

PRESIDENT WILLIAM J. CLINTON
TALKING POINTS FOR NATIONAL ASSOCIATION
OF EVANGELICALS
THE WHITE HOUSE
MARCH 9, 2000

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- 1 -

ISSUE ONE -- China/PNTR: The National Association of Evangelicals has not taken a position on China/ PNTR. Their former President, Don Argue, and their Vice President for Government Relations, Rich Cizik, went to China as part of the three-cleric delegation sent by the State Department in early 1998.

- 2 -

Argue has offered to be helpful while Cizik is supportive but refuses to be public. The group is undoubtedly divided on the issue but it would be well worth raising it with them and emphasizing:

China will be admitted into the WTO – the only question is whether the US enjoys WTO-based access to China.

WTO is not a substitute for a human rights policy, and we will maintain our strong human rights and religious freedom stand on China.

But we believe that insofar as the WTO changes China, it will do so in exactly the direction our human rights and religious freedom advocates have long supported.

ISSUE TWO

Religious Liberty Protection Act. It would be best not to raise this issue with them. They want more open leadership from the White House in support of the bill. Given the very strong opposition of civil rights and gay groups, we have continued to press for a compromise on civil rights.

That compromise has yet to be achieved and appears unlikely. Senator Lott has promised RLPA proponents that he will bring the bill to the floor in the next 30-60 days. The outcome of a cloture vote is uncertain. If that fails, it is possible that there will be an effort for a more limited bill. They may ask you to support cloture when Lott brings the bill up.

We recommend that you avoid making any commitment but simply express a concern that bringing the bill up in the absence of any consensus may end up ending the effort to pass a good RLPA bill this Congress.

Franz B. Wolf
3003 Van Ness Street Apt. S-624
Washington DC 2008-4709

Born June 15, 1900 in Stuttgart, Germany

00 MAR 9 AM 8:40

Education: Doctorate in Economics, University of Freiburg

Early career: one of the editors of the Frankfurter Zeitung, Germany's leading anti-Nazi newspaper

Came to the United States in 1936 with his wife and three children. Lived in New York until moving to Washington in 1951

Became U.S. citizen in 1944. Long time contributor to the Democratic Party; always voted for Democratic candidates.

Government service: Served as Deputy Chief Economist of the Office of Price Stabilization.

Later career: Vice President, Robert R. Nathan Associates; led or participated in many consulting assignments on World Bank projects for developing nations.

100th birthday
letter.

Can we do a
"special" letter.
Betty

3-9-00

Send to Burkhardt -

Yes ☒

No ☐

Can I

'00 MAR 8 PM5:59

THE BAUER AGENCY**a Public Relations Consulting Firm**

74923 Highway 111, Suite 145, Indian Wells, CA 92210 * e-mail: AndreaBauer1@aol.com fax: (760)346-9051
(760 346-9050)

March 7, 2000

To: President Bill Clinton
The White House

Attn: Betty Currie

Re: Amnesty for Ms. Heidy Marisol Rivas
Born July 17, 1978/El Salvador

I am writing this letter on behalf of my dear friends, the Mastrangelos of Agoura Hills, Ca. Heidy is engaged to their son, and now carrying his child. We have been informed that marriage alone will not give Heidy a permanent legal status.

Heidy has been in the United States continually since the age of five, when her father abandoned her and returned to El Salvador. He neglected to file appropriate paperwork on behalf of his child, and she has lived without a green card, drivers license, and most important, a social security card and the legal means to support herself in the only country she has ever known.

Heidy went through our school system, and wishes to further her education. She is a bright and articulate young woman, and will be an asset to our country, with legal status.

I know there are so many people caught in this terrible situation, but my heart goes out to Heidy, who is the same age as my daughter, but without the ability to claim her place in our society. My daughter is a senior in college, founder of Young Democrats at Oregon State, an intern for Senator Wyden last summer, and National Public Affairs Task Force Director for Oregon State and heading to DC tomorrow for still another leadership conference. Heidy can't even get a legal job at minimum wage. There has to be a better opportunity for her in our wonderful country. They are all "our children".

I so appreciate your attention to this matter, and know that the Mastrangelos will be eternally grateful for helping Heidy.

I am the co-founder of the Democratic Foundation of the desert, (Mark Nichols is Chairman) and a delegate from the 80th AD. I am also friends with the lovely first lady of California, Sharon Davis.

I hope that you will come and visit us in the desert soon. I would like to meet you one day.. You have been a remarkable President, and I admire you so very much.

Respectfully,



Andrea Bauer

c: Bob and Shelly Mastrangelo

Send to Berkhardt?

Yes ☒No ☐

and

Stephanie
Streett



NA

228 Seventh Str

Telecopy Center



7-3540 fax

00 MAR 9 PM 2:30

Mary Suther
Chairman of the Board
Val J. Halamandaris
President

Honorable Frank E. Moss
Senior Counsel
Stanley M. Brand
General Counsel

Please deliver the following pages to:

Name: Betty Currie, Executive Secretary to the President

Date: March 9, 2000

Telecopy #: 202-456-1210

From: Val J. Halamandaris, President

Of Pages (including cover): 4

3-9-00
Send to Scheduling.

Yes ☒
No ☐

Cancel

If you have any qu
(202) 547-6
(202) 547-6



Mary Suther
Chairman of the Board
Val J. Halamandaris
President

NATIONAL ASSOCIATION FOR HOME CARE

228 Seventh Street, SE, Washington, DC 20003 • 202/547-7424 • 202/547-3540 fax

Honorable Frank E. Moss
Senior Counsel
Stanley M. Brand
General Counsel

Memorandum

to: Betty Currie, Executive Secretary to the President
from: Val J. Halamandaris, President
re: Appointment with the President
date: March 9, 2000

I recently saw the President at a Democratic Governors' Association (DGA) meeting. I am a member of the DGA board.

I asked to see him with the hope of heading off a full-scale national crisis. At a time of escalating need, Medicare home care benefits have been cut by some 40 percent, more than five times the amount of intended adjustments under the Balanced Budget Act. As a result, thousands of patients are going without the home care services they need. I know that the President is not aware of the magnitude of the problem and would not have sanctioned policies that are counterpoint to everything he believes in.

★ The President indicated he would be delighted to see me and suggested that I get in touch with you. Out of respect for the President's schedule and the demands on his time, I would be pleased to meet with him virtually anytime and any place. I will be in Washington, DC, for the majority of March. There is nothing in my schedule that I could not move in order to meet with the President.

Please contact my personal secretary, Ms. Debi Machis, at 202-547-7424. Ms. Machis will be expecting your call. Because you do not know me, I am including a copy of my resume.

I wish you all the best and look forward to hearing from you.

Val J. Halamandaris
228 Seventh Street, S.E.
Washington, DC 20003

202-547-7424

Curriculum Vitae

vjh@nahc.org

Val J. Halamandaris is an attorney, author, publisher, editor, producer of film and television, trade association executive, humanitarian, and one of the nation's acknowledged experts on the U.S. Congress and in the fields of health care and aging. He is especially well regarded by many members of the U.S. Congress, having worked for 38 years on Capitol Hill; 20 years as Counsel to the U.S. Senate and U.S. House of Representatives.

Present Positions

- *President, National Association for Home Care* (1982-present)
- *Founder and Executive Director, Caring Institute* (1985-present) - A non-profit dedicated to the promotion of caring, integrity and public service.
- *Founder and Partner, Center for Health Care Law* (1987-present) - A public interest law firm advocating for the rights of the elderly, the disabled and chronically-ill children.
- *Founder and Executive Director, Frederick Douglass Museum and Hall of Fame for Caring Americans on Capitol Hill*, (1989-present) - A non-profit museum and art gallery located in the first Washington, DC home of Frederick Douglass restored with "sweat equity" to honor him and the most caring men and women in America.
- *Founder (1993) and Director General, World Homecare & Hospice Organization* (1996-present)
- *Founder (1985) Hospice Association of America*

Accomplishments

President of the National Association for Home Care - As founding CEO of this trade association, he represents the interests of the ill, dying and disabled and those who provide care for them at home. During his tenure, this organization has achieved tremendous success, increasing the number of employees from three to 75, the number of members from 200 to 6,000 and revenues from \$250,000 to \$12 million. A 1995 survey of congressional staff by the international marketing firm, Fleishman-Hillard, Inc., established NAHC as the most highly respected and most effective organization representing health care interests in Washington, DC.

Originated and implemented HealthRIGHT and SpeakOut! USA, 1992/1995 - HealthRIGHT was the first electronic petition of government designed to allow ordinary citizens the opportunity to give their views as to what should be done with the health care system. In 1994 HealthRIGHT became Speak Out! USA. In all, four separate nationwide tours were undertaken, logging 100,000 miles, stopping in over 500 major cities and all fifty states, capturing on videotape the health care experience and advice of hundreds of individuals. These interviews, which were presented to Congress, put a human face on the nation's health care concerns.

Author of numerous books and Congressional reports - Along with Senator Frank E. Moss (D-UT), wrote *Ton Old, Too Sick, Too Bad* in 1977. In 1991 wrote *Profiles in Caring: Advocates for the Elderly*, in 1992 *Faces of Caring: A Search for the 100 most Caring People in History*, in 1993 updated and revised *The Columbian Orator*, in 1994 wrote *Heroes of Congress: A Search for the 100 Most Important Members of Congress* and also wrote that year *Caring Quotes: A Compendium of Caring Thoughts*, and in 1997 was selected as a contributing editor for aging issues for the new *Encyclopedia of Congress*.

Authored 25 major Congressional reports. For example: *Nursing Home Care in the United States; Abuses in the Sale of Health Insurance to the Elderly; Alternatives to Institutionalization; Medicare After Fifteen Years; Elder Abuse: The Hidden Problem; Fraud and Abuse Among Clinical Laboratories; Kickbacks Among Medicaid Providers; Building a Long-Term Care Policy: Home Care Data and Implications; Fraud and Abuse Among Practitioners Participating in the Medicare Program; Quackery A \$10 Billion Dollar Scandal; Business and Investment Frauds Perpetrated Against the Elderly: A Growing Scandal.*

Founding Editor and Publisher of CARING a monthly four-dollar Magazine (1982-present)

Established CARING Publishing (1991-present) - CARING Publishing was established in order to publish books of value that others may have thought unlikely of commercial success. Examples include: *Arthur Flemming: Crusader at Large* by Bernice Flemming; *Restless: The Memoirs of Labor and Consumer Activist Esther Peterson* by Esther Peterson with Winifred Conkling; and *The Tao of Dying* by Doug Smith.

Established CARING Communications (1987-present) - CARING Communications is a film and video production company that has produced numerous educational videos, television commercials, public service announcements, news programs for satellite and Internet broadcast and documentary films beginning in 1987 with *Suffer Not the Little Children*. Other film titles produced and broadcast include the series; *Health of the Nation; Health of the Elderly* and *Health of the Children*.

