. The district judge is *directly* guilty of this falsification (namely, her false Opinion), by virtue of her **original jurisdiction;** but the panel judges are also *directly* guilty, by virtue of their own **independent *de novo* review** (self-proclaimed, and required by common law). The panel and *en banc* judges are ***obviously* guilty of concealment/cover-up.**

However, for three of §1519's provisions, it is *not* obvious whether my case satisfies them (I contend they *are* satisfied), and so these *do* require further analysis. These are (all considered in the special context of §1519):

- **"(Federal) investigation" —** Does this mean only "FBI-style" investigations, or does it also apply to "court proceedings"?
- **"Jurisdiction" —** Does this encompass "judicial jurisdiction" in the sense of the judicial system?
- **"Department/agency" —** Insofar as I have been able to determine, these terms are rather context-sensitive, not hard-coded universally-well-defined terms of art/law (except that "department" does seem to refer to the executive branch of government, not legislative or judicial). Are the "courts" included within the ambit of "departments/agencies"?

My research has led me to the following conclusions.

To begin with, the legislative history of SOX (House & Senate reports, Congressional Record, official/exact Public Law)[6] is all "supportive" of my position, albeit not "dispositive." Too, the "Official U.S. Government Manual" (online, at http://usgovernmentmanual.gov/), does of course "list" the federal courts, but that still doesn't resolve the question whether the courts are to be considered "departments/agencies" in the sense of §1519.

The background just mentioned played a decisive role in the recent Supreme Court case, *Yates v. U.S.*, 574 U.S. ____, №13-7451 (2015)[7] — which for our purposes here, *does* yield a definitive resolution of my contention (in the affirmative).

Yates contains the following three passages, all of which solidly support my contention (the third passage, from the dissenting opinion, chooses to support me via §1512(c)(1) instead of §1519, though that minor distinction of law is already overridden by the majority opinion of the second passage in any event):

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5 • "Knowingness" refers to "knowledge of the act", not "knowledge of the act's illegality" (by the *Owen/Thayer* principle of governmental strict liability, ℘24 *infra*.)

6 • All of which I am transmitting to you as email attachments, for your convenience.

7 • Attached in email. (This is the controversial "a-fish-is-not-a-tangible-object" case.)

qualified. See Final Report of the National Commission on Reform of Federal Criminal Laws §1323, pp. 116–117 (1971).

Section 1519 conspicuously lacks the limits built into the MPC provision and the federal proposal. It describes not a misdemeanor, but a felony punishable by up to 20 years in prison. And the section covers conduct intended to impede any federal investigation or proceeding, including one not even on the verge of commencement. Given these significant differences, the meaning of "record, document, or thing" in the MPC provision and a kindred proposal is not a reliable indicator of the meaning Congress assigned to "record, document, or tangible object" in §1519. The MPC provision, in short, tells us neither "what Congress wrote [nor] what Congress wanted," cf. *post*, at 15, concerning Yates's small fish as the subject of a federal felony prosecution.

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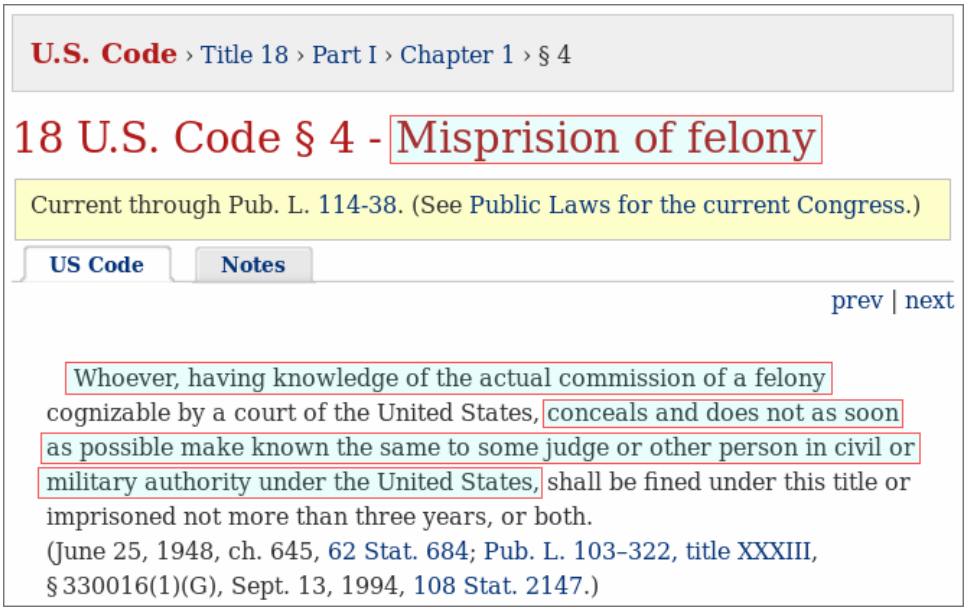
[5] Despite this sweeping "in relation to" language, the dissent remarkably suggests that §1519 does not "ordinarily operate in th[e] context [of] federal court[s]," for those courts are not "department[s] or agenc[ies]." *Post*, at 10. That suggestion, which, as one would expect, lacks the Government's endorsement, does not withstand examination. The Senate Committee Report on §1519, on which the dissent elsewhere relies, see *post*, at 6, explained that an obstructive act is within §1519's scope if "done 'in contemplation' of or in relation to a matter or investigation." S. Rep. 107–146, at 15. The Report further informed that §1519 "is . . . meant to do away with the distinctions, which some courts have read into obstruction statutes, between court proceedings, investigations, regulatory or administrative proceedings (whether formal or not), and less formal government inquiries, regardless of their title." *Ibid.* If any doubt remained about the multiplicity of contexts in which §1519 was designed to apply, the Report added, "[t]he intent of the provision is simple; people should not be destroying, altering, or falsifying documents to obstruct any government function." *Ibid.*

For example, an FBI investigation counts as a matter within a federal department's jurisdiction, but falls outside the statutory definition of "official proceeding" as construed by courts. See, *e.g.*, *United States* v. *Gabriel*, 125 F. 3d 89, 105, n. 13 (CA2 1997). But conversely, §1512(c)(1) sometimes reaches more widely than §1519. For example, because an "official proceeding" includes any "proceeding before a judge or court of the United States," §1512(c)(1) prohibits tampering with evidence in federal litigation between private parties. See §1515(a)(1)(A); *United States* v. *Burge*, 711 F. 3d 803, 808–810 (CA7 2013); *United States* v. *Reich*, 479 F. 3d 179, 185–187 (CA2 2007) (Sotomayor, J.). By contrast, §1519 wouldn't ordinarily operate in that context because a federal court isn't a "department or agency." See *Hubbard* v. *United States*, 514 U. S. 695, 715 (1995).[3] So the surplusage canon doesn't come into play.[4] Overlap—even significant overlap—abounds in the criminal law. See *Loughrin* v. *United*

18 USC §4 — Misprision Of Felony



U.S. Code › Title 18 › Part I › Chapter 1 › § 4

18 U.S. Code § 4 - Misprision of felony

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 684; Pub. L. 103–322, title XXXIII, §330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

See generally: (i) Christopher Mark Curenton, Commentary, *The Past, Present, and Future of 18 U.S.C. §4: An Exploration of the Federal Misprision Statute,* Alabama Law Review, vol. 55, Issue 1, ℘183–192 (2003–2004); (ii) *U.S. v. Osvaldo Caraballo-rodriguez,* 480 F.3d ℘62–88 (1st Cir. 2007).

