

## The State of the Union under a failed Constitution

April 2, 1996

*The legal profession's tyrannical control over the Nation and the federal crime of Treason.*<sup>1</sup>

Earlier Federalist articles<sup>2</sup> by this writer identified the unconstitutional effective control of all government by members of the legal profession as the greatest problem the Nation faces today. From that control by a *same hands faction* arose the tyranny that Madison<sup>3</sup> feared. That tyranny has given rise to a multitude of very serious problems, sufficient in scope to threaten the complete destruction *from within*, of what remains of our Republic's constitutional democracy. Unacceptable levels of crime, ineffective public education, unaffordable justice, unaffordable healthcare, divorce/custody wars and domestic violence are some of the major problems that have resulted. The criminalization of the police attempting to hold the line against criminals protected by lawyers abusing constitutional protections is another.<sup>4</sup> We have here what they had in Rome when Juventus asked rhetorically *Quis custodit ipsos custodis*.<sup>5</sup>

In this context many people cry out that those responsible are guilty of treason. Treason is the greatest crime in the nation. It carries the death penalty and as a capital crime it is not subject to any statute of limitations.<sup>6</sup> Prosecution of this crime shields the nation against traitors, but also has a historic background as an instrument of abuse.<sup>7</sup> Yet it has never before been used by the people as a sword of freedom, to protect against the tyranny of their own government. That would be an application in the noblest cause of all.

The accusation of treason should never be made without *'reasonable ground for belief in the existence of facts warranting the proceedings complained of*.<sup>8</sup> Yet failure to report treason is itself a crime, known as Misprision of treason.<sup>9</sup> The examination here will be limited to whether or not probable cause<sup>10</sup> exists for finding that members of the legal profession occupying elected office in the legislative and executive branches of the federal government, are guilty of treason. If probable cause exists, perhaps the Nation should grant amnesty to those potentially guilty in exchange for their resignation from public office, rather than prosecute them to the full extent of the law.

This is suggested notwithstanding the fact that this particular form of treason would be the most egregious form of all. For every person guilty of treason would have betrayed a threefold trust. First because he is a citizen of this country and owes it allegiance. Second, because he is specifically trained by his country as a lawyer who, as an officer of the Court and a part of the Judiciary,

swore an oath to protect and uphold the Constitution. Third, because he occupies a fiduciary position as an elected representative of the people who, when he took office, swore a second oath to uphold the Constitution.

### **What is treason?**

Treason is a crime by a person owing allegiance to the United States which threatens the security of the Nation. The offense is covered under Federal Statutes, Title 18, USCS, (Crimes and Criminal Procedure) Section 2381<sup>11</sup> which defines *treason* as follows:

*Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned for not less than five years, and fined not less than \$10,000; and shall be incapable of holding any office under the United States.* (Emphasis added) The concept of '*adhering to their enemies, giving them aid and comfort*' was further defined by the Supreme Court as: '*Strengthening or tending to strengthen the ability of the enemies of the United States, or which weakens or tends to weaken the power of the United States to resist and attack such enemies.*'<sup>12</sup> (Emphasis added)

Acts that are treasonable may consist of a criminal act already more generally covered and more easily prosecutable under other statutes. Treason is very broad in scope since there are a multitude of acts that can produce the proscribed result. The act can be as egregious as sabotage in time of war. It can also consist of an act, seemingly innocent in itself, if such an act was intentionally done to advance a treasonous intent.<sup>13</sup>

**The elements of the crime.** The two elements of the crime of treason are defined by Supreme Court Justice Douglas as the '*overt act and the intent with which it is done.*'<sup>14</sup> Thus a person guilty of treason must commit: 1. An overt act, with 2. Treasonous intent,<sup>15</sup> which 3. Adheres to and gives aid and comfort to the country's enemies, or 4. Strengthens this country's enemies, or 5. Weakens this country. ***Thus the legal issue is :***

**Is it treason for a member of the legal profession, whose 'same hands' faction possesses absolute control of the Judiciary branch of the federal government, to hold elected office in either the Legislative or Executive branch of the Federal Government on the grounds that such an act constitutes a contribution to the nullification of the separation of powers clause implicit in the US Constitution, which materially undermines the Constitution, and thereby adheres to and gives aid and comfort to the enemies of the United States, or tends to strengthen the ability of the enemies of the United States, or tends to weaken the power of the United States to resist and attack such enemies ?**