Val J. Halamandaris
Curriculum Vitae
Page 2

Congressional Staff Member for Twenty Years (1962-1982) - Employed by Senator Frank Moss (D-UT) on his staff from June 1962 through September 1969. Joined the staff of the U.S. Senate Special Committee on Aging chaired by Senator Frank Church (D-ID) as Associate Counsel in September 1969. Responsibilities included staffing the Health Subcommittee chaired by Senator Edmund S. Muskie (D-ME) and the Long Term Care Subcommittee chaired by Senator Frank E. Moss (D-UT). In April 1978 joined the staff of the U.S. House Select Committee on Aging as Special Counsel and in October of 1979 was promoted by Chairman Claude Pepper to the position of Senior Counsel and Director of Oversight.

Legislative Accomplishments

During the twenty years as a Congressional staff member, researched and wrote a number of important pieces of legislation. For example, creating:

- The Medicare Home Health Care Benefit in the Medicare program, 1965;
- The Medicaid Home Care Benefit, 1967;
- The Federal Minimum Standards for Nursing Homes, 1967;
- The Medicare Hospice Benefit, first introduced in 1972 and enacted into law in 1982;
- The Office of Inspector General in the Health and Human Services Department, 1976;
- State Medicaid fraud units, 1980;
- Harsh criminal penalties making it a felony to defraud the Medicare and Medicaid Programs, 1980;
- Federal minimum standards for insurance policies sold in supplementation of Medicare, 1982
- Greater authority for the U.S. Postal Service to prosecute fraud committed through the mail and other mediums such as telephone, television and radio, 1981;
- The abolition of mandatory retirement for senior citizens, 1981;
- The National Institute of Arthritis and Musculoskeletal and Skin Diseases at the National Institutes of Health, 1982;
- The option for Medicare beneficiaries to participate in Health Maintenance Organizations, 1980.

Appointments and Honors

- Tribute by Congressman Claude Pepper in the *Congressional Record*, September 25, 1984
- Tribute by Senator Frank E. Moss in the *Congressional Record*, April 10, 1975
- CBS News, *60 Minutes*, February 15, 1976
- Selected by the Creative Thinking Association of America along with Steven Jobs, the founder of Apple Computer as being among those people who will have made the greatest impact on America going into the 21st Century, 1990
- Appointed Member of the Board, Rosalynn Carter Institute, 1994-present
- Appointed Member of the Board, Give Kids the World, 1993-1998 - Give Kids the World is a non-profit organization which sends terminally-ill children and their families to Walt Disney World in Orlando, FL.
- Spirit of Volunteerism Award, Visiting Nurse Services of New York, 1989
- Governor Ella T. Grasso Award, Connecticut Hospice, 1991
- Outstanding Alumni Award, College of Eastern Utah, June 5, 1986
- British Columbia Health Association Recognition Award, February 1994
- Creative Thinking National Recognition Award, Creative Thinking Association of America, 1991
- *Medical World News*, February 10, 1975
- *50 Plus*, "He is Not 007, But He Gets Results," article by Jack Anderson, April 1979
- *Gallery Magazine*, "Inside Capitol Hill: The Undercover Agents Who Tackle the Nation's Toughest Scandals," May 1981
- *Arthritis Today*, "A Hero Among Us," September/October 1998
- *Modern Healthcare*, "Val Halamandaris is not a Viking," March, 1975
- Appointed Deputy Treasurer of the Democratic Governors' Association, 1996-1998
- *Modern Healthcare*, "Doing 'What's Right for the Old and Sick'," May 22, 1987
- Community Service Award, National Council of Senior Citizens, July 26, 1998
- *Parade Magazine*, "Somebody Cares: The Halamandaris Brothers' Unique Mission," June 28, 1992
- Appointed by President Bill Clinton to the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, 1996-1998
- Featured in *The Visionaries*, hosted by Sam Waterson—a documentary presented by the public television station WGBH Boston that aired nationally on PBS in the Spring of 1997.

Teaching

Visiting Professor, University of Southern California, Andrus School of Gerontology, 1974.

Personal

Born: Price, Utah, September 25, 1942

Educated: Utah public schools including The College of Eastern Utah; B.A. George Washington University, Washington, DC 1966; J.D. Catholic University School of Law, Washington, DC 1969

Bar Affiliations - Admitted to the Bar of the: United States District Court for the District of Columbia, 1970; United States Circuit Court of Appeals for the District of Columbia, 1971; The Supreme Court of the United States of America, 1974.

BOB JAUCH

WISCONSIN STATE SENATOR



00 MAR 9 04:21:03

3-9-00

Tuesday, February 29, 2000

President Bill Clinton
c/o Orson Porter
1600 Pennsylvania Avenue
Washington, D.C. 20500

Send to Burkhardt?
Yes ☒
No ☐

Dear Mr. President,

Carol

I am writing to tell you about an outstanding young woman who took a few minutes to offer encouragement to this high school senior who was the victim of vicious racial slurs. I know you get many letters like this, but I hope you will take a few minutes to learn about Aly and understand why your words of support would make an enormous difference.

Aly is an exceptional 18-year-old honor student and athlete at Northwestern High School. While maintaining a 4.0 grade point, she participates in basketball, golf and softball. She is a skillful competitor and well respected by her teammates, coaches, fellow students and fans. Aly is a Japanese-American.

On February 10th, as Aly led her team onto the court for a girl's basketball game, she endured cruel racial slurs from the opposing team's fans because she is a Japanese-American. These "fans" persisted in belittling her with their racial taunts to the point where she broke into tears. Aly was able to summon enough courage to finish the game, however, the harmful and hurtful words caused great pain -- particularly for a teenager struggling with her own identity.

Sadly, this is not the first time she has been stung by racially derogatory remarks. In the 5th grade, Aly was taunted because she was different and has carried within her the pain caused by racial hostility until it boiled to the surface after the vulgar attacks during the basketball game.

Since the events of February 10th, Aly has been uplifted by the support shown by her classmates, teachers and coaches and the community. She has shown great leadership in rising above the verbal assault and demonstrated how to respond to such torment in a mature way but the pain is still very real. I have enclosed a copy of the special edition of the Maple Northwestern High School's newspaper, The Octagon, in which Aly touchingly expresses her pain and at the same time reveals her inner strength. I am also enclosing my letter of support to this very special young woman.

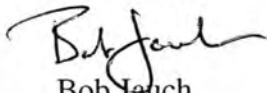
I am asking for a few words of inspiration and encouragement from a leader like yourself that will affirm her special uniqueness and sooth the pain caused by racial arrogance and ignorance. Your words of compassion and hope will mean a great deal to Aly and will help make her quest to overcome the barriers of intolerance and ignorance a little easier.

You can send your letter to Aly at the following address:

Aly Klugow
Maple Northwestern High School
PO Box 188
Maple, WI 54854

Thank you for your consideration of this request and for demonstrating to this young student athlete that, despite the abhorrent action of a few, for the majority of society the principals of equality, human dignity and respect for all prevail.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Jauch", written in a cursive style.

Bob Jauch
State Senator
25th Senate District

BJ/lk

BOB JAUCH

WISCONSIN STATE SENATOR



February 16, 2000

Aly Klugow
Maple Northwestern High School
PO Box 188
Maple, Wisconsin 54854

"I have the audacity to believe that peoples everywhere can have three meals a day for their bodies, education and culture for their minds and dignity, equality and freedom for their spirits. I believe that what self centered mean have torn down, other centered men can build up." Martin Luther King

Dear Aly:

I am profoundly saddened and angry to hear of the abusive actions of some individuals who harassed you by making racially derogatory comments during the basketball game in Hayward. Their words are ugly and harmful and their actions are despicable. The actions come from weak-minded individuals who only feel superior if they can make some other people feel inferior.

I feel terrible for you that you have been forced to endure the pain that accompanies prejudice. Nothing bites as deep or hurts as much as when someone endures the cruelty of racial prejudice. It is particularly hurtful because you are even more vulnerable as a teenager who is still developing a sense of confidence in who you are as a person.

The fact that the comments stem from ignorance and stupidity doesn't ease the pain or wash away the tears. You were hurt and needed to cry. We, too, share your pain and need to cry as well. For when they attack you as an individual, they attack the very foundation and conscience of our school and community. They offend our basic sense of what is right and just. They offend the basic value that no one ought to feel inferior just because they are different.

I was touched as I read your article in The Octagon. Thank you for revealing your fears and sharing your pain so that everyone may learn the hard lessons that result from ridicule. Thank you most of all for revealing your wonderful inner strength that allows you to hold your head high, be proud of who you are and be responsible in your actions.

You and the editors of The Octagon are right on. Sinking to the level of those individuals only dishonors the students of Maple Northwestern. Hate only multiplies hate. The best way to overcome the degenerate behavior of others is to rise above it. Set a powerful

example that the students of Maple respect the diversity and dignity of all individuals no matter what their ethnic or cultural background. Assert yourselves as responsible and mature citizens who practice good sportsmanship in supporting your team while respecting the other.

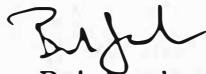
I have heard from Chris and your mother that your fellow students have been remarkably supportive of you. I hope that you have been uplifted and strengthened by their encouragement. Their support shows their respect and affection for you as a person, but also underscores the belief that despite the actions of a few, that people are fundamentally good and decent.

Sometimes in life, the most painful experiences offer us the most powerful lessons to improve ourselves. While the pain touches you deeply, I am confident that the love and support you receive will mean more, last longer and assist you in becoming an even stronger person.

I am immensely proud of you and the way you have responded. I know that your family and friends are all proud as well. Thanks for being who you are and helping all of us see the way to assure justice, equality and dignity for every citizen.

Best of luck in your game and good success throughout the rest of your life.

Sincerely,



Bob Jauch
State Senator

P.S. Quite often, I read words of Martin Luther King to offer me inspiration. His wisdom and courage is very helpful to me as I struggle to rise to the challenges as a public official. I looked for The Words of Martin Luther King, Jr., but was not successful. However, in a separate package, I am sending you a book of inspirational quotations, titled, Stretch Your Wings. The book offers serious and humorous comments from successful individuals who overcame adversity and broke down barriers. I hope you enjoy it.

tiger
country

An Octagon Extra



Edited by Bryan Lagae and Stephanie Krivinchuk

"We are no longer Jews or Greeks or slaves or free men or even merely men or women, but we are all the same."
-Gal 3:26-26

by Aly Klugow

Once upon a time there was a little girl. She was a happy, bubbly little girl who loved her life and everyone in it. This little girl grew up like everyone else. She dressed the same, played the same games and ate the same food. She always thought she was just the same as everyone around her.

The little girl grew older. She reached the fifth grade. She was about to join a game of tag that some other children were playing when one boy yelled, "Get outta here...Chinese peach butt!" All the children laughed.

