

**U.S. V. HUBBARD: PROSECUTING
FALSE STATEMENTS TO CONGRESS:
HEARING, ONE HUNDRED FOURTH
CONGRESS, FIRST SESSION, JUNE
30, 1995, SERIAL NO. 41**

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U.S. v. HUBBARD: PROSECUTING FALSE STATEMENTS TO CONGRESS

FRIDAY, JUNE 30, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room 2237, Rayburn House Office Building, Hon. Bill McCollum (chairman of the subcommittee) presiding.

Present: Representatives Bill McCollum, Steven Schiff, Howard Coble, Fred Heineman, Ed Bryant of Tennessee, Steve Chabot, Bob Barr, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, Sheila Jackson Lee, and Melvin L. Watt.

Also present: Paul J. McNulty, chief counsel; Glenn R. Schmitt, counsel; Daniel J. Bryant, assistant counsel; Aerin D. Dunkle, research assistant; Audrey Clement, secretary; and Tom Diaz, minority counsel.

OPENING STATEMENT OF CHAIRMAN McCOLLUM

Mr. McCOLLUM. The subcommittee will come to order. Good morning.

This morning we're going to look at a special section of the law that for decades has been a powerful tool in the hands of prosecutors seeking to address the willful misleading of the executive, judicial, and legislative branches. That is section 1001 of title 18 of the U.S. Code.

It has been a long-haul statute. It has been around quite a long time. Over the years section 1001 has been used to prosecute a wide variety of misconduct. Notable prosecutions under section 1001 include those of Lieutenant Colonel North and Admiral Poindexter, and more recently the case against former Congressman Rostenkowski.

On May 15, 1995, the U.S. Supreme Court dramatically changed criminal law dealing with the offense of willfully misleading a branch of the Government. In the case of *Hubbard v. United States*, the Supreme Court limited the application of section 1001 to only the executive branch, leaving the offenses of lying to Congress in the courts outside its scope.

As a consequence, Congress is faced with a decision. Do we want to amend 1001 so as to return to the state of the law before the *Hubbard* decision? And if so, how? Whatever our decision, we must proceed with care. Certain legislative fixes may be unintentionally problematic over the long run.

In amending section 1001, we must guard against criminalizing behavior which was not criminal before the *Hubbard* decision. For example, do we want an amended section 1001 which makes a lobbyist's statement to a congressional aide a criminal act if it is later shown that that statement was false?

Moreover, we must take seriously the concern raised by the Court regarding the effect of this statute on our adversarial system of justice. Statutes which deter quality representation of criminal defendants must be avoided.

Everyone should want to ensure that law enforcement has the ability to punish those who willfully mislead Congress, but that ability must be weighed against our commitment to free speech, a balanced adversarial system of justice, and a genuine separation of power between the three branches of government.

My friend from New Jersey, Bill Martini, is to be commended for his prompt response to the *Hubbard* decision. The bill that he introduced, H.R. 1678, the Government Accountability Act, is an excellent starting point for this subcommittee as it begins to take action.

I would like to thank all the witnesses for coming today. I look forward particularly to the testimony of Congressman Martini and those who follow after him. I am at this point in time going to introduce my good friend.

I'd like to welcome our guest in the first panel who is Congressman Martini. He was elected to the House of Representatives from the Eighth Congressional District of New Jersey in November 1994. He serves on the Committee on Transportation and Infrastructure as well as the Committee on Government Reform and Oversight.

In addition, Congressman Martini is a member of the Congressional Crime Task Force and the Congressional Immigration Task Force. He has been a prominent New Jersey attorney for many years. He's a former Federal and county prosecutor. He relinquished his Cedar Grove law practice upon taking office as a U.S. Representative.

Bill Martini is a graduate of Villanova University and received his law degree from Rutgers University Law School in 1972. Mr. Martini is active in many civic and charitable organizations, serving as a trustee of the United Way of Passaic County, the Center for Italian-American Culture, and the Passaic Valley Council of the Boy Scouts of America.

I'm sure I mispronounced your county. You can correct me for that. But welcome, Bill. We're happy to have you here today, particularly because you have been able to craft this piece of legislation, to initiate our effort to take a reexamination of section 1001.

STATEMENT OF HON. WILLIAM J. MARTINI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. MARTINI. Well, thank you, Mr. Chairman. It's a pleasure to be here before you and the other members of the subcommittee. I thank you for providing me the opportunity to testify before you today.

I think, as you so ably put it already, my intent is to present this legislation as a beginning point for a dialogue which—and certainly

it's my intent to work with this committee and to finalize and formulate a final product—we can bring to the floor.

