

No more lies!

Congress must repeal Subsections (b) and (c)

On October 11, 1996, Congress voted unanimously, and President Bill Clinton signed into law, the [False Statements Accountability Act of 1996](#) ("FSAA").

The 81-word False Statements & Fraud statute, [18 U.S.C. § 1001](#) that the FSAA replaced had been on the books unchanged since 1948. It was straightforward. It made it a crime "in any matter within the jurisdiction of any department or agency" to lie, conceal, cover up, trick, scheme, fabricate or otherwise defraud. No exceptions.

Apparently, the attorneys who comprise more than half of Congress wanted more wiggle room. So, they arranged for a one-term Congressman from New Jersey, [William J. Martini](#), to introduce the FSAA and magically push it through in seven months. He was subsequently appointed to a judgeship sponsored by former Goldman Sachs, MF Global, and Senator fraudster Jon S. Corzine.

Martini's 284-word Act (3.5 times more words) introduced profound changes, especially Subsection (b). While Subsection (a) was consistent with the previous language. Subsections (b) and (c) walked off into the moral darkness.

The argument for Subsection (b) was that the previous law (and 240 years of Constitutional precedent) had a "chilling effect" on the ability of an attorney to vigorously defend his client. The devil is in the details of this high-sounding concept.

Subsection (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.

Martini's changes permitted attorneys, judges and parties in governmental proceedings to **lie without consequence**.

1948 fraud statute was clear and unambiguous

The changes muddied the ethical waters. The 1948 fraud statute was clear. It prohibited lies by "Whoever, in any matter within the jurisdiction of any department or agency."

Martini's Act changed "any department or agency of the United States" to "executive, legislative, or judicial branch." Then, he added a Subsection (c) that added all sorts of wholly unnecessary caveats.

1996 False Statement Act made truth-telling optional

In short, Congressional lawyers added many exceptions into a straightforward moral principle – **Don't lie**. They rendered the law ambiguous as to whom it applies. Was this change the genesis of the rampant lying that plagues government today? It appears so.

In 1996, Congress changed the ethical standard from facts to lies.



Figure 1: On Oct. 11, 1996, Congress sanctioned parties, judges, lawyers and government agencies to defraud the fact-finding process. [The Economic Espionage Act](#) empowering the NSA to spy on Americans became law the same day. Who knew? Professor James P. Chandler was advising Congress and the White House and was at the center of all this law making. Follow the money.

Then, Subsection (b) turned the "don't lie" principle on its head. It made well-settled principles of honesty and truthfulness optional.

Everyone to whom we have brought attention to Subsection (b) expresses disbelief that such a deceptive law could have gone unnoticed. (Oh, legal insiders know it.)

Believe it. This law has been tested. A California (San Francisco) Circuit Court judge, Susan P. Graber, has been particularly active in affirming Subsection (b):

"The amended version of 18 U.S.C. § 1001 is unambiguous on its face. **Statements made in judicial proceedings are excluded from liability** under the statute by subsection (b)." [US v. McNeil](#), 362 F. 3d 570 (9th Cir. 2004) at 574.

"Our only task is to understand what **Congress** meant when it **chose to exempt from criminal liability certain kinds of lies to the federal government**. Under 18 U.S.C. § 1001(b), criminal liability does not attach to materially false statements submitted by a party to a judge in a judicial proceeding, **even if the party makes the statements knowingly and willfully.**" [US v. Horvath](#), 492 F. 3d 1075 (9th Cir. 2007) at 1081.

Ask your elected representatives to repeal Subsections (b) and (c) and return the law to its unambiguous 1948 language.

OPINION prepared by: Americans For Innovation, v. Jun. 18, 2015.
<http://americans4innovation.blogspot.com>