A misprision of felony charge is especially appropriate against a person placed in a special position of trust/responsibility (such as a judge), and may be referred to as *"misfeasance/malfeasance in public office."*

In the U.S. today, misprision of felony is uniformly construed to require that the accused take some *"positive/active/affirmative step"* (beyond mere "negative/passive silence") to conceal the felony. In my case that's true of all *reviewing* authorities (appellate panel and higher, individually and/or collectively), all of whom were fully briefed about the district judge's falsification of facts felony (18 USC §1519, ℘2 *supra*), but *deliberately lied by producing (false) documentation* (official court filings), thereby *positively* concealing/refusing-to-recognize/refusing-to-"make-known" the felony.

Anent, *Code of Conduct for United States Judges,* Canon 3(B)(5):

(5) A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge's conduct contravened this Code or a lawyer violated applicable rules of professional conduct.

Cover-Up[8] (Concealment)

A **cover-up** is an attempt, whether successful or not, to conceal evidence of wrongdoing, error, incompetence or other embarrassing information. In a passive cover-up, information is simply not provided; in an active cover-up, deception is used.

The expression is usually applied to people in positions of authority who abuse power to avoid or silence criticism or to deflect guilt of wrongdoing. Perpetrators of a cover-up (initiators or their allies) may be responsible for a misdeed, a breach of trust or duty, or a crime.

While the terms are often used interchangeably, **cover-up** involves withholding incriminatory evidence, while **whitewash** involves releasing misleading evidence. See also **misprision**.

When a scandal breaks, the discovery of an attempt to cover up is often regarded as even more reprehensible than the original deeds.

Whitewash[9] (Concealment)

To **whitewash** is a metaphor meaning "to gloss over or cover up vices, crimes or scandals or to exonerate by means of a perfunctory investigation or through biased presentation of data".[1] It is especially used in the context of corporations, governments or other organizations.

Misprision[10] (Concealment)

Misprision (from Old French: *mesprendre*, modern French: *se méprendre*, "to misunderstand") is a term of English law used to describe certain kinds of offence. Writers on criminal law usually divide misprision into two kinds, negative or positive.

Negative misprision is the concealment of treason or felony. By the common law of England it was the duty of every liege subject to inform the king's justices and other officers of the law of all treasons and felonies of which the informant had knowledge, and to bring the offender to justice by arrest (see Sheriffs Act 1887, s. 8). The duty fell primarily on the grand jurors of each

Positive misprision is the doing of something which ought not to be done; or the commission of a serious offence falling short of treason or felony, in other words of a misdemeanour of a public character (e.g. maladministration of high officials, contempt of the sovereign or magistrates). To endeavour to dissuade a witness from giving evidence, to disclose an examination before the privy council, or to advise a prisoner to stand mute, used to be described as misprisions (Hawk. P. C. bk. I. c. 20).

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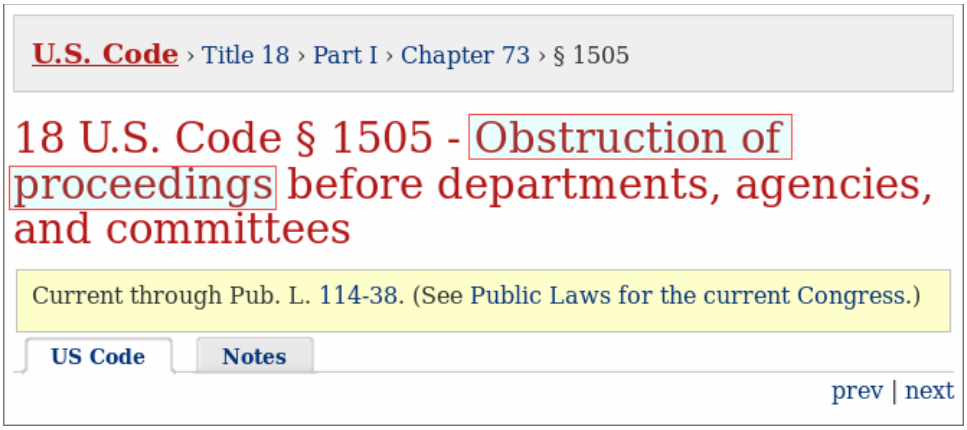
8 • From https://en.wikipedia.org/wiki/Cover-up.

9 • From https://en.wikipedia.org/wiki/Whitewashing_(censorship).

10 • From https://en.wikipedia.org/wiki/Misprision.

18 USC §1505 — Obstruction Of Justice: Obstruction Of Proceedings



U.S. Code › Title 18 › Part I › Chapter 73 › § 1505

18 U.S. Code § 1505 - Obstruction of proceedings before departments, agencies, and committees

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

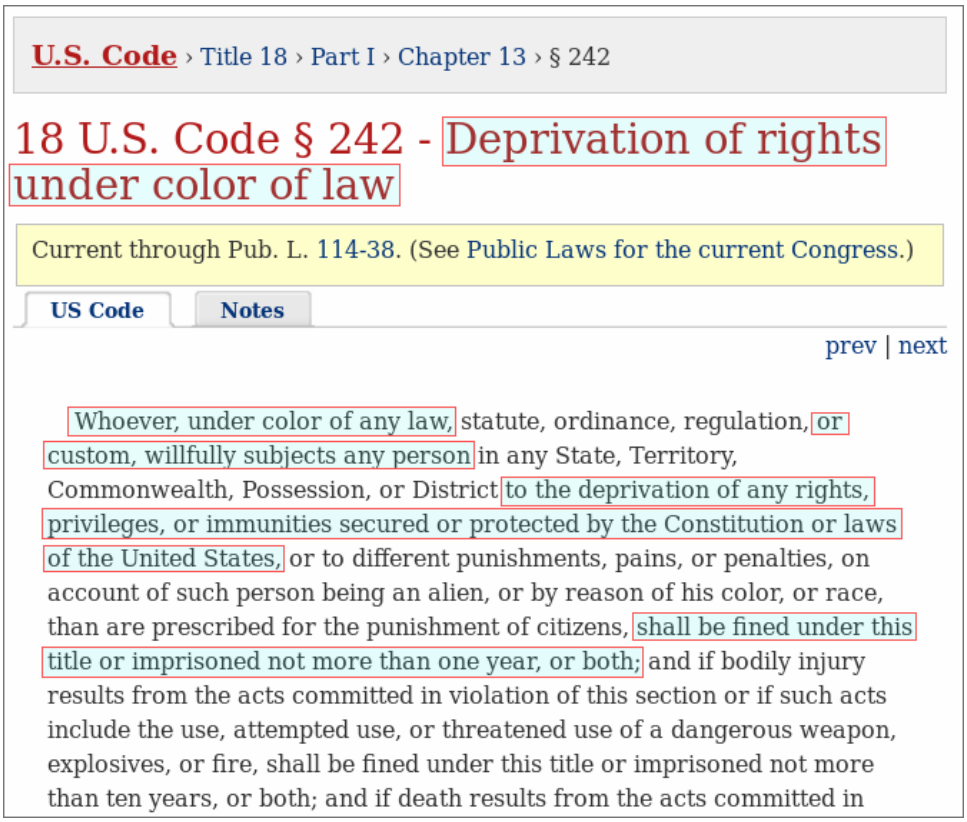
Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Concerning "department or agency," see the discussion of 18 USC §1519 (℘2 *supra,* and my Nov. 20/22 letter).

