

## The State of the Union under a failed Constitution

July 31, 1996

*Rebuttal to the legal profession's Defenses to the allegation that probable cause exists for stating that by occupying public office in either the legislative or executive branches of the federal government, members of the legal profession are guilty of the federal crime of treason.*<sup>1</sup>

Federalist # 92, presented the argument that the legal profession unconstitutionally controls all government generally and the federal government in particular. That control began with the *de facto* control by the legal profession of the federal judiciary without constitutional authority. As a consequence, probable cause exists to conclude that any single member of that profession who occupies elective public office in either the executive or legislative branches of the federal government is guilty of having committed the crime of treason. That argument was intended to address the question in the most general way. This article will respond to the defenses already articulated by those who do not agree with that general position. The legal issue was presented as follows: *Is there probable cause to believe that:*

**It is treason for any member of the legal profession, whose 'same hands' faction possesses absolute control of the Judiciary branch of government, to hold elective public office in either the legislative or the executive branches of that government on the grounds that such an act constitutes a contribution to the nullification of the principle of the separation of powers implicit in the 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.**

For a person to be guilty of treason the law requires that person to commit :

1. An overt act, with 2. Treasonous intent, which either, 3. Gives aid and comfort to the country's enemies, or 4. Strengthens this countries enemies, or 5. Weakens this country.<sup>2</sup> Let us examine the facts, the defenses<sup>3</sup> and the rebuttals to the proposition that probable cause does exist.

**Question 1. Did the accused commit the overt act ?**<sup>4</sup>

The 'overt act' at issue is the act of occupying elective public office in either the legislative or the executive branch of government by a member of the legal profession. **Every such act is a matter of public record.**

There is therefore no dispute on this point.

**Question 2. Was the overt act committed with treasonous intent?**

The legal profession's answer is no, for the following reasons:

***2.1 The act of occupying public office is an innocent act done under color of law that does not carry with it the presumption of treason.***

*Innocent acts are capable of being committed with treasonous intent. It is therefore no defense to argue that the overt act is itself innocent.*<sup>5</sup>

***2.2 The individuals accused of treason are generally men and women of excellent reputation as patriotic citizens, some of whom are decorated war heroes. Such individuals cannot be guilty of treason.***

*Neither the individuals' war record nor their past is at issue. Reputation and previous good deeds are not a defense to the issue of treasonous intent.*

***2.3 Evidence of treasonous intent is essential to the crime of treason and therefore must be shown to exist 'beyond a reasonable doubt'.***

***Implied treasonous intent, even if it exists in theory, cannot be proved beyond a reasonable doubt.***<sup>6</sup>

*When deemed present by the Court, implied treasonous intent is the legal equivalent of actual treasonous intent and does meet the necessary standard of 'beyond a reasonable doubt.'*<sup>7</sup>

**Question 3. Did the overt act adhere to and give aid and comfort to our enemies or weaken or tend to weaken the power of the United States to resist such enemies?**

The legal profession's answer is no, for the following reasons:

***3.01 Members of the legal profession do not control all government, since they do not have a clear majority at this time in the House of Representatives. Absent that control there can be no nullification of the principle of Separation of Powers and hence no undermining of the Constitution or adhering to, giving aid and comfort to the enemy.***

*Neither absolute nor effective control of all government needs to exist for an act to 'contribute to the nullification of the principle of separation of powers.' It is sufficient that a member of the 'same hands' faction which possesses either effective or absolute control of a single branch of government, acquire elective power in another. The members of the legal profession do possess absolute control of the judiciary branch. That is sufficient for the acts in question to be deemed treason.*<sup>8</sup>

***3.02 Even if lawyers do 'control' all government they do not qualify as the kind of 'same hands' faction against whom Madison intended to protect the people by the creation of the Separation of Powers principle. That is because lawyers, although members of the same profession sharing a common interest adverse to the general interest, differ in a great many respects from each other in significant ways.***