"Chinese peach butt?" the little girl thought, stunned. "I'm not Chinese. What are they talking about?" She cried a little, understanding she was being made fun of, but not understanding the underlying reason for the taunting. She shrugged it off and decided, "Hey, I know some Chinese people, they're really nice. I guess I don't mind being called Chinese. And besides, I like peaches." And she went off to play alone. She played alone an awful lot that year.

Days passed by and the little girl remained alone. Finally, the school year ended and summer vacation came. The little girl had lots of fun playing at the beach and romping about in the woods. She met another little girl; they became inseparable. This new girl was special. She couldn't see the dark hair and slanted eyes, all she saw was a friend. The two girls biked around everywhere, swam in the nearby river and were always together. Once again, the little girl was happy.

More time passed; the little girl

wasn't so little anymore. She entered her senior year in high school. She was part of the school basketball team, and she had lots of friends. Memories of all the taunting and jeering that had filled her head in the past were forgotten. Forgotten, that is, until one night when her basketball team traveled to another town to compete.

The young woman led her team out onto the court as she'd done so many times in the past. As she ran by a group of opposing fans she heard one young man scream "Chink!" into her ear, then scattered laughter. She'd forgotten what it felt like to be the victim of such racist remarks.

She was old enough to understand racism now, but in many ways she was still that hurt little girl. She cried. She knew she shouldn't give her tormentors the satisfaction of seeing her do it, but she couldn't help herself. Her friends, the best friends she could ever have, came to her rescue. They supported her, helped her pull herself together.

More comments spewed towards her. "Hey slanty eyes, it's not bright in here. Why ya squinting? You gonna cry again Chink? Gonna cry?" And as hard as she tried to ignore the stinging comments, she just couldn't bottle them up. She sat on the bench and cried some more.

"What did I ever do to them?" she thought. She'd never felt so degraded, so humiliated or hurt in all her life. Her thoughts turned bitter. She realized she didn't want to let her team

down just because of her problems. They needed her as much as she needed them. The young woman pulled herself together again in the fourth quarter and managed to score basket after basket. She helped her team rally, but it was too late. The damage was already done. She followed her team into the locker room. Then, she lost it.

No longer would all those bitter emotions stay tucked away deep inside her pitted heart. She screamed, she wailed, she thought about all the horrible things that were said to her. She vomited. But oddly, in spite of all the hate stewing around inside of her, she still felt love. Love for her parents who planted themselves in the midst of those who tormented her, love for her mother who cried openly for her, love for the eight girls gathered around her, crying with her. Real love.

She thought about how they pulled for her when she was helpless. And one more time, she pulled the scattered pieces of her bruised soul together, and with another agonized scream tried to leave it all behind her. She walked out of the locker room with her head held up high that night.

She wouldn't allow her dignity to abandon her, to leave her so helpless again. She marched right past her tormentors and out of the building with every bit of courage that she could muster. Somehow, with the help of so many loved ones, she got through that fateful night. And maybe someday she'll forget all the pain. But for the time being, she still screams inside. I still scream inside.

tiger
country

An Octagon Extra



Edited by Bryan Lagae

"Someone Wasn't Doing Their Job"

by Lukas Jipson

EDITOR'S Note: The following letter was sent to the Athletic Director at the Hayward School District and a local Hayward newspaper.

On Thursday, February 10, 2000, during the basketball game between the Northwestern Tigers and the Hayward Hurricanes girls basketball teams, a girl from Northwestern was assaulted verbally by numerous fans from Hayward. From the moment she stepped on the court to the moment she left, racial slurs and racially based taunts were continually fired at her with only one intention in mind: pain. These fans, with no resistance from any faculty or parents from Hayward did this throughout the entire game.

I've heard of these things before. I know about the problems America has with racism. I've seen footage of what life was like for African-Americans in the south during the extremes of segregation. I know that often times high school kids without proper guidance fall to the levels of showing their hate because of race. I believe that if there is a place where racism can be curbed and freedom from it can be found, it is in a school. However, kids are kids, sometimes no matter what they have been taught, they make the wrong moral decision. That is where adults come in. There are adults who know how to protect kids from ethnic hate. There are adults who know when an injustice is being committed, and know how to stop it effectively. I thought that adults who work at a public school were adults like this.

This is where I have a problem with what happened last night. I know the students' feelings could not have been controlled, I know their decisions could not have been made for them. I do know though, that with proper attention paid, this injustice would never have happened.

There may have been a few things said, or gestures made, that no one could do anything about. This is the

case anywhere. I knew something went wrong though, when this girl, this fellow athlete, this friend of mine, came to school the next day and told me about the game and what had happened. She was strong at first; she had faced it before. Then I saw a tear run down her cheek as she choked out the words, "They wouldn't stop."

I asked myself why they wouldn't stop. Where were the adults to stop this from happening in our great United States of America? I thought about what would have happened if that sort of thing would have occurred at our school. It would never happen.

The only conclusion I can come to is that the supervising faculty is to blame. How could they let this go on? The girl let her coach know, the Hayward coach know and the referees know what was going on. What else could she do to stop it?

Someone wasn't doing their job. Someone let the hate bubble up through the cracks of the gym floor and stand amidst a high school basketball game. Someone allowed a girl, young and soft, to be driven into with nails of hate. Someone did not do their duty to their country.

It is over now; she will never have to go back to your school. I ask that you do something about this. Stop this from happening again. It would pain me greatly to hear about another high school girl leaving the Hayward High School gymnasium crying because of racism.

Sincerely,

Lukas Jipson, Northwestern High School student

Submitted by Mr. Bartelt at the Request of The Octagon

"The Best Way to Get Even is to Not Get Sucked In."

It was just a little over a year ago that our student section had one of the worst reputations in Northwest Wisconsin.

There were articles written in *The Octagon* and I got on the P.A. and pleaded with the student body to channel their energies in a positive way, rather than negative. It took a few games for it to catch on but the results were phenomenal. To see the entire section stand in unison and chant cheers or to make the wavering "O" sound while the other team had the ball or was shooting free throws proved that it was possible to be loud and enthusiastic without being unsportsmanlike.

While it is certainly true that I was very proud of the girls team going to state, I was as equally proud of how the student body, in the last month and a half of the

season, was able to change their reputation to one of the best anywhere.

Parents from other schools took the time after games to talk to the coaching staff and compliment us on how our students were. A comment from a couple of Stanley-Boyd parents was, "We wish our students were like yours."

And having the Somerset athletic director make a special point of saying to me that he hadn't seen a student body be that enthusiastic without being unsportsmanlike is something that I will never forget.

The reason I bring this subject up is because there are many of you who were at the girls game at Hayward and there will be many more who will hear about what happened. The conduct of some of the Hayward students was the most uncalled for and disgusting behav-

ior I have seen in a long time, but the only thing that I could think of that would be more disgusting would be if our students adhere to a vengeful, "Even the score" attitude when they come here next week. Trust me, Hayward will be expecting it and will be looking for us to get revenge so they can say that we are no better than they are.

I am addressing this now so that we can start in the home games, of re-establishing that end-of-season tournament atmosphere that made such a good name for our school last year.

The best way to "get-even" is to not get sucked into that kind of hateful mentality that the Hayward students displayed. I am counting on you to continue to uphold our fine reputation that was established at the end of last season.

WEGETLETTERSWEGETLETTERSWEGETLETTERSWEGETLETTERS

Many of us are disappointed that the daily quotes are appearing less and less. Please include these, we like them. Thank you. ~3rd Block Chemistry II Class

To Linny Olesewski:

In yesterdays Octagon, you have a story about the Sweetheart dance, with Adam Helbach and Amanda Schaller selling tickets. HOWEVER, the tickets being sold were for chances on free parking in the teacher lot, to celebrate National FCCLA week, NOT the dance.

What's up with that?

~Mrs. Weaver

Editor's Note: It was not Linny Olesewski who took that picture, it was me. I hope FCCLA gets my sincere apology.

A note to comment on Aly's courage and dignity in last night's game. As parents, as fans, we couldn't be more proud of you.

~The McDonalds

"The Best Way to Get Even is Not To Get Sucked In"

-Mr. Bartelt

On behalf of my family and me I want to thank everyone for their support and encouragement in helping us get through the unfortunate events that occurred during the February 10 girls basketball game at Hayward High School. Your letters, e-mails and words of reassurance have been invaluable.

Thank you NHS students, parents, faculty and fans.

The incidents that arose in the Hayward gymnasium hurt me. They hurt

many of us. I assure you, no one would like to see vindication as much as I. However, I ask that no one retaliate on my behalf. Sinking to the level of those individuals only dishonors us and our community and renders them victorious. I would hate for that to happen.

Truly, the best way to get even is to let that terrible behavior end where it began.

Please.



Editor's Note: In the effort to preserve integrity and decency, The Octagon, the Administration, the teams and Aly asks that all students act with the same moral and ethical standards that separates us from the students such as those who define humanity on the physical, rather than the spiritual essence of humanity.

Demonstrating Courage Under Fire

by Nels Thoreson and Ryan Scherz

A high school basketball game was played last Thursday night. A competitor with incredible skills, athleticism, and heart played that night. An emotionally and physically tough person played that night. A good friend to many people played that night. The crowd, without any consideration for human emotion, taunted her. They didn't look at her characteristics, and focused on ethnicity instead. The ethnicity was an attempt to guilt them into submission, but to no avail. Nothing would stop them. They were intent on accomplishing one goal; they wanted to bring pain, plain and simple.

Throughout the year this person has led her team to many victories. This left-handed wonder drives to the hole and finishes like no other. She passes well, and plays tenacious defense. She shows great enthusiasm and love for the game. These are the characteristics which she should be judged by; not by race or appearance. They didn't come to participate in the competitive atmosphere of a basketball game. They came to hurt their school, themselves, and left a permanent scar on an undeserving individual's soul. They think what they did was comical, even beneficial to the team. Nothing could be further from the truth. The crowd accomplished its goal, but they did not win. Aly will never be beaten. She rose above them, on the court and in moral standard. She just wanted to play a game. Ignorance will never stop her from doing what she loves, playing basketball. What doesn't kill us, only makes us stronger.

She took a trip to Hayward for a game versus the Hayward Hurri- Coach Bartelt tried to stop the

I am a mother. As mothers, we are part of a special circle that outsiders can't totally understand. We felt for our children from the moment we got them. We may even feel for our children in a way they don't feel for themselves. It is an instinct we have—the wanting to protect our children from some cruel ways of the earth.

When our children are happy, we are ecstatic. When our children are afraid, we are fearful. When our children are disappointed or sad, our hearts break too.

And as a mother, we know there will be many disappointments in life. We know we can't prepare our children for everything, that they will just have to feel the pain in order to truly grow and learn.