Concerning "corruptly," 18 USC §1515(b) provides:

(b) As used in section 1505, the term "corruptly" means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.

18 USC §242 — Deprivation Of Rights Under Color Of Law[11]



U.S. Code › Title 18 › Part I › Chapter 13 › § 242

18 U.S. Code § 242 - Deprivation of rights under color of law

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in

"Color of law" refers to operations taken under the *superficial appearance* of legal power/authority (such as official acts committed by a judge "from the bench" within their jurisdiction), but which may *in fact* be in violation of the law.

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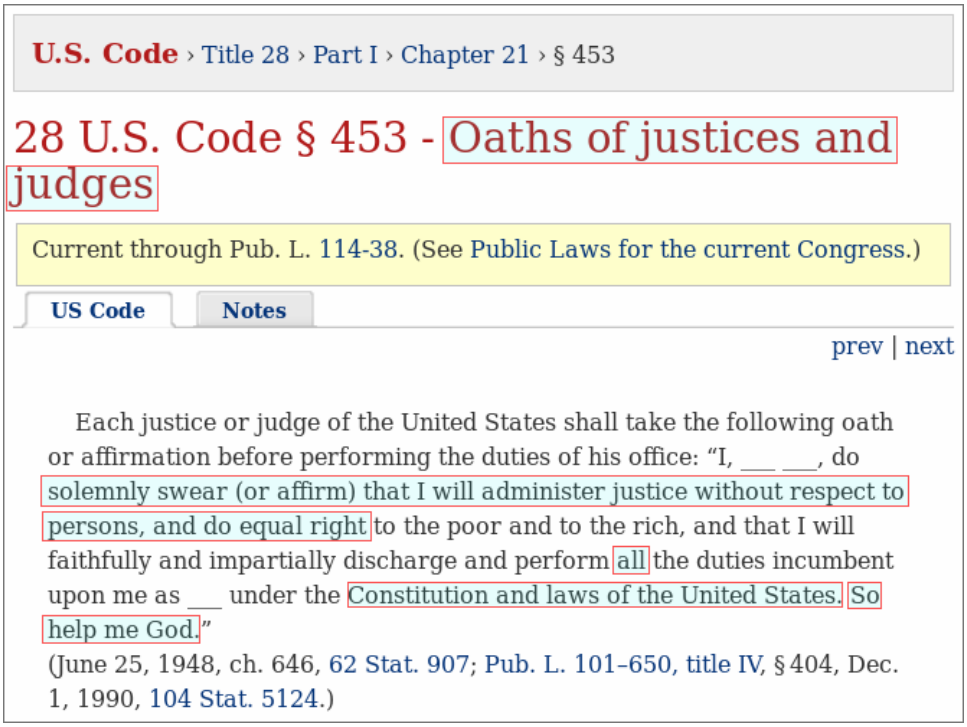
11 • To this *criminal* law (18 USC §242), compare its *civil* counterpart (42 USC §1983, *Civil Action for Deprivation of Rights*), which now (since 1996) includes a special[†] judicial civil immunity clause, as mentioned in my previous letter (Nov. 20/22, ℘1ƒ3). See ℘1ƒ2 *supra*. {† · A few other sporadic special civil immunity exceptions exist, too. E.g.: *Nixon v. Fitzgerald* 457 U.S. ℘731–799 (1982) (but holding that even the President, and judges, are liable for *criminal* wrongdoing); *Butz v. Economou* 438 U.S. ℘478–530 (1978).}

28 USC §453 — Judicial Oath Of Office



U.S. Code › Title 28 › Part I › Chapter 21 › § 453

28 U.S. Code § 453 - Oaths of justices and judges

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ ___, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God."

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 101–650, title IV, § 404, Dec. 1, 1990, 104 Stat. 5124.)

Anent, we recall two constitutional provisions:[12]

- We the People of the United States, in Order to … **establish Justice** [which includes **Truth**] …

  — U.S. Const Preamble (emphasis added)

- [A]ll executive and **judicial** Officers, both of the United States and of the several States, shall be bound by **Oath** or Affirmation [i.e., **Promise**], to **support this Constitution** [esp. **law** (Art. III), which incorporates the doctrine of *stare decisis*] …

  — U.S. Const Art VI (emphasis added)

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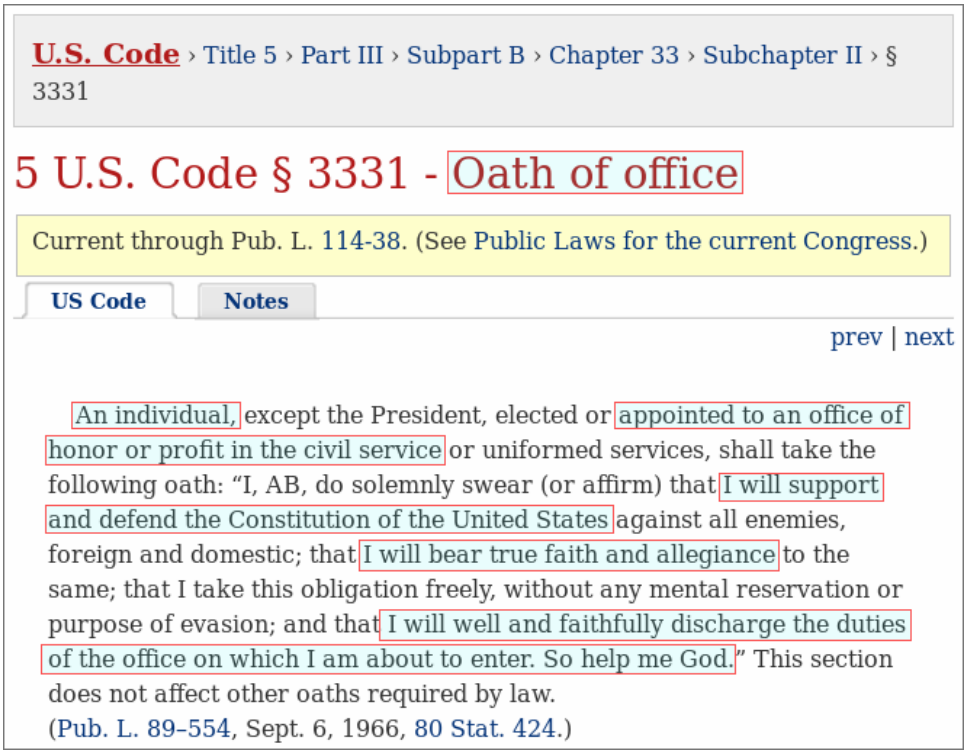
12 • Inside front cover of my Petition for Rehearing to the Supreme Court.