### **ARGUMENT:**

The unconstitutional effective control of government by members of the legal profession commenced with the takeover by lawyers and judges on a *de facto* basis of the federal judiciary, one of the three branches of government, absent any such requirement in the Constitution. For purposes of the issue at hand the assumption will be made that the said *de facto* control ***taken alone***, does not rise to the level of threatening the Nation's constitutional democracy. That situation leaves the Nation's non lawyers with only two of three branches still excluded from absolute permanent control by members of the legal profession. It is only in these two branches that the 99.7% of the Nation who are non-lawyers, may attempt to exercise their constitutional right to representative government as originally protected by the cornerstone principle of the Constitution known as the Separation of Powers.

Thus if any member of the legal profession,<sup>16</sup> a '*same hands' faction already in total control of one branch of government*, takes any action that contributes to or results in, the acquisition of effective control of either or both of the other two branches, by the members of their profession, such an act could be construed as treason. **This is because such an act would either result, or tend to result, in the tyranny of a *same hands* faction effectively controlling all government.**<sup>17</sup>

All available evidence supports the conclusion,<sup>18</sup> that it is unconstitutional for members of the legal profession to occupy elected office in either the legislative or executive branches of the federal government, on the grounds that such an act would constitute a violation of the separation of powers clause implicit in the Constitution. For the same act by a particular lawyer to rise to the level of the crime of treason it would be necessary that the act also:

1. Result in the '*adhering to, giving aid and comfort to the enemies of the United States*', or '*strengthening or tending to strengthen the enemies of the United States, or weakening or tending to weaken the power of the United States to resist or attack its enemies*,' and
2. Be done with *treasonous intent*, (unless the *Park doctrine*<sup>19</sup> is applicable).

**1. *The adhering to, giving aid and comfort to the enemy, or weakening or tending to weaken the power of the United States to resist or attack such enemies requirement.***

The Constitution is the single greatest document ever written by a society of people who wish to govern themselves in a manner that provides their government ***with sufficient power to govern but insufficient to oppress***. That document has kept this Nation reasonably free for over 200 years. It created a delicate balance between freedom and security. It is the very fabric that ties our society together.

The maintenance of this great document's integrity is an essential element of the well-being, freedom and security of the people of this Nation. Any act which materially compromises that integrity would constitute a material undermining of the Constitution, which would adhere to and give aid and comfort to the enemies of the United States, for such an act could and would materially weaken the people's faith in their own government.<sup>20</sup> The act of either succeeding, or tending to succeed, in materially reducing or nullifying the checks and balances established by the Constitution for the protection of the people from their own government through the principle of the Separation of Powers, would qualify as an act which materially undermines the Constitution. After the members of the legal profession established absolute de facto control of the federal Judiciary, the act of holding elective public office by any member of that 'same hands' faction or group, in either the Legislative or Executive branches of government constitutes an act which would result in the aforementioned undermining of the Constitution and would therefore qualify as **probable cause** for an 'overt act' of treason.

## **2. The treasonous intent requirement.**

In *Cramer v United States*<sup>21</sup> Justice Jackson addressed the issue of treasonous intent in the following manner: Intent in the crime of treason is '*never susceptible of proof by direct testimony*' ... '*Since intent must be inferred from conduct of some sort, we think it is permissible to draw usual reasonable inferences as to intent from the overt acts.*' Thus with respect to treason the law permits that '*intent may be inferred from all circumstances surrounding the act.*'<sup>22</sup>

The law further states that: '*In matters of treason the accused is presumed to have intended the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts.*'<sup>23</sup> In the case at Bar all the evidence supports the legal inference of treasonous intent. This is because every lawyer has been specifically trained in the law, and can therefore legally be inferred to stand *incircumstances and possessing knowledge that permits him to reasonably expect that the result of the act of holding elective public office, in either the legislative or executive branch of government, would tend to contribute to or result in, the unconstitutional control by his 'same hands' faction or group, of all government and hence constitute treasonous intent.*

The law makes the legal inference of presumed treasonous intent the standard to be met for the finding of **actual treasonous** intent.<sup>24</sup> That standard has been met here. In addition an abundance of factual evidence exists to support the same conclusion. The legal profession is known to continually seek as much power in both the legislative and executive branches as it can. It does so to advance its own interests. Those interests like the interests of any other similar

'same hands' faction or group, naturally favor that faction first and foremost and are therefore opposed to the general interests of the Nation.<sup>25</sup> Any member of the legal profession who succeeds in increasing the profession's political power by occupying elective public office in the legislative or executive branches of the federal government, can by inference, reasonably be charged with that knowledge and therefore *probable cause* for treasonous intent.