But today I am saddened. And angry. I witnessed a mother hurting. Hurting for her child. But not for the normal things we hurt for our children. But for her child crying because of the human cruelty in the world. We expect our children to hurt because they didn't make the varsity team, or maybe a friend said hurtful words. But for one of our children to cry because of an outward appearance, that can be no more controlled than the direction of the wind, is totally unacceptable to me. How can people be so cruel? I don't understand it.

How can we change it? Starting right now, this minute, have some tolerance and patience for humanity. Think of what it would be like to walk in another's shoes—how it would feel if you were them. It is easy to be nice to the people we like. There is no challenge in that. I challenge each one of us, to be nice to the people we don't know, or maybe even to the people we don't like. That is where the challenge is. That is where you can actually grow and learn from the others around you. Instead of being tunnel visioned and having small opinions, let your world open up. It is easy to say hurtful words to the others around you. Be above that. I guarantee you have nothing to lose, and everything to gain.

Missy Yrjanainen

February 11, 2000

Mr. William Trautt
District Administrator
School District of Hayward
Box 860
Hayward, WI 54843-0860

Dear Mr. Trautt:

Thank you so much for taking my phone call on Friday.

Enclosed is a copy of the OCTAGON school newspaper that will be distributed to all students on Monday, February 14, 2000.

Bad news, as always, travels fast. This is not the first time Aly has incurred bigotry from Hayward. Last year a more immature Aly stormed off the floor to the locker room in anger and tears at the jeers and taunting of your fans. Not just the kids . . . parents included. No one realized until the game was over what had happened. The sportscasters for the radio station told us what they had observed from Hayward fans. Aly was too ashamed to even tell anyone what was happening. Looking back on it, we should have said something instead of shaking our heads thinking it was just a small group of ignorants.

At half-time last night, my husband, also an assistant football coach from our school, was in the doorway of the gym when the women supervising said to the man she was supervising with, "You know they won't stop, that's just the kind of kids they are." At that point, I would have hoped those boys would have been escorted from the gym and then we could have all left with a better feeling that some justice was served.

Well, read from the OCTAGON the rest of the story. You can hear Aly tell it in her own words. Read our basketball coach/assistant principal's reaction too. My daughter has played basketball with Aly for eight years, we have traveled with this team throughout Minnesota and Wisconsin. We have never even once encountered the bigotry that she endured last night. There are many tears in the hallway - a hallway that is much too quiet for a Friday- in empathy for her today. Aly is a 4.0 honor student who fully understands the implications of what happened on Thursday night.

page 2 - William Trautt, District Administrator, Hayward School District

I am requesting this special issue of our OCTAGON be sent to your school board, administrators and student council. I sincerely hope someone in your school district would feel the profound affect this situation has had on us.

Thank you so much for listening.

Sincerely,

Scott and Peggy Janigo
Brule, WI 54820

Scholar/Athletes Nominated for WIAA Award

Story by Morganna Moon and Linny Olesewski

Photos by Nels Thoreson



SCHOLAR ATHLETES Ryan Scherz and Aly Klugow

Two athletes were nominated this week for the WIAA Student Scholar Athlete award. They are Aly Klugow and Ryan Scherz.

The WIAA began giving away this award in 1986. One girl and one boy are chosen in each high school in Wisconsin.

To be eligible for the award, the student must have four letters in WIAA varsity sports and must be nominated by their coaches.

They must also maintain a minimum of 3.0 GPA on a scale of 4.0.

Once nominated, the students must submit a 250 word essay and an application. In addition, the student

must also be involved in community activities and clubs.

Alysia Klugow enjoys a 4.05 GPA. She is involved in golf, basketball, and softball. Her community activities include volunteer refereeing, hoop league coaching, and various church activities. In school, she is involved in N-Club and SADD. Klugow said, "I think it's a real honor to be nominated

for this kind of award. Many people don't recognize the difficulty in maintaining good grades while playing extra-curricular activities. It's very rewarding to be given recognition."

Ryan Scherz keeps a 4.17 GPA. He has participated in football, wrestling, and baseball. He referees youth baseball and youth football. School activities include N-Club, which he is co-president of, and Academic Quiz Bowl. Said Scherz of the nomination, "It's an amazing honor."

Sixteen boys and sixteen girls are chosen as finalists in late spring. They are put up in a fancy hotel and have a banquet. They receive a medal and certificate and may put mention of the award on their college applications.

Fech continued

character. He is studious. He has unlimited potential.

I listened to his assessment of his situation. I listened to him consider walking on at the school of his dreams, the University of Wisconsin-Madison. I saw this as an indignity.

He had been slapped in the face by these schools, raising his hopes then letting those hopes slowly diminish until finally they were gone. I hoped that he would take another school's offer, go somewhere else

and prove everyone wrong. I see him making every program that passed on him sorry for such a blunder.

On Super Bowl Sunday, January 30, Cody came home from a college visit and told me he had made his college choice. I was happy to hear that he was going to accept an athletic scholarship of a substantial amount to play football for the North Dakota State University Bison.

On February 2, Fechtelkott signed his

national letter of intent. This time, his eyes displayed a combination of relief and satisfaction. His hard work had paid off. He will play for one of the best Division 2 programs in the nation. And don't think because he didn't go to Wisconsin he won't be playing on Saturday's on national television.

The Bison may be fighting for the national championship within the next few years. I have no doubt that if this is the case, Cody Fechtelkott will play a big role in their success.

WISH A VERY HAPPY BIRTHDAY TO ROBIN JOHNSON

3-9-00

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Docket Number 99-4209

**JUAN CEDILLO, President, United States
Counter-Insurgent Association of Justice,
Inc.,**

Petitioner-Appellant,

vs.

**UNITED STATES OF AMERICA, and
DOES I through X, inclusive,**

Respondent-Appellees.

Send to RM?

Yes ☒

No ☐

Send to Counsel?

Yes ☒

No ☐

APPELLANT'S OPENING BRIEF

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
IN THE WESTERN DIVISION
CASE NO. 99-671-CV-W-BD
GARY A. FENNER, DISTRICT JUDGE**

**Juan Cedillo, President,
United States Counter-Insurgent
Association of Justice, Inc.
1215 Grand Avenue
Kansas City, Missouri 64106
816-221-7384**

*P.S. I am sending you this in
the hopes that you could
pass on to the U.S. President.
Bill Clinton. Thank You.*

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Docket No. 99-4209

Janet Reno, Attorney General of the United States, DOJ

CERTIFICATE OF COMPLIANCE

I certify that Appellant's Opening Brief contains not more than 3,888 words, not more than 458 lines of text, and the Brief with Appendix contains 40 pages total.

Juan Cedillo

I. STATEMENTS

A. Statement Regarding Oral Arguments

1. Appellant Cedillo requests oral argument on the grounds: (a) that no lawful consideration of his civil cause occurred in the court below, (b) that the law brought to bear by the said court did not address or consider the lawlessness of federal officers and agents in their initial dealings with alien residents whose family members were American citizens, and (c) that the result of their lawlessness broke up otherwise normal American families contrary to existing law.

B. Statement of Jurisdiction

1. This Court has jurisdiction for this appeal under provisions of 28 U.S.C. §§ 1291 and 1294. Aplt. App. 15.

C. Statement of Issues

1. The issues, though several, can be embraced by one; namely:

Whether the use of federal public appropriations under false pretenses to engage in sedition, conspiracies to injure private individuals, and seditious conspiracies rise to the level of constitutional or statutory protection.

D. Statement of the Case

1. Assigned judge in court below used federal public appropriations for the office he holds, the operation of his office, and for the maintenance and operation of the public facilities out of which he operates his office, doing so under false pretenses: (a) to engage in seditious conduct to undermine the United States Government, (b) to engage in conspiracies injurious to private individuals, and (c) to engage in seditious conspiracies offensive against or defrauding the United States.

E. Statement Regarding Standard of Review

1. Cedillo alleges there has been no lawful review of his cause of action by any public officer of the United States, and consequent thereto, this Court is requested to consider the merits of the case as filed in the court below en blanc using the De Novo Test as a Standard of Review making its own findings of fact.

II. FACTS, POINTS OF LAW, AND AUTHORITIES

A. Cedillo suggest there were filing irregularities in the court below which clearly indicated; first: collusion through ex parte communications between judge assigned and Defendant USA, by and through counsel; second: through harmful offensive conduct injurious to Cedillo's cause of action, and third: through conduct offensive against or defrauding the United States based upon the following:

1. Cedillo filed Complaint/Motion for Injunctive Relief in court below July 14, 1999 and summons was served July 20, 1999. R.P. 1 and 4.

2. Appellee USA untimely filed a motion to extend time without seeking prior concurrence on September 17, 1999 and on September 30, 1999; however, neither motion was opposed on grounds Cedillo wanted an the Appellee USA to address the problem reported in his complaint trusting FRCP 11 would apply, have meaning, and authority. R.P. 6 and 8; and FRCP 11, Aplt App. 39.

3. On October 8, 1999, Appellee USA, by and through counsel, motioned court to dismiss; Cedillo responded October 15, 1999. R.P. 9 and 10.

4. Court issued two Orders *after-the-fact* extending time to respond: first extending time to October 1, 1999 and second to October 8, 1999; but *did not issue* either Order

extending time until October 20, 1999; and the collusion evident now possessed the element of an overt conspiracy corruptly endeavoring to interfere with the due administration of justice using the Federal Rules of Civil Procedure and local court rules to coverup federal government criminal activities R.P. 11 and 12, and 18 U.S.C. § 1503(a), Aplt. App. 20.

5. Cedillo motioned the court below to compel a response on October 29, 1999; however, USA responded with a Suggestion on November 3, 1999. R.P. 13 and 14. On November 5, Cedillo replied to Appellee USA's Suggestion.

6. Lower court issued an order on November 15, 1999 dismissing the case without a hearing, without providing for either due process of law, without providing a forum for the equal protection of the law under provisions of the 13th and 14th Amendments to the Constitution and Statutes enacted under the power of those amendments to enforce their provisions, and thereby succeeded in the corrupt endeavor to influence the due administration of justice. R.P. 16; see Aplt App. 17 for 13th and 14th Amendments and laws enforcing those amendments, and 18 U.S.C. §§ 241, 242, 287, 371, 1001, and 2384 at Aplt. App. 18 - 20.

7. Clerk issued a judgment terminating case on November 15, 1999 and Cedillo filed his notice of appeal on November 24, 1999. R.P. 17 and 18.

8. In view of the foregoing, assigned judge in court below used the Federal Rules of Civil Procedure, federal public appropriations, and inapplicable case law to cover-up activities corruptly influencing the due administration of justice and offenses against or defrauding the constitutional powers and statutory authority of the United States. 18 U.S.C. §§ 241, 242, 287, 371, 1001, and 2384 (supra.); Section 9, Clause 7, Article I, Section 1, 13th Amendment and 14 Stat. 27, re-enacted by § 18, 16 Stat. 140 at 144, and reaffirmed by 17 Stat.

13 which also enforces Sections 1, 3 and 4 of the 14th Amendment.