5 USC §3331 — Civil Service Oath Of Office



U.S. Code › Title 5 › Part III › Subpart B › Chapter 33 › Subchapter II › § 3331

5 U.S. Code § 3331 - Oath of office

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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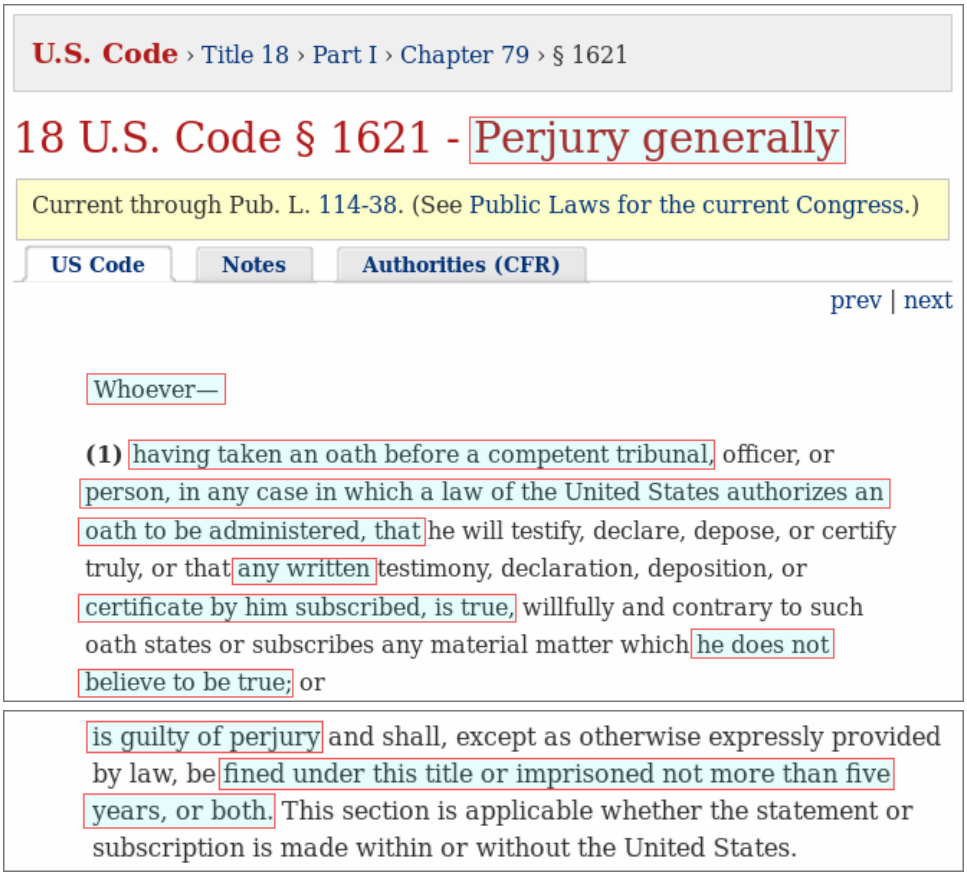
An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424.)

Judges must take *both* the judicial oath (28 USC §453, ℘10 *supra*) and this civil service oath (5 USC §3331).

18 USC §1621–1623 — Perjury (Lying Under Oath)



U.S. Code › Title 18 › Part I › Chapter 79 › § 1621

18 U.S. Code § 1621 - Perjury generally

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes | Authorities (CFR)

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Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

Judges/justices are, of course, ***always* under oath**[13] on the bench — by *both* their oaths of office, 28 USC §453 (℘10 *supra*) and 5 USC §1331 (℘11 *supra*).

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13 • **"Oath"** (or affirmation) = personal promise to deity and government (Constitution), as sacred signs of solemn *veracity,* developed over time by various cultures as a symbolic concept in legal practice — namely, **willful violation of oath (lying about the duties one has promised-to under oath) subjects the false promisor to the crime of perjury.**

18 U.S. Code § 1622 - Subornation of perjury

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 774; Pub. L. 103–322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

18 U.S. Code § 1623 - False declarations before grand jury or court

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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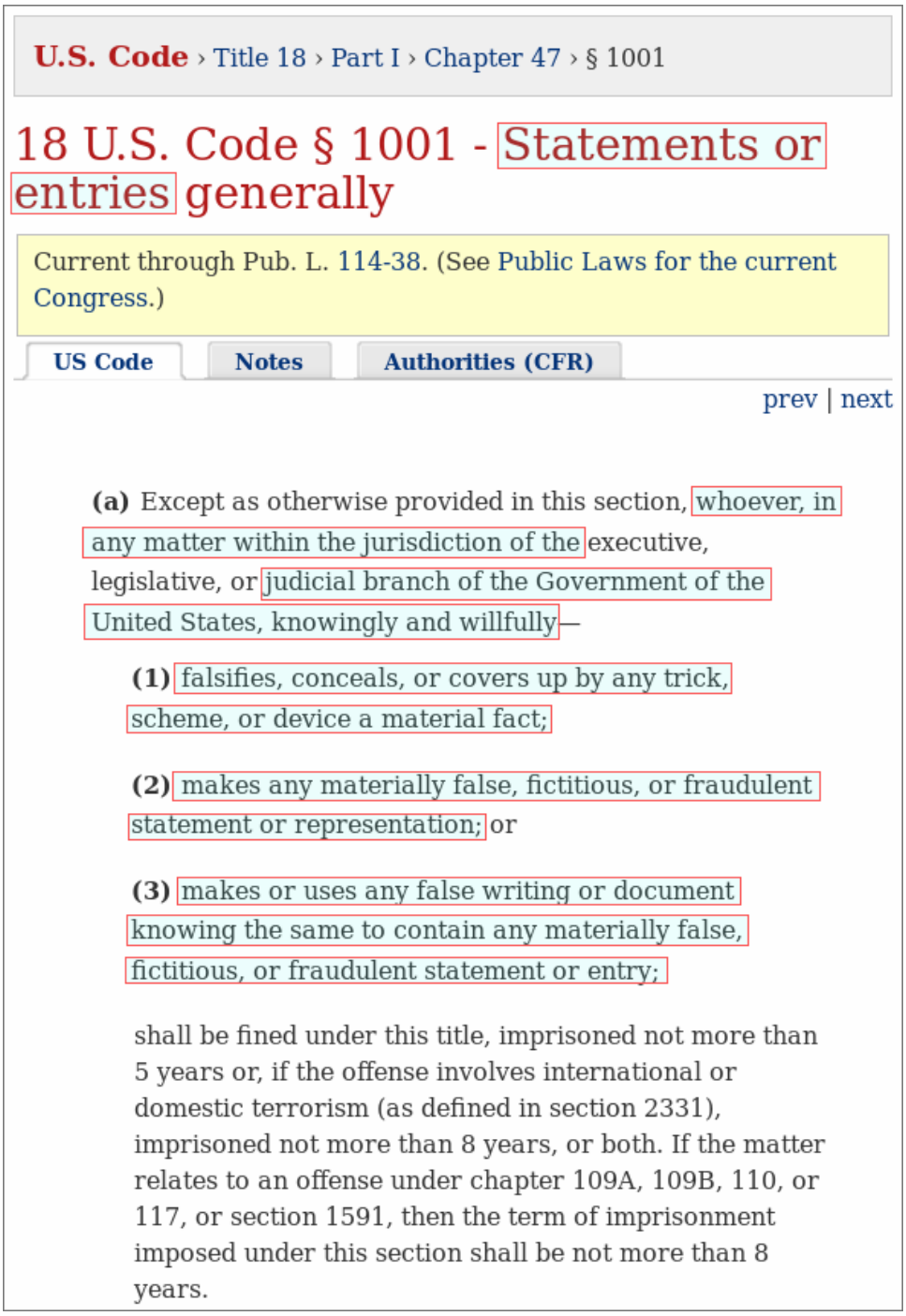
(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