*All 'same hands' factions differ from each other in significant ways. If that were a disqualifying criterion, Madison's statement about the very meaning of tyranny would be meaningless.<sup>9</sup> The issue is whether or not any faction or group of people possesses any interest that is common to it and adverse to the general society. The legal profession's desire to advance its own best interests is an 'interest' common to it and adverse to society as a whole. The same is true of every professional group or association in the Nation. Thus it is clear that members of the legal profession are a 'same hands' faction within the meaning of Madison's language.*

***3.03 The word 'enemy' in the treason statute can only mean another nation with which this Nation is at war. Absent war there can be no enemy and hence no treason.***

*The dictionary defines the word 'enemy' in many ways, to wit: One who cherishes resentment or malicious purpose towards another; an adversary; foe. One of a hostile army or nation.<sup>10</sup> Every Nation is at all times faced with enemies who cherish resentment or malicious purpose towards it. Drug lords and other criminal elements are often referred to as 'enemies' of the Nation. Newspaper reports indicate the existence of counterfeiting of this Nation's currency on a scale so extensive as to necessarily suggest the participation of unfriendly nations viewed as 'enemies' of this Nation.<sup>11</sup>*

*To argue that the only interpretation of the word enemy is limited to a nation at war with this country is wrong. That is because the plain meaning of the word enemy is more inclusive. Furthermore such an interpretation would lead to the most ludicrous results. According to this argument individual members of the legal profession who were constitutionally elected in time of peace, would become guilty of the crime of treason at the very moment of the outbreak of war with any nation. That is logically absurd.*

***3.04 The words 'member of the legal profession' or 'lawyer' are too vague. Many members of the government are 'nonpracticing lawyers'. Some are not even active members of State Bars. At worst only active members of State Bars should qualify for 'same hands' faction definition and potential probable cause for treason.***

*Every person who graduates from law school has earned the right to be called a lawyer and thus share important common interests with other lawyers/judges who are members of his 'same hands' faction, which are adverse to the rest of society. A lawyer may or may not choose to sit for the Bar exam. He then may or may not choose to practice law. Nevertheless he retains a common interest with other members of his*

*'same hands' faction or group, which he may choose to take advantage of at any time. That is sufficient to include all lawyers within the meaning of the 'same hands' faction targeted by Madison to protect the Nation from tyranny.*

***3.05 The idea that is advanced is an interpretation of law that is both new and esoteric. It would be unfair to seek harsh immediate enforcement. Therefore all existing potential violators should be grandfathered.***<sup>12</sup>

*The concept of 'grandfathering' those already doing something that a new law will no longer permit is not valid here. First, because this is not a matter of a new law. It is merely the application of existing Constitutional law. Second, because treason is not a matter to be 'grandfathered' in, like a property use right that has become illegal after the fact. It is the most serious crime in the Nation.*

***3.06 Even if totally true there is something inherently unfair, wrong and unconstitutional, in singling out a particular profession and disqualifying it from public office outside the Judiciary branch.***<sup>13</sup>

*The particular profession allegedly 'singled out' is the one that has already taken over absolute control of the federal Judiciary absent any constitutional authority. The issue is therefore whether the 99.7% of the people of this Nation who are not lawyers, have a constitutional right to representative government protected by the principle of separation of powers, that supersedes the right of the legal profession to control all government. The answer is obviously yes.*

***3.07 No single individual, except the President of the United States, can by himself impact the separation of powers structure sufficiently to 'adhere to and give aid and comfort to the enemies' or weaken or tend to weaken the United States. Therefore all but the President are immune from the potential charge of treason.***

*The charge of treason involves overt acts that adversely impact this Nation sufficiently to adhere to and give aid and comfort to the Nation's enemies, or tend to 'weaken' this Nation. Any member of the legal profession holding office in either the legislative or executive branch represents the creation of a sufficient such tendency.*