B. The actions taken in the court below amounted to crimes against or defrauding the United States using public appropriations to do so on the following basis:

1. Lower court assigned judge knew but acted with reckless disregard for the truth and deliberately ignored Cedillo's pleadings which clearly indicated the urgent need for court action to stop unlawful activities of Defendant USA's officers, agents, and employees:

(a) the activities involving arrests *by local city police* in one State or federal district at request of unnamed, un-uniformed, and unidentified government persons who then removed the aliens arrested without warrants outside the jurisdiction of the arresting officer across state lines or federal district for detention later to face a federal magistrate judge -- who may be oblivious to the foregoing -- on charges unknown to the arrested individuals until the charges were read to them in a federal magistrate court outside the federal district of residence; (b) such activity voided any immunity which would otherwise be available, but under the circumstances does not rise to the level of any constitutional or statutory protection. *Supra* and 31 U.S.C. §§ 3729(b)(3) and 3730(e)(2)(A) and (B); and Sections 1, 3 and 4 of the 14th Amendment and 17 Stat. 13; and R.P. 3, 10, and 13.

2. Cedillo sought to stop the aforesaid illicit practices -- now routine with the able but nevertheless seditious assistance of the assigned judge of the lower court -- citing valid case law [*INS v. Errico* (1966) 358 US 214] in order to keep from breaking up families whose children were American citizens. R.P. 10, 13, 15, and 18 and *Errico*.

3. Cedillo showed the lower court: (a) that the arrest and incarceration process being accomplished under color of law was vile, invidious, uncivilized and could reasonably be

considered crimes against humanity, with discovery practice, when the full impact of the lawlessness nationwide became known; (b) that the cause of action at Bar was summarily rejected, possibly to deny discovery as a furtive design, citing case law (Page 2, Order, R.P. 16) which did not address the situations merited in the complaint by Cedillo; and (c) that the assigned judge knew the cases cited did not apply to the illegal arrests and illegal detentions cited by Cedillo. See R.P. 16 also included as Aplt. App.

4. Assigned judge in the lower court then proceeded to justify his orders granting enlargement of time for Defendant USA, by and through counsel, to respond and then issued the order granting the extensions long after the response time had expired.

(a) The delayed order caused the said collusion to evolve into a full conspiracy in violation of 18 U.S.C. §§ 241, 242, 287, 371, 1001, and 2384.

(b) Here, the assigned judge and the Defendant USA, by and through counsel, said Federal Rules of Civil Procedure (FRCP) and local court rules – in spite of FRCP 11 (Aplt. App. 31) – to cover-up, their own seditious conduct, their own conspiracy to injure private persons, and their own seditious conspiracies which became criminal offenses against or defrauding the United States in addition to the criminal activities complained of by Cedillo. Id.; 18 U.S.C. §§ 371, 287, 1001, and 2384; and Sections 1, 3, and 4, Fourteenth Amendment to the Constitution of the United States in that no public appropriations shall be used in support of insurrection against the United States.

(c) Said judge and defendant used federal public appropriations under false pretenses to conspire to offend or defraud the United States. Section 9, Clause 7, Article I, US Constitution, and 18 U.S.C. §§ 241, 242, 287, 371, 1001, and 2384.

C. Pertinent constitutional powers and statutory authority proscribing the conduct in the court below are as follows:

1. No money is drawn from the United States Treasury except in consequence of appropriations made by law. Section 9, Clause 6, Article 1, Constitution of the United States.

2. Congress has no power grants to enact law permitting offenses to be committed against the United States. Id.

3. Congress enacted other laws to recover money drawn from the United States Treasury and claimed or used under false pretenses. 31 U.S.C. §§ 3729 through 3732. Aplt. App. 25 - 30.

4. Congress enacted law to suppress insurrections which should be brought to the attention of the President of the United States when the Department of Justice is unwilling, incapable or dysfunctional in such matters. 10 U.S.C. § 333. Aplt. App. 31.

5. An insurrection occurs when two or more persons intentionally, (ignored Cedillo pleadings), defy federal law, (demonstrated by offensive conduct), with sufficient force and effect during times pertinent, (by the orders issued), so as to deny the power of the United States Constitution. Supra., and In re: CHARGE TO GRAND JURY, (N.D. Ill., July 1894), 62 F.R. 828. Aplt. App. 32 - 34.

6. The United States Constitution denies office to public officers who, after taking an oath to support the Constitution of the United States, (private citizens take no such oath) shall have engage in insurrection against the same. Section 3, Fourteenth Amendment.

7. The United States shall never pay any debt incurred in aid of insurrection against the United States and the validity of a public debt shall never be questioned. Section

4, Fourteenth Amendment.

D. Actions taken in the court below by the judge assigned in conspiracy with the counsel for the Defendant - Appellee USA, which are considered offenses against or defrauding the United States, are as follows:

1. Appellant brought by Reply to Suggestion in Opposition to Motion to Compel, (R.P. 15) to the attention of the assigned judge in the court below in November 5, 1999 that certain situations and activities occurring within said court and reported to him in accord with 18 U.S.C. § 2382, (Aplt. App. 20) appeared to be seditious, to be conspiracies to injure a private citizen, and to be seditious conspiracies to undermine the integrity of the United States committing offenses against or defrauding the United States. 18 U.S.C. §§ 241, 242, 287, 371, 1001, and 2384. Said judge had a solemn duty obligation to further report the offenses charged to the Office of the United States Attorney for the Western District of Missouri and failed to do so. The Court Clerk denied Cedillo's Motion to Compel as moot without comment on November 15, 1999. See R.P. 17.

2. The said assigned judge defied federal law with reckless disregard for the truth and with sufficient force and effect upon issuing the order during times pertinent and dismissed Cedillo's Complaint, which denied all motions as moot, thereby signaling his intent to also deny the power of the United States Constitution; and consequent thereto, he cannot claim the slightest modicum of immunity by his actions after having joined the reported seditious conduct, the conspiracy to injure a private individuals, and the seditious conspiracy. Supra and Section 3, 14th Amendment. Aplt. App. 17 ; and Forrester v. White, 484 U.S. 219, 225 (1988), Aplt. App. 35 - 37.

3. No public appropriation drawn from the United States Treasury can be used in support of an insurrection against the United States Constitution. Supra, Section 4, 14th Amendment.

4. Therefore, recovery of public appropriations obtained and used under false pretenses is authorized for return to the United States Treasury in accord with 31 U.S.C. §§ 3729 and 3730, (Aplt. App.); such funds shall be summed from October 20, 1999 when, by the orders issued after-the-fact, the intent to defy federal law (14 Stat. 27, and 17 Stat. 13) occurred with sufficient force and effect so as to deny the power of the United States Constitution, (13th and 14 Amendments and Section 9, Clause 7, Article I, Const. U.S.). Supra.

5. Recovery shall be from the assigned judge in the court below and the counsel for the Defendant USA and all persons participating in the insurgency in the amount of public appropriations obtained and used by them under false pretenses during times pertinent and used by each of them, individually and in concert, to be determined and summed from the October 20, 1999 until the total money due the United States Treasury is recovered and returned therein. Id.

E. Federal public officers, agents, and employees involved in the offenses against the United States Constitution shall not hold office or be employed as they were during times pertinent until the defect is cured by a 2/3rd vote of both Houses of the Congress of the United States. Section 3, 14th Amendment.

F. Cedillo was held in the court below without recourse and was effectively punished each time he attempted by pleadings to escape the conditions of involuntary servitude:

1. Which held him to a set of circumstances of a “Hobson’s Choice” wherein he

had no worthwhile choices between viable alternatives, [U.S. v Clementi, C.A. 8 (Mo.) 70 F.3d 997], Aplt. App. 38;

2. Which held him to that asymmetry;

3. Which punished him each time he attempted to escape the wrath of his predicament when the assigned judge ruled against his interest under color of law or favoring his opponent without just cause; and,

4. Which used public appropriation obtained under false pretenses throughout the imposition. Section 1, 13th Amendment; Sections 1,3, and 4, 14th Amendment; and “Hobson’s Choice”: U.S. v. Clementi, C.A. 8 (Mo.) 1995, 70 F.3d 997.

III. ARGUMENT

A. Cedillo complained to the court below:

1. That he had been denied opportunities to make worthwhile choices between viable alternatives unlawfully by the Defendant USA;

2. That he had been held thereby under imposed subjugation from which there was no escape at that judicial level without further punishment; and,

3. That he be released from the conditions of servitude under which he was subjugated involuntarily, under which escape was thwarted in numerous ways, and under which he was punished for attempts to escape.

B. The assigned judge and the counsel for the Defendant USA are federal public officers possibly entitled to general immunity under provisions of 31 U.S.C. § 3730(e)(2)(A)[Aplt. App.]; however *no immunity whatsoever rises to the level of constitutional or statutory protection* for sedition, conspiracies to harm private individuals, and seditious

conspiracies. Supra Title 18 U.S.C. violations; see In re: CHARGE TO GRAND JURY, (N.D. Ill. July 1894), 62 F.R. 828, (Aplt. App.); and Sections 3 and 4, Fourteenth Amendment to the Constitution of the United States. Aplt. App. .

C. The assigned judge of the lower court had a solemn duty to require a grand jury investigation into the charges against the public officers' (including himself), agents' and employees' intentional seditious conduct, intentional conspiracies to harm a private citizen, and intentional seditious conspiracies. Instead, the said judge used his public office of trust, federal public appropriations and did so under false pretenses to aid and abet the offenses against the United States complained of by Cedillo, thereby protecting all of the other participants in the process. The only action taken by said judge was *to dismiss the complaint and deny all motions submitted by Cedillo* using FRCP, local court rules, fake case law, his office and said public appropriations in direct contradistinction of the constitutional prohibition to obtaining money from the United States Treasury under false pretenses and to do so thereby aiding and abetting the offenses complained of *after-the-fact* against the United States Constitution.

D. Accordingly, the federal public appropriations used to aid and abet offenses against the United States were in direct contradistinction to the power exercised by the Congress of the United States when it enacted law to appropriate the money from the United States Treasury for the compensation of federal public officers, agents, and employees for the operation of the public offices or jobs held, and for the operation and maintenance of the public facilities out of which they operated. Therefore said money obtained under false pretenses is now authorized to be recovered at three times the amount received from the first intentional offensive event on October 20, 1999 that occurred in the court below until the full amount is returned to the

United States Treasury or no further federal appropriations are available to each one of them; whichever occurs first.

1. The same argument holds for all other participants nationwide since they may be willing participants as well committing the constitutional offenses of seditious conduct, conspiracies to injure a private citizen and the seditious conspiracies against the United States Constitution with reckless disregard for that document in general and both Section 1, 13th Amendment and Sections 1, 3, and 4 of the Fourteenth Amendment in particular. Therefore when said money is obtained under false pretenses, it is now due recovery at three times the amount received from the first offensive seditious conspiracy event that occurred on October 20, 1999 and later used to deny discovery until the full amount is returned to the United States Treasury or until no public appropriations are available to any of the other participant, whichever occurs first.