18 USC §1001 — False Statements Or Entries (Oath Not Required)



U.S. Code › Title 18 › Part I › Chapter 47 › § 1001

18 U.S. Code § 1001 - Statements or entries generally

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes | Authorities (CFR)

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(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

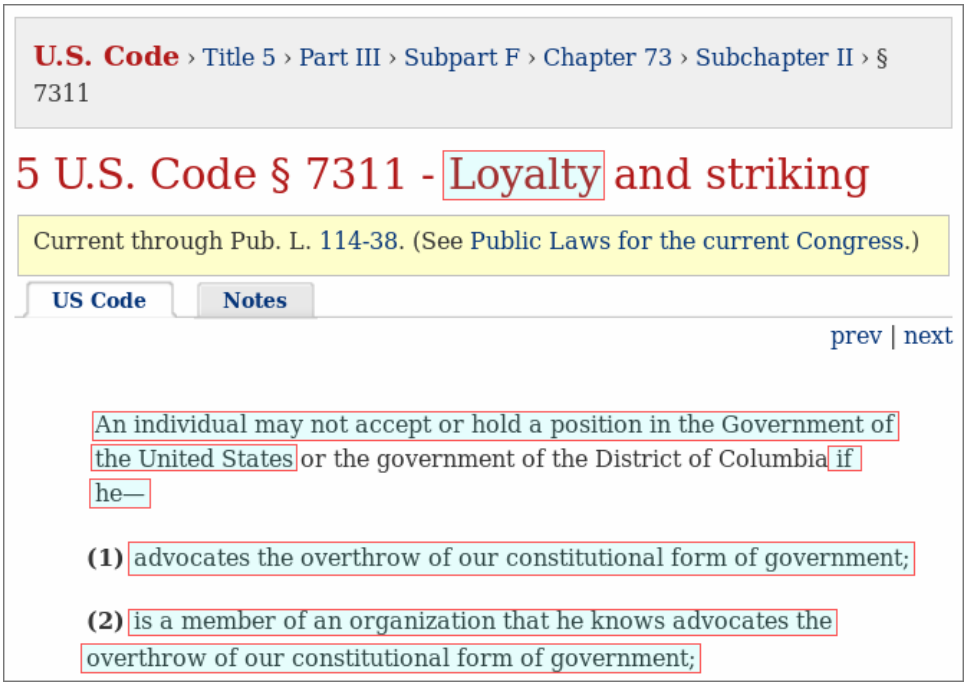
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

5 USC §7311(1–2) — Loyalty



U.S. Code › Title 5 › Part III › Subpart F › Chapter 73 › Subchapter II › § 7311

5 U.S. Code § 7311 - Loyalty and striking

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

The "overthrow of our constitutional form of government" involved in my case refers to "dissing" (disregard/dismiss/disagree/disrespect/dissemble) the Judicial Branch as an institution (corruption of one-third of our constitutional form of government, entrusted by Const. Art. III with the **administration/interpretation of law** in the United States).[14]

The "organization"[15] involved in my case refers to the collection of judges who are like-minded[16] with the judges involved in the case.

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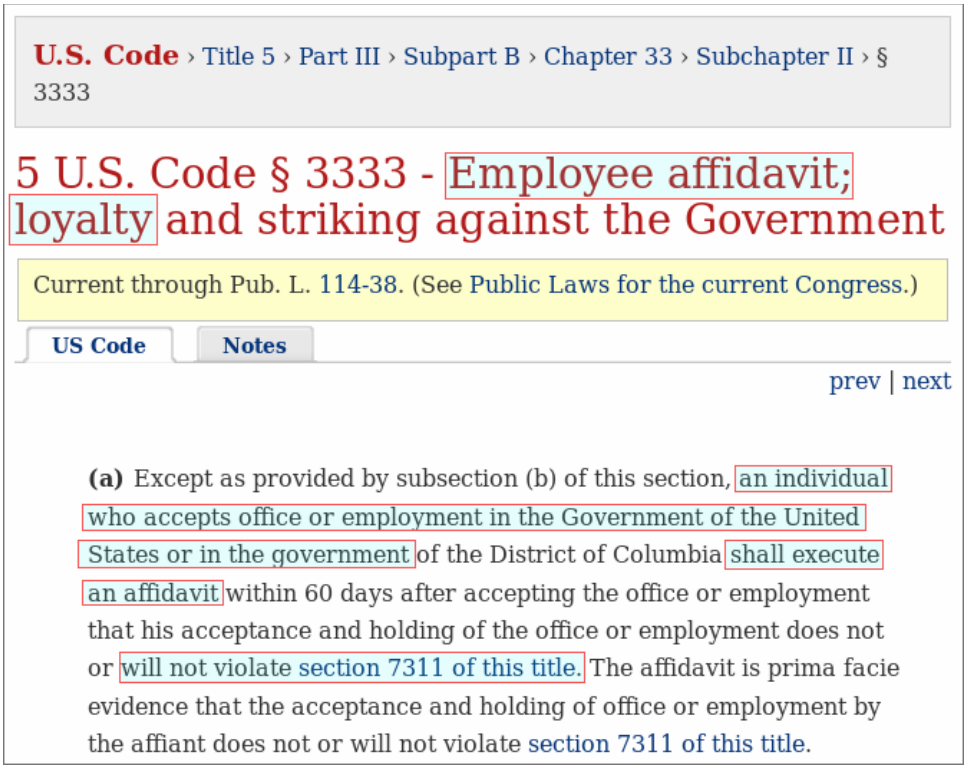
14 • A full(er) philosophical/jurisprudential discussion of the nexus amongst (i) law/justice, (ii) the Constitution, and (iii) the Judicial Branch, has been given in my PetReh (Petition for Rehearing to the Supreme Court).

15 • According to persuasive well-documented "rumors"/reports, this "organization" amounts to a substantial percentage of the federal judiciary. See my Petition for Writ of Certiorari ℘xif7 for a *dozen* recent topical references (and many more references cited therein).

16 • "Like-mindedness" is also the hallmark of conspiracy (see ℘19).

5 USC §3333 — Affidavit[17] Of Loyalty



U.S. Code › Title 5 › Part III › Subpart B › Chapter 33 › Subchapter II › § 3333

5 U.S. Code § 3333 - Employee affidavit; loyalty and striking against the Government

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

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(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title.