I would like to start, I think it's probably most appropriate to start by simply reciting section 1001 of title 18 of U.S. Code. That statute reads as follows: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined \$250,000 or \$500,000 for an organization, or imprisoned not more than 5 years or both."

The question before us today is whether or not individuals who knowingly and intentionally issue a fraudulent or false statement to the legislative or judicial branch of the Federal Government should be subject to criminal prosecution under title 18 of section 1001. The legislation I am proposing, the Government Accountability Act, H.R. 1678, is intended to amend section 1001 in such a manner as to make its application consistent with the legal precedents established prior to the recent Supreme Court decision in *Hubbard v. United States*.

Under the *Hubbard* decision, section 1001 is now only applicable to individuals who knowingly issue a false statement to the executive branch of the Federal Government or a department or agency thereof. The Court has ruled that false statements made by individuals to the legislative or judicial branch of government can no longer be prosecuted under section 1001. This is based on their interpretation of the plain meaning of the language of the statute and their interpretation that the language or words, department, or agency of the United States, does not apply to the courts, and by inference does not apply to the Congress.

This holding was contrary to 40 years of legal precedent established by a 1955 Supreme Court ruling in *Bramblett v. United States*. In that case, *Bramblett*, the defendant, was a former Congressman who was convicted of orchestrating a ghost employee scheme. The Court held that *Bramblett*, "Falsely and fraudulently represented to the disbursing office of the House of Representatives that a named woman was entitled to compensation as his official clerk."

In *Bramblett*, a lower court found that the false statement statute was meant to describe the executive, legislative and judicial branches of the Government. Thus, persons who made false statements to the legislative branch could be and were after *Bramblett*, prosecuted under section 1001.

In *Hubbard*, the Supreme Court this year held that, "A court is neither a department nor an agency within the meaning of section 1001." They did that based upon their understanding and reading of the plain language of the statute. This clearly implies that Congress is certainly not an agency or department of the executive branch. In fact, a lower court has recently used *Hubbard* to overturn the conviction of a former HUD official who lied to Congress.

In an effort to clarify the existing law, I have introduced the Government Accountability Act, H.R. 1678. By amending section 1001

of title 18 to include the proposed language, by striking "any department or agency" of the United States, and inserting the language, "The executive, legislative or judicial branch or any department or agency thereof." This would, in my opinion, make title 18, section 1001, of title 18 applicable to false statements made to any three branches of the Federal Government. Individuals who knowingly and intentionally deceive or issue fraudulent statements in dealings with any branch of the Federal Government should in my opinion be prosecuted to the fullest extent of the law.

As a former Federal prosecutor in Newark, NJ, I know firsthand the importance of section 1001 of title 18. In my opinion, this is a critical provision of law which protects the Federal Government from potential waste, fraud, and abuse.

Mr. Chairman, last November we were elected to serve the American people and not ourselves. Without the protections of section 1001, we have subjected the legislative and judicial branches of the Federal Government to a Pandora's box of potential abuse. For this reason, I applaud this subcommittee for taking swift action on this important matter.

My legislation, if enacted, would restore section 1001 of title 18 to the status quo prior to the *Hubbard* decision. Members of Congress, congressional staff, and those who conduct business with the legislative and judicial branch of government must be held responsible for their actions. I am concerned that without a viable Federal false statement statute, Government officials and others will be able to engage in acts of fraud and misconduct against the legislative and judicial branches of government, without fear of retribution.

Much of the attention surrounding the *Hubbard* decision has focused on the applicability of section 1001 to Members of Congress. Section 1001 in the past has been used to prosecute Members of Congress who lie on their financial disclosure forms, initiate ghost employee schemes, knowingly submit false vouchers, and purchase personal goods and services with taxpayer dollars. Without a viable false statement statute, as H.R. 1678 would maintain, these crimes may very well go unpunished.

I would now like to address an application of section 1001 that may concern some members of this committee and others elsewhere. In *United States v. Poindexter*, the Court held that section 1001 was not only applicable to false claims by Members of Congress, but also to false testimony by executive branch officials to Congress. As a member of the Government Reform and Oversight Committee, this application of section 1001 is of critical importance to me.

One of the primary responsibilities of Congress is the oversight of the various functions of the Federal Government. Congress often makes legislative decisions based in part on testimony or information received from the executive branch and nongovernmental witnesses. We generally operate, and rightfully so, on the assumption that the testimony we receive from various Government officials is accurate and truthful. Many would suggest that it's the enforcement mechanism provided by section 1001 of title 18 that ultimately protects the legislative branch from false statements. It is, I believe, for this reason that both Chairman Bill Clinger of the