IV. CONCLUSION

A. Federal public appropriations obtained under false pretenses to engage in offenses against the United States Constitution shall be recovered and returned to the United States Treasury.

B. No federal officer, agent, or employee who uses such appropriated funds under false pretenses may hold office or employment until the defect is addressed and cured by the United States Congress.

C. The Court has jurisdiction to order a grand jury investigate the offenses reported to in accord with 18 U.S.C. § 2382.

D. Oral arguments are justified.

E. The assigned judge in the court below joined with others to intentionally defy federal laws with sufficient force and effect so as to deny the power of the United States Constitution which denies him public office and the applicable federal public appropriations.

F. The grand jury investigation into the offenses against the United States Constitution should determine the extent of the said offenses vis-a-vis the Immigration and Naturalization Service, the Department of Justice, and the other federal government functions.

G. This Court should review the case on appeal on the De Novo Test Standard of Review *en blanc*.

H. Cedillo is entitled and hereby reserves the right to file in district court an *ex rel* complaint under provisions of the False Claims Act; facts provided herein to the contrary, notwithstanding.

Wherefore, Appellant Cedillo urges the Court to act with deliberate speed since the health, safety, and welfare of American citizen relatives of aliens is in jeopardy until the rule of law is reestablished within applicable federal government functions nationwide which the Federal Rules of Civil Procedure and Federal Appellate Rules of Procedure can not manage while the rule of law is imperiled, federal citizens are in danger, and resolute action is required by this Court for a decisive solution.

Respectfully submitted,

Juan Cedillo, President
United States Counter-Insurgent Association, Inc.
1215 Grand Avenue
Kansas City, Missouri 64106

CERTIFICATE OF SERVICE

The undersigned certifies that on this ____ day of February 2000, a true and correct copy of the foregoing Appellant's Opening Brief was sent first class by U.S. Mail, postage prepaid, and addressed to or hand carried to :

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**Clerk, US District Court
Western District of Missouri, Western Division
Marked for: Honorable Gary A. Fenner
District Judge**

Juan Cedillo

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**UNITED STATES CODE ANNOTATED
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV—JURISDICTION AND VENUE
CHAPTER 83—COURTS OF APPEALS**

Current through P.L. 106-73, approved 10-19-1999

§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

§ 1294. Circuits in which decisions reviewable

Except as provided in sections 1292(c), 1292(d), and 1295 of this title, appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

- (1) From a district court of the United States to the court of appeals for the circuit embracing the district;**
- (2) From the United States District Court for the District of the Canal Zone, to the Court of Appeals for the Fifth Circuit;**
- (3) From the District Court of the Virgin Islands, to the Court of Appeals for the Third Circuit;**
- (4) From the District Court of Guam, to the Court of Appeals for the Ninth Circuit.**

U.S.C.A. Const. Amend. XIII-Full Text

**UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
AMENDMENT XIII—SLAVERY ABOLISHED; ENFORCEMENT**

Current through P.L. 106-73, approved 10-19-1999

Amendment XIII. Slavery Abolished; Enforcement

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

**AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS;
EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION;
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

18 U.S.C.A. § 241

**UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I—CRIMES
CHAPTER 13—CIVIL RIGHTS**

Current through P.L. 106-73, approved 10-19-1999

§ 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

§ 242. Deprivation of rights under color of law

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 violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

§ 287. False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

§ 371. Conspiracy to commit offense or to defraud United States

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.

§ 1001. Statements or entries generally

(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 or imprisoned not more than 5 years, or both.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to--

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

§ 1503. Influencing or injuring officer or juror generally

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or 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 administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is--

- (1) in the case of a killing, the punishment provided in sections 1111 and 1112;
- (2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and
- (3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

§ 2382. Misprision of treason

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.

§ 2384. Seditious conspiracy

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

U.S.C.A. Const. Art. I § 9, cl. 7

**UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
ARTICLE I—THE CONGRESS**

Current through P.L. 106-73, approved 10-19-1999

Section 9, Clause 7. Appropriations; Publication of Statements and Accounts

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

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CHAP. XXXI. — *An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication.* April 9, 1866.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

Who are citi-
zens of the
United States;

their rights
and obligations.

SEC. 2. *And be it further enacted, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.*

Penalty for de-
priving any per-
son of any right
protected by this
act, by reason of
color or race, &c.

SEC. 3. *And be it further enacted, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court, against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses, or wrongs done or committed by virtue or under color of authority derived from this act or the act establishing a Bureau for the relief of Freedmen and Refugees, and all acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the "Act relating to habeas corpus and regulating judicial proceedings in certain cases," approved March three, eighteen hundred and sixty-three, and all acts amendatory thereof. The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offences against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of the cause, civil or criminal, is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said courts in the trial and disposition of such cause, and, if of a criminal nature, in the infliction of punishment on the party found guilty.*

Courts of the
United States to
have jurisdiction
of offences under
this act.

Suits com-
menced in State
courts may be
removed on de-
fendant's motion.

1865, ch. 90.
Vol. xiii. p. 507.

1863, ch. 87.
Vol. xii. p. 755.
Jurisdiction to
be enforced ac-
cording to the
laws of the Uni-
ted States, or the
common law, &c.

District attorneys, &c., to institute proceedings against all violating this act.

Number of commissioners appointed by circuit and territorial courts to be increased; their authority.

Marshals, &c., to obey all precepts under this act.

Penalty for refusal, &c.

Commissioners may appoint persons to execute warrants.

Authority of such persons.

Warrants to run where.

Penalty for obstructing process under this act;

for rescue, &c.;

for aiding to escape;

for harboring, &c.

SEC. 4. *And be it further enacted*, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as by this act has cognizance of the offence. And with a view to affording reasonable protection to all persons in their constitutional rights of equality before the law, without distinction of race or color, or previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of the United States and the superior courts of the Territories of the United States, from time to time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act; and such commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this act, and the same duties with regard to offences created by this act, as they are authorized by law to exercise with regard to other offences against the laws of the United States.

SEC. 5. *And be it further enacted*, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of the person upon whom the accused is alleged to have committed the offence. And the better to enable the said commissioners to execute their duties faithfully and efficiently, in conformity with the Constitution of the United States and the requirements of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; and the persons so appointed to execute any warrant or process as aforesaid shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the clause of the Constitution which prohibits slavery, in conformity with the provisions of this act; and said warrants shall run and be executed by said officers anywhere in the State or Territory within which they are issued.

SEC. 6. *And be it further enacted*, That any person who shall knowingly and wilfully obstruct, hinder, or prevent any officer, or other person charged with the execution of any warrant or process issued under the provisions of this act, or any person or persons lawfully assisting him or them, from arresting any person for whose apprehension such warrant or process may have been issued, or shall rescue or attempt to rescue such person from the custody of the officer, other person or persons, or those lawfully assisting as aforesaid, when so arrested pursuant to the authority herein given and declared, or shall aid, abet, or assist any person so arrested as aforesaid, directly or indirectly, to escape from the custody of the officer or other person legally authorized as aforesaid, or shall harbor or

...shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which said offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States.

SEC. 7. *And be it further enacted*, That the district attorneys, the marshals, their deputies, and the clerks of the said district and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, inclusive of all services incident to such arrest and examination. The person or persons authorized to execute the process to be issued by such commissioners for the arrest of offenders against the provisions of this act shall be entitled to a fee of five dollars for each person he or they may arrest and take before any such commissioner as aforesaid, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner, and in general for performing such other duties as may be required in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

Fees of district attorneys, marshals, clerks, commissioner, &c.;

SEC. 8. *And be it further enacted*, That whenever the President of the United States shall have reason to believe that offences have been or are likely to be committed against the provisions of this act within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and it shall be the duty of every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.

to be paid from the treasury of the United States, and to be recoverable from defendant when convicted.

President may direct the judge, &c., to attend, &c., for the more speedy trial of persons charged with violating this act;

SEC. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.

may enforce the act with the military and naval power.

SEC. 10. *And be it further enacted*, That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States.

Appeal to the supreme court of the United States.

SCHUYLER COLFAX,

Speaker of the House of Representatives.

LA FAYETTE S. FOSTER,

President of the Senate, *pro tempore*.

In the Senate of the United States, April 6, 1866.

The President of the United States having returned to the Senate, in which it originated, the bill entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," with his objections thereto, the Senate proceeded, in pursuance of the Constitution, to reconsider the same; and,

Bill passed over the veto of the President.

**UNITED STATES CODE ANNOTATED
TITLE 31. MONEY AND FINANCE
SUBTITLE III—FINANCIAL MANAGEMENT
CHAPTER 37—CLAIMS
SUBCHAPTER III—CLAIMS AGAINST THE UNITED STATES GOVERNMENT**

Current through P.L. 106-73, approved 10-19-1999

§ 3729. False claims

- (a) **Liability for certain acts.—Any person who—**
- (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
 - (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
 - (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
 - (4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
 - (5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
 - (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—
 - (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
 - (B) such person fully cooperated with any Government investigation of such violation; and
 - (C) at the time such person furnished the United States with the information about the

violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation; the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) **Knowing and knowingly defined.**—For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information—

- (1) has actual knowledge of the information;
- (2) acts in deliberate ignorance of the truth or falsity of the information; or
- (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) **Claim defined.**—For purposes of this section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) **Exemption from disclosure.**—Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

(e) **Exclusion.**—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

§ 3730. Civil actions for false claims

(a) **Responsibilities of the attorney general.**—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) **Actions by private persons.**—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to > Rule 4(d)(4) of the Federal Rules of Civil Procedure. > [FN1] The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint

is unsealed and served upon the defendant pursuant to > Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to Qui Tam actions.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the

Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam plaintiff.--(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon

which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain actions barred.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C.App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

(f) Government not liable for certain expenses.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and expenses to prevailing defendant.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of,

testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

§ 3731. False claims procedure

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought--

(1) more than 6 years after the date on which the violation of section 3729 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

§ 3732. False claims jurisdiction

(a) Actions under section 3730.--Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) Claims under state law.--The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

10 U.S.C.A. § 333

UNITED STATES CODE ANNOTATED

TITLE 10. ARMED FORCES

SUBTITLE A—GENERAL MILITARY LAW

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 15—INSURRECTION

Current through P.L. 106-73, approved 10-19-1999

§ 333. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

restraining order has been served on the defendant, or, if it has not been served on him, that he had notice or knowledge of its contents.