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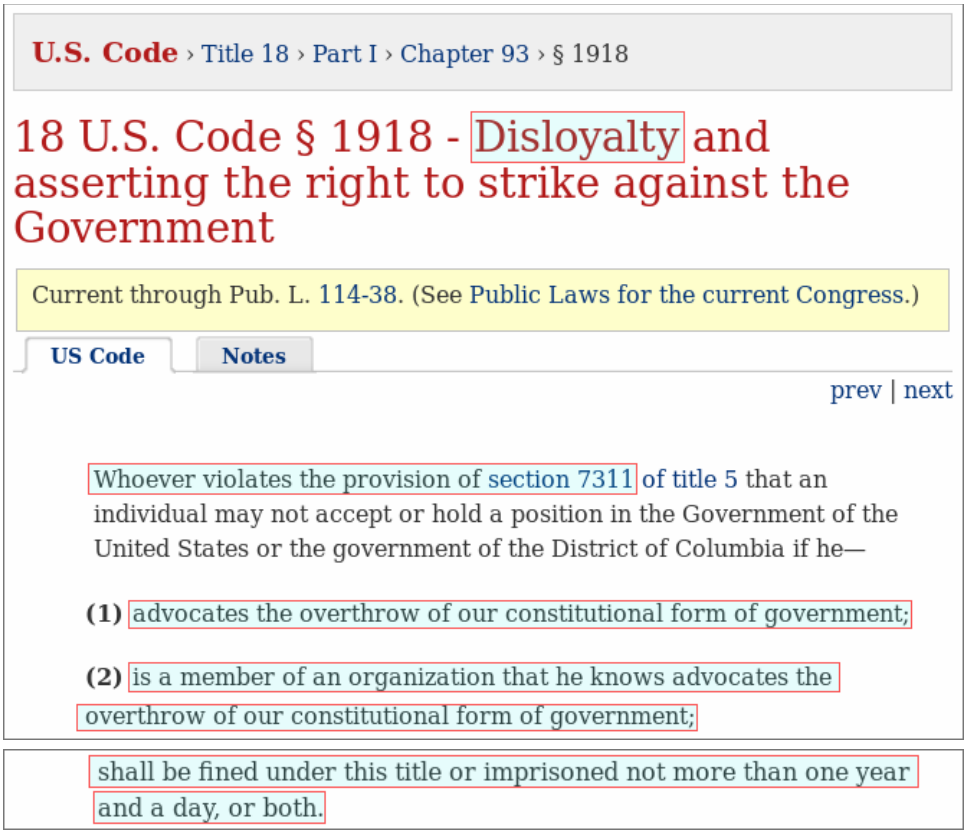
17 • **"Affidavit"** = written/signed version of an **oath.**

18 USC §1918(1–2) — Disloyalty



U.S. Code › Title 18 › Part I › Chapter 93 › § 1918

18 U.S. Code § 1918 - Disloyalty and asserting the right to strike against the Government

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

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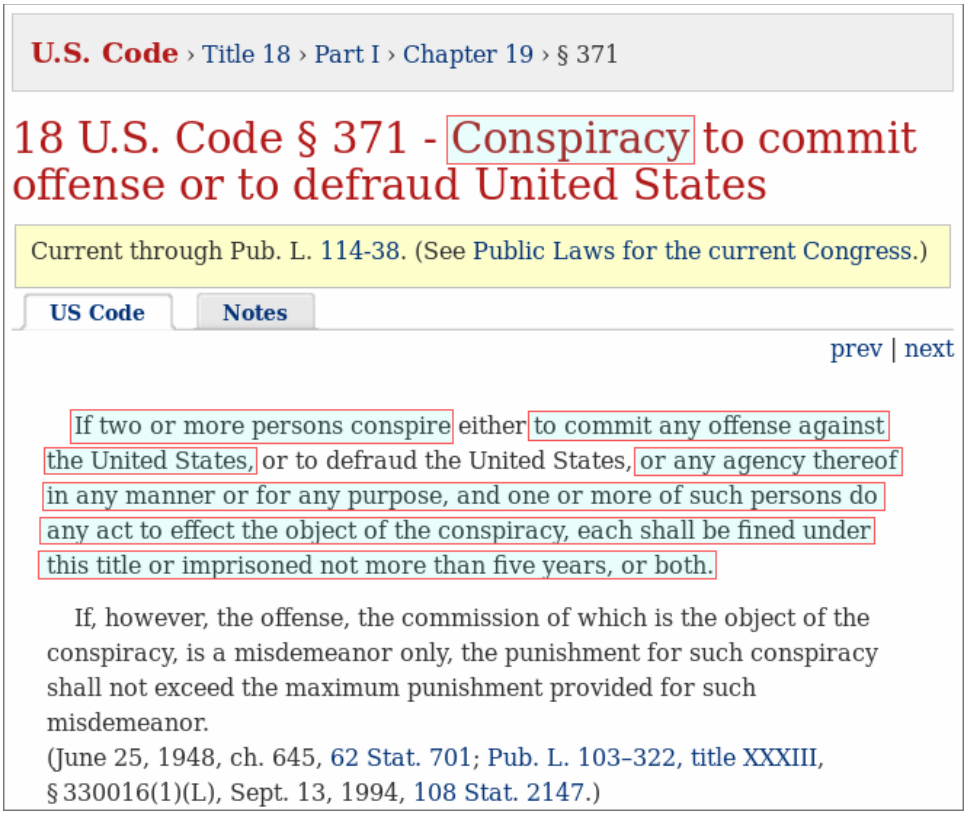
Whoever violates the provision of section 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

shall be fined under this title or imprisoned not more than one year and a day, or both.

18 USC §371 — Conspiracy[18]



U.S. Code › Title 18 › Part I › Chapter 19 › § 371

18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

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If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

The appellate panel and *en banc* court clearly satisfy the "two or more" criterion. But so does the district court, according to the next paragraph.

Conspiracy (successful or not) does not require written/spoken/express/formal "agreement." Nor does it require all-to-all ("N×N") consent. Nor does it even require co-conspirators' knowledge of one-another's identity or quantity. *Mere "like-mindedness" suffices:* **"All that is required is that a participant know of the others' existence and their activities to further the conspiracy."**[19] Neither repentance nor restitution limits liability.