***3.08 The charge of treason potentially leveled against elected members of the legal profession implies a conspiracy which simply does not exist and absent which no lawyer may be guilty of the crime of treason.***

*The crime of treason does not require conspiracy. It is enough that one individual commit an unassisted, even secret, intentional act of treason for the crime of treason to exist.*<sup>14</sup>

***3.09 Lawyers have always been over-represented in government and have served the country well and are still doing so.***

*This argument is irrelevant to the issue.<sup>15</sup> If the law considers the presence of lawyers in the legislative or executive branches to be treason, there is no need to further justify their removal.*

***3.10 Although many other nations of the world are not dominated by lawyers in government they are having major problems, therefore it is not right to blame control by lawyers of our federal government for major problems that we are facing here.***

*This argument is also irrelevant to the issue for the same reason the previous one was.<sup>16</sup>*

**Conclusion:**

Analysis of the legal profession's defenses to the charge that probable cause exists for the charge of treason against lawyers occupying public office in the legislative and executive branches of the federal judiciary, indicate that those defenses are without merit.

PUBLIUS II  
(Ronald Bibace)

**About the author:** *This writer is a constitutional scholar who wrote Federalists 86 - 92, in defense of the Constitution. He is like Madison, a non lawyer and like Hamilton an immigrant and naturalized American.*

- 
1. Treason can also be a State crime.
  2. See *Cramer v United States*, (1945) *infra* & *Haupt v United States* (1947) *infra*.
  3. The standard defenses to treason are found in 18 USCS Section 2381, V DEFENSES. They are: Duress, Entrapment, First Amendment privilege, Immunity from Prosecution, Governmental Action and Miscellaneous. Only Government Action, addressed in 2.1 *infra*, is appropriate here.
  4. The legal profession's arguments will be presented in bold italicized print and the rebuttal in italics.
  5. *Haupt v United States* 330 US 631 (1947).
  6. If the Park doctrine of 'strict liability' or *criminal liability without fault* established in *United States v Park* (1974) 421 US 658,668, is reasonably applicable here there is no further need to prove intent under the law. As a matter of pure legal theory, there appears to be little reason why it should not apply.
  7. *Cramer v United States*, (1945) 325 US 1, L Ed 1459, 1460
  8. The record shows that the legal profession has 'effective' control of all government at this time. The profession controls 100% of the Judiciary and the Executive branch, over 50% of the Senate and about 40% of the House of Representatives. That constitutes total 'effective' control.
  9. James Madison, Federalist 47, (1788): *No political truth is certainly of greater intrinsic value ... than that the accumulation of all powers legislative, executive and judiciary, in the same hands, ... may be pronounced the very definition of tyranny.*
  10. Funk & Wagnall's International Dictionary of the English language.
  11. Sun Sentinel editorial, Fort Lauderdale, Feb. 15, 1996.
  12. To 'grandfather' means to allow as an exception to a new law those who were previously doing that which the new law prohibits.
  13. This issue was addressed in Federalist 87 by this writer in 1995.

14. Conspiracy is a separate crime. It is defined in Black's Law Dictionary as the association, combination or confederacy of or between, two or more persons formed for the purpose of committing by their joint efforts, some unlawful or criminal act. It is not a requirement of treason but it could be present as an **additional** crime.
15. It is also inaccurate. Lawyers have been overrepresented in government for years. However although they may have once served their country well , all available evidence supports the general conclusion that such has not been the case for a very long time.
16. Furthermore a careful examination of the problems of other nations indicates that few are suffering as much as we are in the areas of crime, the justice system in general, public education, healthcare, divorce/child custody wars, lack of confidence in government, to name only some of our major problems. Our constitutional system of government should be giving us the finest results in all of these areas because we have also been the richest nation in the world for a long time. It is the problems identified and addressed here that have caused the Nation's steady decline and that will if not corrected, bring the Nation down.