**Conclusion:**

All the available evidence supports the general conclusion that probable cause does exist for believing that it is an act of treason for any individual member of the legal profession to occupy elective office in the legislative or executive branches of government.<sup>26</sup>

PUBLIUS II  
(Ronald Bibace)

**About the author:** *This writer is a constitutional scholar who wrote Federalists 86, 87, 88, 89, 90 & 91 in defense of the Constitution. He is like Madison, a non lawyer who loves the law, and like Hamilton an immigrant and naturalized American.*

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1. Treason can also be a crime at the State level.
  2. Federalists #'s 86, 87, 88, 89, & 90, & 91 written in 1995.
  3. James Madison, the author of the Constitution and co-author of the 1787 Federalist Papers.
  4. A system designed to protect the presumed innocent has become one that frees the factual perpetrator of the criminal deed on technical grounds, primarily for the financial benefit of the defense Bar.
  5. Latin for: *Who shall guard the guardians themselves?* He provided no answer.
  6. Title 18, USCS, Section 3281, Limitations of prosecutions, Capital Offenses,
  7. Despotic governments oppressed their own people by falsely accusing them of treason.
  8. Black's Law Dictionary : A definition of *Probable cause*.
  9. *Misprision of treason*: United States Statutes 18, Section 2382.
  10. Black's Law Dictionary: Another definition of *Probable cause*: *An apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person had committed the crime charged.*
  11. The Federal statute implements Article III., Section 3, of the US Constitution, which defines treason.
  12. See *United States v Haupt*, D.C.III., 47 F.Supp. 836,839.
  13. See *Haupt v United States* 330 US 631 (1947).
  14. See *Cramer v United States* (1945) 325 US 1, 89 L Ed 1441, 65 S Ct 918.
  15. Providing the **Park doctrine** (footnote 19) does not apply.
  16. There are different levels of egregiousness to the crime of treason in this context. A president who is also a lawyer, would be in total effective control of the executive branch. Thus by his overt act that person would be responsible for adding an entire branch of government to the unconstitutional control of his 'same hands' faction . That is far more egregious than the overt act of a single member of Congress who is a lawyer. Both acts can qualify as probable cause for treason. Only the degree is different.
  17. Which is precisely the situation that exists today.
  18. See Federalist 86, 87, 88, 89, 90, & 91 written by this writer in 1995.
  19. The **Park doctrine** was established in *United States v Park* (1974), 421 US 658, 668, in a case involving a corporate officer criminally prosecuted for failure of subordinates to remedy violations of law. The **Park doctrine** applied the civil law concept of 'strict liability' (liability without fault),

- to criminal law. That was done in the belief that in some cases at least, public welfare supersedes individual due process rights. That doctrine, logically applied here, could eliminate the need to prove '*treasonous intent*'.
20. Current surveys repeatedly report a significant majority (76%) of this Nation's people do not trust their own government.
  21. *Cramer v United States*, (1945) 325 US1, L Ed 1459, 1460
  22. See *Haupt* case, *supra*.
  23. *Cramer v United States*, (1945) 325 US 1, L Ed 1441, 65 S Ct 918.
  24. Assuming the *Park doctrine* does not apply, for if it does there is no need to prove intent.
  25. That is true regardless of the legal profession's allegation that what they do as a professional group is in the best interests of the Nation. All professional groups and associations make that claim. However much truth there may be in these allegations, every such group or association retains enough special interests opposed to the interests of the Nation, to qualify for Madison's definition of 'same hands faction' that the Constitution was written to oppose.
  26. However, the best interests of the Nation and the legal profession would be served if lawyers were voted out of office rather than prosecuted for treason. The Constitution, representative government, the Separation of Powers and the system of checks and balances would be restored through the ballot box. The Nation would be saved and could forgive and forget. The lawyers will have been saved from *themselves* and served from any risk of ending their careers convicted of treason.