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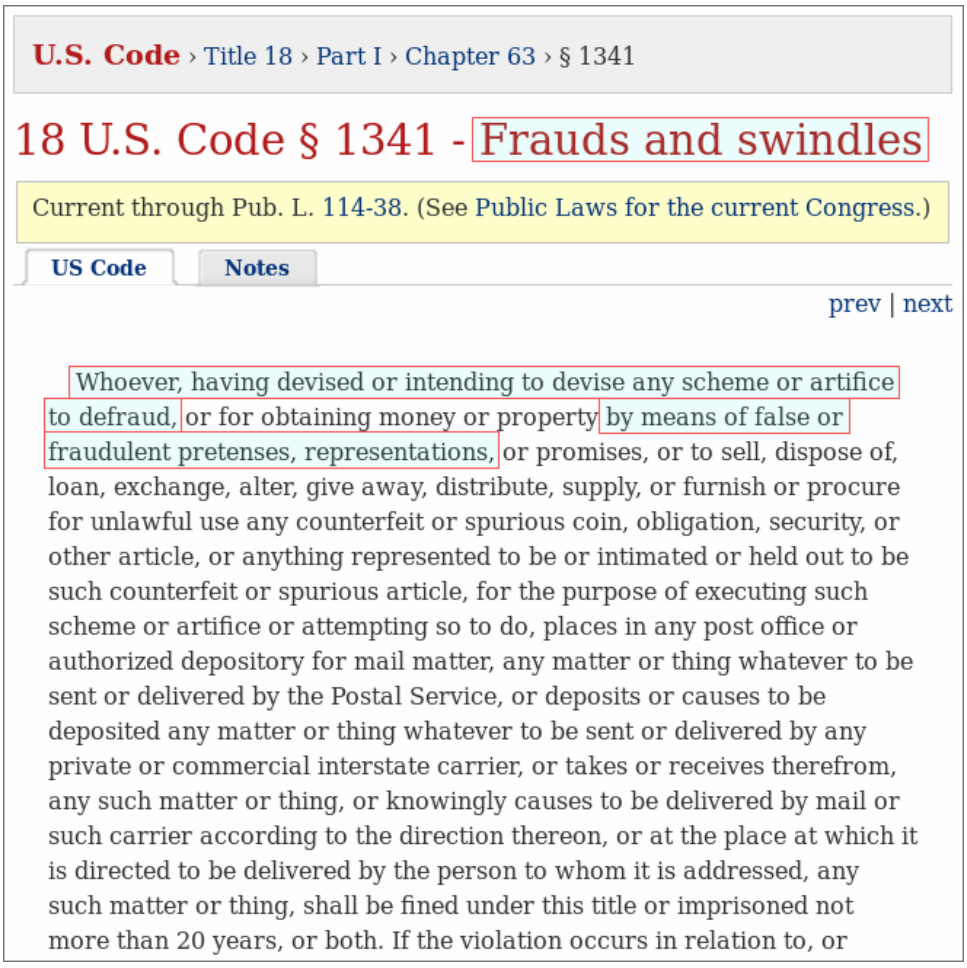
18 • This particular allegation, *"(real) conspiracy,"* is here based upon direct/proven observation/articulation of hard facts/evidence (namely, the district court's inarguable falsification of "undisputed facts" in its Opinion, and the appellate courts' false "blind-eye" attitude towards it) — as opposed to so-called *"(speculative) conspiracy-theory,"* a derogatory term involving extreme/unwarranted hypotheses, chiefly of psychological/socio-political origin, invented by a "fringe" victim of abuse having "secret knowledge," in an attempt to "explain inexplicable evil/dark forces," contradicting the prevailing understanding of history or simple facts. Absent confession, guilt of conspiracy must be decided by a jury at trial.

19 • *U.S. v. Monroe,* 73 F.3d 129 (7th Cir. 1995, emphasis added, internal quotation marks omitted); *aff'd* 124 F.3d 206 (7th Cir. 1997)

18 USC §1341(1346) — Honest-Services Fraud *(Perhaps Not)*



U.S. Code › Title 18 › Part I › Chapter 63 › § 1341

18 U.S. Code § 1341 - Frauds and swindles

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

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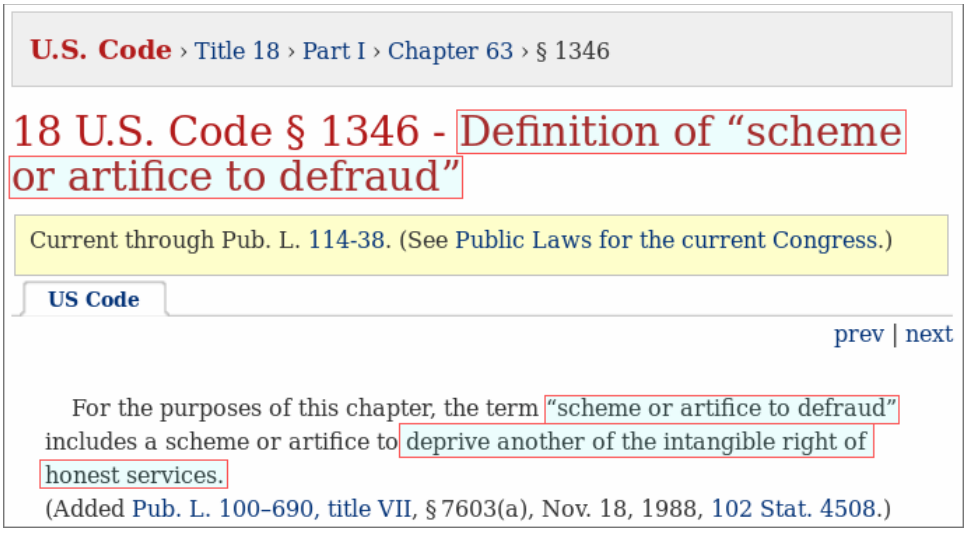
Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or



U.S. Code › Title 18 › Part I › Chapter 63 › § 1346

18 U.S. Code § 1346 - Definition of "scheme or artifice to defraud"

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

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For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

(Added Pub. L. 100–690, title VII, § 7603(a), Nov. 18, 1988, 102 Stat. 4508.)

While §1341(1346) has been been called federal prosecutors' "weapon of mass discretion" in the war against both white-collar and public-sector corruption,[20] recent narrow interpretation has tended to limit its scope, on the basis of a "void-for-vagueness" due-process doctrine.[21] For that reason (only), this statute may not be applicable to the instant case.[22,23]

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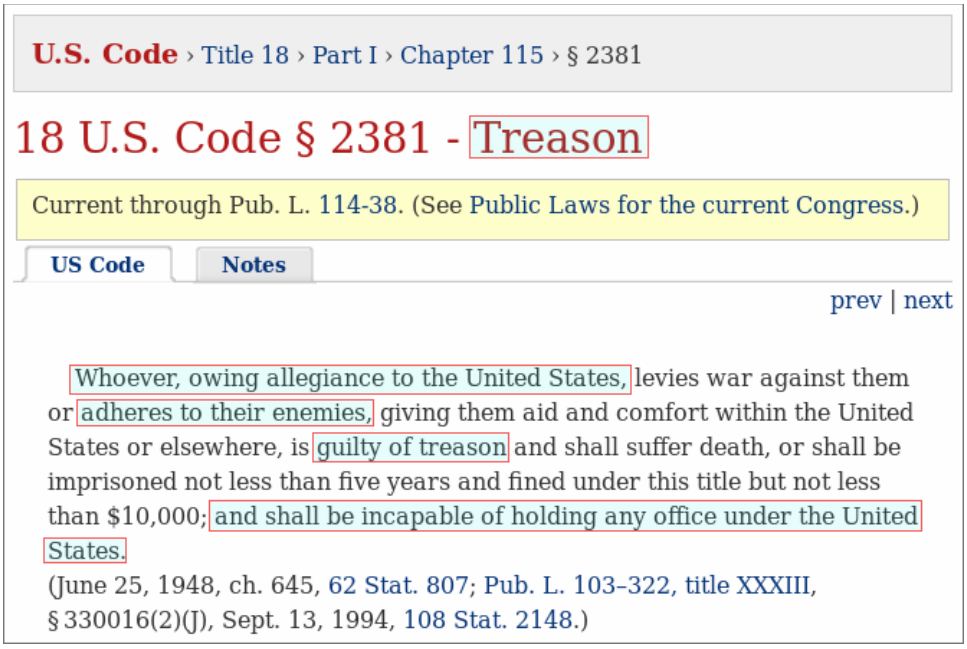
20 • Nicholas J. Wagoner, *Honest-Services Fraud: The Supreme Court Defuses the Government's Weapon of Mass Discretion in Skilling v. United States,* South Texas Law Review, Vol. 51, №4, ℘1087–1142.