Now, in this case, the information, I think, lacks considerable of having the certainty and precision that is essential. It is not alleged that this man was one of the unknown parties that are referred to in the injunction. It is not alleged that the restraining order was a lawful one, in the language of the statute. It does not allege,—and that is the most serious thing, to my mind,—that either by his words or his acts he was engaged in aiding the common object with other members of the American Railway Union. If what this man did was not done to give aid or comfort or encouragement to the object of arresting the mails, if it was an independent crime the man was committing, if he wanted to commit arson or robbery, without having any connection with these men that were engaged in the interruption of commerce, then he would not be within the terms of the restraining order, nor within the law, which has been read here,—the law of July 2, 1890. Now, it is not charged, although it has been assumed all the way through,—I suppose the proof adduced would go to show that,—that he was connected with the railway union, and that his acts were acts that were calculated in their nature to give aid and comfort to the strike that has been carried on. If those facts were proved, why they would be sufficient to satisfy the court that his mind was acting in combination with the minds of Debs and others, or that they were engaged in the common purpose, and hence that they were in the conspiracy that is mentioned in the statute, provided the things that they were trying to do would naturally result in delaying or interrupting the mails, or in delaying or interrupting the carriage of passengers and freight from one state to another. I think that in these particulars the affidavit is insufficient. I think the charge is sufficient, so far as showing that the court has jurisdiction to issue the writ, when it is shown by an affidavit that this man was engaged in the combination or conspiracy with other railroad men in aiding and assisting to arrest the mails and interstate commerce. I think the affidavit would show a cause of action against him, and then it would depend upon the proof whether or not the offense was made out.

IN RE CHARGE TO GRAND JURY.

(District Court, N. D. Illinois. July 10, 1894.)

1. INSURRECTION—WHAT CONSTITUTES.

The open and active opposition of a number of persons to the execution of the laws of the United States, of so formidable a nature as to defy for the time being the authority of the government, constitutes an insurrection, even though not accompanied by bloodshed, and not of sufficient magnitude to render success probable.

2. CRIMINAL CONSPIRACY—OBSTRUCTING MAILS AND INTERSTATE COMMERCE.

A corrupt or wrongful agreement between two or more persons that the employees of railroads carrying the mails and conducting interstate commerce should quit, and that all others should, by threats or violence, be prevented from taking their places, constitutes a criminal conspiracy to hinder or obstruct the mails and interstate commerce.

3. SAME—LABOR ORGANIZATION.

Where two or more leaders of a labor association, for the purpose of advancing personal ambition or satisfying private malice, by concert, insist or demand, under effective penalties and threats, upon the members of the association quitting their employment, to the obstruction of the mails or of interstate commerce, they are guilty of criminal conspiracy.

A grand jury, having been called to consider the offenses alleged to have been committed during the strike of the American Railway Union against the railroads hauling Pullman cars, was instructed by the court as follows:

GROSSCUP, District Judge. Gentlemen of the Grand Jury: You have been summoned here to inquire whether any of the laws of the United States within this judicial district have been violated. You have come in an atmosphere and amid occurrences that may well cause reasonable men to question whether the government and laws of the United States are yet supreme. Thanks to resolute manhood, and to that enlightened intelligence which perceives the necessity of a vindication of law before any other adjustments are possible, the government of the United States is still supreme.

You doubtless feel, as I do, that the opportunities of life, under present conditions, are not entirely equal, and that changes are needed to forestall some of the dangerous tendencies of current industrial tendencies. But neither the torch of the incendiary, nor the weapon of the insurrectionist, nor the inflamed tongue of him who incites to fire and sword is the instrument to bring about reforms. To the mind of the American people; to the calm, dispassionate sympathetic judgment of a race that is not afraid to face deep changes and responsibilities, there has, as yet, been no appeal. Men who appear as the champions of great changes must first submit them to discussion, discussion that reaches, not simply the parties interested, but the outer circles of society, and must be patient as well as persevering until the public intelligence has been reached, and a public judgment made up. An appeal to force before that hour is a crime, not only against government of existing laws, but against the cause itself; for what man of any intelligence supposes that any settlement will abide which is induced under the light of the torch or the shadow of an overpowering threat?

With the questions behind present occurrences, therefore, we have, as ministers of the law and citizens of the republic, nothing now to do. The law as it is must first be vindicated before we turn aside to inquire how law or practice, as it ought to be, can be effectually brought about. Government by law is imperiled, and that issue is paramount.

The government of the United States has enacted laws designed, first, to protect itself and its authority as a government, and, secondly, its control over those agencies to which, under the constitution and laws, it extends governmental regulation. For the former purpose,—namely, to protect itself and its authority as a government,—it has enacted that every person who incites, sets on foot, assists, or engages in, any rebellion or insurrection

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authority of the United States or the laws thereof, or gives aid or comfort thereto, "and any two or more persons in any state or territory who conspire to overthrow, put down, or destroy by force the government of the United States, or to levy war against them, or to oppose by force the authority thereof; or by force to prevent, hinder or delay the execution of any law of the United States contrary to the authority thereof," shall be visited with certain penalties therein named.

Insurrection is a rising against civil or political authority,—the open and active opposition of a number of persons to the execution of law in a city or state. Now, the laws of the United States forbid, under penalty, any person from obstructing or retarding the passage of the mail, and make it the duty of the officers to arrest such offenders, and bring them before the court. If, therefore, it shall appear to you that any person or persons have willfully obstructed or retarded the mails, and that their attempted arrest for such offense has been opposed by such a number of persons as would constitute a general uprising in that particular locality, and as threatens for the time being the civil and political authority, then the fact of an insurrection, within the meaning of the law, has been established; and he who by speech, writing, or other inducement assists in setting it on foot, or carrying it along, or gives it aid or comfort, is guilty of a violation of law. It is not necessary that there should be bloodshed; it is not necessary that its dimensions should be so portentous as to insure probable success, to constitute an insurrection. It is necessary, however, that the rising should be in opposition to the execution of the laws of the United States, and should be so formidable as for the time being to defy the authority of the United States. When men, rather than resist the civil or political power of the United States, or to oppose the execution of its laws, and are in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, they become insurgents; and every person who knowingly incites, aids, or abets them, no matter what his motives may be, is likewise an insurgent. The penalty for the offense is severe, and has been designed to protect the government and its authority against direct attack. There are other provisions of law designed to protect those particular agencies which come within governmental control. To these I will now call your attention.

The mails are in the special keeping of the government and laws of the United States. To insure their unhindered transmission, it is made an offense to knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier carrying the same. It is also provided that "if two or more persons conspire together to commit any offense against the United States and one or more of such parties do any act to effect the object of the conspiracy," all the parties thereto shall be subject to a penalty. Any person knowingly and willfully doing any act which contributes, or is calculated to contribute, to obstructing or hindering the mails, or who knowingly and willfully takes a part in such

acts, no matter how trivial, if intentional, is guilty of violating the first of these provisions; and any person who conspires with one or more persons, one of whom subsequently commits the offense, is likewise guilty of an offense against the United States. What constitutes conspiracy to hinder or obstruct the mails will be touched upon in connection with the subject to which I now call your attention.

The constitution places the regulation of commerce between the several states, and between the states and foreign nations, within the keeping of the United States government. Anything which is designed to be transported for commercial purposes from one state to another, and is actually in transit, and any passenger who is actually engaged in any such interstate commercial transaction, and any car or carriage actually transporting or engaged in transporting such passenger or thing, are the agencies and subject-matter of interstate commerce, and any conspiracy in restraint of such trade or commerce is an offense against the United States. To restrain is to prohibit, limit, confine, or abridge a thing. The restraint may be permanent or temporary. It may be intended to prohibit, limit, or abridge for all time, or for a day only. The law draws no distinction in this respect. Commerce of this character is intended to be free, except subject to regulation by law, at all times, and for all periods. Temporary restraint is therefore as intolerable as permanent, and practical restraint by actual physical interference, as criminal as that which flows from the arrangements of business and organization. Any physical interference, therefore, which has the effect of restraining any passenger, car, or thing constituting an element of interstate commerce, forms the foundation for this offense. But to complete this offense, as also that of conspiracy to obstruct the mails, there must exist, in addition to the overt act and purpose, the element of criminal conspiracy.

What is criminal conspiracy? If it shall appear to you that any two or more persons corruptly or wrongfully agreed with each other that the trains carrying the mails and interstate commerce should be forcibly arrested, obstructed, and restrained, such would clearly constitute a conspiracy. If it shall appear to you that two or more persons corruptly or wrongfully agreed with each other that the employes of the several railroads carrying the mails and interstate commerce should quit, and that successors should, by threats, intimidation, or violence, be prevented from taking their places, such would constitute a conspiracy.

I recognize, however, the right of labor to organize. Each man in America is a freeman, and, so long as he does not interfere with the rights of others, has the right to do with that which is his what he pleases. In the highest sense, a man's arm is his own, and, aside from contract relations, no one but he can direct when it shall be raised to work, or shall be dropped to rest. The individual option to work or to quit is the imperishable right of a freeman. But the raising and dropping of the arm is the result of a will that resides in the brain, and, much as we may desire that such wills

should remain entirely independent, there is no mandate of law which prevents their association with others, and response to a higher will. The individual may feel himself, alone, unequal to cope with the conditions that confront him, or unable to comprehend the myriad of considerations that ought to control his conduct. He is entitled to the highest wage that the strategy of work or cessation from work may bring, and the limitations upon his intelligence and opportunities may be such that he does not choose to stand upon his own perception of strategic or other conditions. His right to choose a leader, one who observes, thinks, and wills for him,—a brain skilled to observe his interest,—is no greater pretension than that which is recognized in every other department of industry. So far, and within reasonable limits, associations of this character are not only not unlawful, but are, in my judgment, beneficial, when they do not restrain individual liberty, and are under enlightened and conscientious leadership.

But they are subject to the same laws as other associations. The leaders to whom are given the vast power of judging and acting for their members are simply, in that respect, their trustees. Their conduct must be judged, like that of other trustees, by the extent of their lawful authority, and the good faith with which they have executed it. No man, in his individual right, can lawfully demand and insist upon conduct by others which will lead to an injury to a third person's lawful rights. The railroads carrying the mails and interstate commerce have a right to the service of each of their employes until each lawfully chooses to quit; and any concerted action upon the part of others to demand or insist, under any effective penalty or threat, upon their quitting, to the injury of the mail service or the prompt transportation of interstate commerce, is a conspiracy, unless such demand or insistence is in pursuance of a lawful authority conferred upon them by the employes themselves, and is made in good faith in the execution of such authority. The demand and insistence under effective penalty or threat, and injury to the transportation of the mails or interstate commerce being proven, the burden falls upon those making the demand or insistence to show lawful authority and good faith in its execution.