21 • Finding the statute's "intangible right of honest services" to cover only "fraudulent schemes to deprive another of honest services *[where the offender profits by money, property or other valuable resources] through bribes or kickbacks supplied by a third party who ha[s] not been deceived [but not through funneling valuable resources to either himself ('self-dealing'), or to a third party who has not been deceived]*" (*Skilling v. U.S.,* 561 U.S. ℘358–464 (2010), ℘404, emphasis added).

22 • In the instant case, no evidence has yet been uncovered of "valuable resource" profiteering, such as bribery by IBM.

23 • An "Honest-Services Restoration Act," broadening *Skilling's* narrow interpretation back to its (no doubt) originally intended meaning (protecting civil rights, First Amendment personal liberties, equal protection concerns, etc.), has not (yet) been enacted by Congress.

18 USC §2381 — Treason[24]



U.S. Code › Title 18 › Part I › Chapter 115 › § 2381

18 U.S. Code § 2381 - Treason

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

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Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States.

(June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 103–322, title XXXIII, § 330016(2)(J), Sept. 13, 1994, 108 Stat. 2148.)

Federal (i) judges/justices (trusted agents owing allegiance to the United States), involved in (ii) widespread (iii) conspiracy to (iv) disloyally (v) betray the Constitution, by (vi) obstructing justice, (vii) violating their oaths of office, (viii) committing perjury (falsifying documents), and (ix) depriving innocent citizens of their rights, (x) within the scope of their official duties — all proven beyond shadow of doubt — are *certainly not "friends"* of the United States. They are *"enemies"* to the very concept of America.

But, is a charge of *treason* appropriate, or is it hyperbolical, in the instant case (given that we're not talking here about national security, spying, espionage, sedition, etc.)? Since the Constitution went into effect, fewer than forty federal cases of treason have been prosecuted. The earliest example[25] involved the Whiskey Rebellion of 1797 (resisting taxation on distilled spirits); some were convicted, all were pardoned. The most famous example involved Arron Burr, charged with proposing the idea of stealing land in the Louisiana Purchase; he was acquitted.

Is a widespread conspiracy of false/corrupt judges on a par with these and other historical examples? *Res Ipsa Loquitur.*[26]

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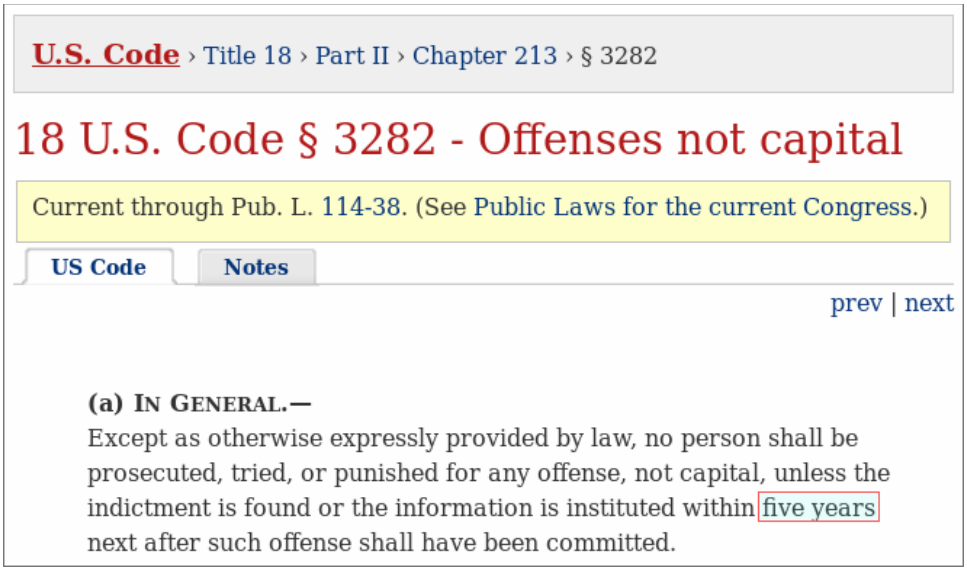
24 • See Const Art III §3.

25 • The case of Benedict Arnold's collaboration with the British occurred during the Revolutionary War, before the Constitution was written.

26 • "The thing speaks for itself."

Statute Of Limitations



U.S. Code › Title 18 › Part II › Chapter 213 › § 3282

18 U.S. Code § 3282 - Offenses not capital

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

US Code | Notes

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(a) IN GENERAL.—
Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

No Immunity; Strict Liability (*Owen/Thayer* Principle)

Nobody in government (or out) (℘9ƒ11ι† *supra*) enjoys ("as-of-right")-immunity from ***criminal*** liability. This principle is often encountered as a *"strict liability" meme,* attributed to *Owen v. City of Independence,* 445 U.S. ℘622–683 (1980), and articulated "something like" this:

> **Government cannot disavow liability for injuries it has begotten, whether based on bad faith or good. Government actors (individual or collective) enjoy no immunity from liability,**[27] **when violating laws or Constitutional rights. *For they are deemed to know the law* (cannot pretend "ignorance of law").**

This language *per se,* however, does not occur in *Owen;* it is a *paraphrase,* largely based on the following passage from *Owen* ℘641 (and cited therein as "the *Thayer* principle") (emphasis added):

> Yet in the hundreds of cases from that era [colonial times] awarding damages against municipal governments for wrongs committed by them, **one searches in vain for much mention of a qualified immunity based on the good faith of municipal officers [because, they "know the law"].** Indeed, where the issue was discussed at all, the courts had rejected the proposition that a municipality should be privileged where it reasonably believed its actions to be lawful. In the leading case of *Thayer v. Boston,* 36 Mass. 511, 515–516 (1837), for example, Chief Justice Shaw explained:
>
> "There is a large class of cases, in which the rights of both the public and of individuals may be deeply involved, in which it cannot be known at the time the act is done whether it is lawful or not. The event of a legal inquiry, in a court of justice, may show that it was unlawful. Still, [even] if it was not known and understood to be unlawful at the time, [even] if it was an act done by the **officers having competent authority,** either by express vote of the city government, or by the nature of the duties and functions with which they are charged, by their offices, to act upon the general subject matter, and especially **[even] if** the act was done **with an honest view ["good faith"]** to obtain for the public some lawful benefit or advantage, **reason and justice obviously [nonetheless] require that the city, in its corporate capacity, should be [strictly/absolutely] liable to make good the damage sustained by an individual, in consequence of the acts thus done.**"

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27 • "Strict/absolute liability" = no immunity, regardless of intent, *scienter, mens rea,* "moral blameworthiness," bad/good faith, innocent error, etc. *Owen* involved liability under 42 USC §1983, but at a time (1980) *prior* to that statute's incorporation (in 1996) of Congress's anti-*Owen/Thayer* special judicial civil immunity clause. See ℘9ƒ11 *supra*.