Let me illustrate: Twelve carpenters are engaged in building a house. Aside from contract regulations, they each can quit at pleasure. A thirteenth and fourteenth man, strangers to them, by concerted threats of holding them up to public odium or private malice, induce them to quit, and leave the house unfinished. The latter in no sense represent the former or their wishes, but are simply interlopers for mischief, and are guilty of conspiracy against the employers of the carpenters. But if, upon a trial for such, it results that, instead of being strangers, they are the trustees, agents, or leaders of the twelve, with full power to determine for them whether their wage is such that they ought to continue or quit, and that they have in good faith determined that question, they are not then, so far as the law goes, conspirators. But if it should further appear that the supposed authority was used, not in the in-

terests of the twelve, but to further a personal ambition or malice of the two, it would no longer justify their conduct. Doing a thing under cloak of authority is not doing it with authority. The injury of the two to the employer, in such an instance, would only be aggravated by their treachery to the associated twelve, and both the employer and employes should, with equal insistence, ask for the visitation of the law.

If it appears to you, therefore,—applying the illustration to the occurrences that will be brought to your attention,—that any two or more persons, by concert, insisted or demanded, under effective penalties and threats, upon men quitting the employment of the railways, to the obstruction of the mails or interstate commerce, you may inquire whether they did these acts as strangers to these men, or whether they did them under the pretension of trustees or leaders of an association to which these men belong. And, if the latter appears, you may inquire whether their acts and conduct in that respect were in faithful and conscientious execution of their supposed authority, or were simply a use of that authority as a guise to advance personal ambition or satisfy private malice. There is honest leadership among these, our laboring fellow citizens, and there is doubtless dishonest leadership. You should not brand any act of leadership as done dishonestly or in bad faith unless it clearly so appears. But if it does so appear,—if any person is shown to have betrayed the trust of these toiling men, and their acts fall within the definition of crime, as I have given it to you,—it is alike the interest, the pleasure, and the duty of every citizen to bring them to swift and heavy punishment.

I wish again, in conclusion, to impress upon you the fact that the present emergency is to vindicate law. If no one has violated the law, under the rules I have laid down, it needs no vindication; but, if there has been such violation, there should be quick, prompt, and adequate indictment. I confess that the problems which are made the occasion or pretext for our present disturbances have not received the consideration they deserve. It is our duty, as citizens, to take them up, and, by candid and courageous discussion, ascertain what wrongs exist, and what remedies can be applied. But neither the existence of such problems, nor the neglect of the public hitherto to adequately consider them, justify the violation of law, or the bringing on of general lawlessness. Let us first restore peace, and punish the offenders of the law, and then the atmosphere will be clear to think over the claims of those who have real grievances. First vindicate the law. Until that is done, no other questions are in order.

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[484 US 219]
CYNTHIA A. FORRESTER, Petitioner

v

HOWARD LEE WHITE

484 US 219, 98 L Ed 2d 555, 108 S Ct 538

[No. 86-761]

Argued November 2, 1987. Decided January 12, 1988.

Decision: State-court judge held not to have absolute immunity from 42 USCS § 1983 damages suit which alleges that judge demoted and discharged probation officer on account of her sex, in violation of Fourteenth Amendment.

SUMMARY

Under Illinois law, the position of a particular state-court judge gave him the authority (1) to hire adult and juvenile probation officers, and (2) to remove such officers at his discretion or pleasure. After the judge demoted and then discharged a female probation officer whom he had hired, the officer filed a lawsuit against the judge in the United States District Court for the Southern District of Illinois, in which lawsuit the officer alleged, in a claim under 42 USCS § 1983, that her demotion and discharge constituted discrimination on account of her sex, in violation of the equal protection clause of the Federal Constitution's Fourteenth Amendment. Although a jury awarded the officer about \$82,000 in compensatory damages on her § 1983 claim, the District Court then granted the judge's motion for summary judgment, on the ground that the judge was entitled to judicial immunity from a civil damages suit. On appeal, the United States Court of Appeals for the Seventh Circuit affirmed, expressing the view that the judge was entitled to the defense of judicial immunity for the demotion and discharge of the probation officer, where, under the circumstances, the functions performed by the officer were inextricably tied to discretionary decisions that had consistently been considered as judicial acts (792 F2d 647).

On certiorari, the United States Supreme Court reversed and remanded the case for further proceedings. In an opinion by O'CONNOR, J., joined by REHNQUIST, Ch. J., and BRENNAN, WHITE, MARSHALL, STEVENS, and SCALIA,

Briefs of Counsel, p 1063, *infra*.

JJ., and joined in pertinent part by BLACKMUN, J., it was held that, because the Illinois judge was acting in an administrative capacity when he demoted and discharged the officer, the judge did not have absolute immunity from the officer's § 1983 damages suit.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

15 Am Jur 2d, Civil Rights § 269; 45A Am Jur 2d, Job Discrimination §§ 55, 232, 873; 45B Am Jur 2d, Job Discrimination §§ 2219, 2229; 46 Am Jur 2d, Judges §§ 27, 72, 82, 83

6 Federal Procedure, L Ed, Civil Rights §§ 11:159-11:162, 11:166

5 Am Jur Pl & Pr Forms (Rev), Civil Rights, Form 67.1

21 Am Jur Trials 1, Employment Discrimination Action Under Federal Civil Rights Acts

USCS, Constitution, Amendment 14; 42 USCS § 1983

RIA Employment Coordinator ¶¶ EP-10,216, EP-22,632.1, EP-37,937, EP-37,939

US L Ed Digest, Judges § 14

Index to Annotations, Demotions; Discharge from Employment or Office; Fourteenth Amendment; Judges; Judicial Officers; Public Officers and Employees; Sex and Sexual Matters; Sex Discrimination

VERALEX®: Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, **Auto-Cite®** and **SHOWME®**. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

ANNOTATION REFERENCES

Construction and application of speech or debate clause of United States Constitution (Art I, § 6, cl 1). 60 L Ed 2d 1166.

Supreme Court's views as to civil liability of judges. 55 L Ed 2d 850.

Supreme Court's construction of Civil Rights Act of 1871 (42 USCS § 1983) providing private right of action for violation of federal rights. 43 L Ed 2d 833.

Sex discrimination. 27 L Ed 2d 935.

Immunity of public officials from personal liability in civil rights actions brought by public employees under 42 USCS § 1983. 63 ALR Fed 744.

Sex discrimination in law enforcement and corrections employment. 53 ALR Fed 31.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Judges § 14 — absolute immunity from damages suit — demotion and discharge of probation officer — sex discrimination

1a-1c. Because a state-court judge was acting in an administrative capacity when he demoted and discharged a female probation officer, the judge does not have absolute immunity from a damages suit, under 42 USCS § 1983, in which the former probation officer alleges that the judge demoted and discharged her on account of her sex, in violation of the equal protection clause of the Federal Constitution's Fourteenth Amendment, for (1) although the judge's decisions at issue may have been important in providing the necessary conditions of a sound judicial adjudicative system, the decisions were not themselves judicial or adjudicative; (2) a judge who hires or fires a probation officer cannot be meaningfully distinguished from an executive branch official who is responsible for making such employment decisions; (3) the alleged influence on the quality of judicial decisions, by the threat of vexatious lawsuits by disgruntled ex-employees, in no way serves to distinguish judges from other public officials who hire and fire subordinates, and does not create a great enough danger to justify absolute immunity; and (4) it is not significant that, under the state's law, only a judge can hire or fire probation officers, for it would lift form over substance to conclude that, because the judge acted within the scope of his authority, such employment decisions are brought within the court's "jurisdiction," or converted into "judicial acts."

Actions § 1 — damages suits — purpose

2. Suits for money damages are meant (1) to compensate victims of wrongful actions, and (2) to discourage conduct that may result in liability.

Evidence § 109; Officers § 61 — immunity from liability — functional approach — burden of showing exemption

3. Under a functional approach to questions of official immunity from suits for monetary damages—other than those questions that have been decided by express constitutional or statutory enactment—(1) the nature of the functions which a particular official or class of officials has lawfully been entrusted is examined, and (2) the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions is evaluated; officials who seek exemption from personal liability have the burden of showing that such an exemption is justified by overriding considerations of public policy; a category of "qualified" immunity exists which avoids unnecessarily extending the scope of the traditional concept of absolute immunity.

United States § 9 — congressional immunity

4. Absolute official immunity is created for members of the United States Congress by the speech or debate clause of the United States Constitution (Art I, § 6, cl 1), but the scope of the protection does not extend further than the purposes of the clause require.

States, Territories, and Possessions § 92; United States §§ 22, 105(2) — immunity — President — other executive officials — federal — state

5. Among executive officials, the President of the United States is absolutely immune from damages liability arising from official acts, but this immunity is based upon the President's unique position in the constitutional scheme, and does not extend indiscriminately to the President's personal aides, or to cabinet-level officers; nor are the highest executive officials in the states protected by absolute immunity under federal law.

Judges § 14; Officers § 61 — judicial immunity — comparison to other officials

6. Although Congress has not undertaken to cut back the judicial immunities from liability which have been recognized by the United States Supreme Court, the Supreme Court should be at least as cautious in extending those immunities as the court has been when dealing with officials whose peculiar problems the court knows less well than the problems of judges; at the same time, the Supreme Court may not ignore compelling reasons that may well justify broader protections for judges than for some other officials.

Appeal § 1; Judges § 14 — correction of error — liability — review

7. Suits against judges for monetary damages are not the only available means through which litigants can protect themselves from the consequences of judicial error; most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability.

8. In the attempt to draw the line between truly judicial acts, for which immunity from suits for monetary damages is appropriate, and acts that simply have happened to be done by judges, immunity—as in other contexts—is justified and defined by the functions such immunity protects and serves, not by the person to whom immunity attaches; although there is no precise and general definition of the class of acts which are entitled to judicial immunity, there is an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform.

Judges § 14 — immunity — functional approach

9. Absolute immunity of government officials from suits for monetary damages is justified only when the danger of officials' being deflected from the effective performance of their duties is very great.

Officers § 61 — absolute immunity

9. Absolute immunity of government officials from suits for monetary damages is justified only when the danger of officials' being deflected from the effective performance of their duties is very great.

SYLLABUS BY REPORTER OF DECISIONS

Respondent, an Illinois state-court judge, had authority under state law to appoint and discharge probation officers. After hiring petitioner as a probation officer and later promoting her, respondent demoted and then

discharged her. Petitioner filed a damages action in Federal District Court under 42 USC § 1983 [42 USCS § 1983], alleging that she was demoted and discharged on account of her sex in violation of the Equal

A “HOBSON’S CHOICE” amounts to a lack of a worthwhile choice between unwelcome involuntary alternatives; or said another way, a lack of viable alternatives either circumstances of which leaves one justifiably wanting.

Coercive impact of Hobson's choice of compromising valuable constitutional rights out of fear of greater punishment should they be asserted in full does not of itself constitute impermissible coercion. U. S. ex rel. Delman v. Butler, E.D.N.Y.1975, 390 F.Supp. 606.

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FEDERAL RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

III. PLEADINGS AND MOTIONS

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) **Signature.** Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) **Representations to Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) **How Initiated.**

(A) **By Motion.** A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners,

associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.