

# Of Tricks, Schemes and Devices

## “THE SILENCE IS DEAFENING”

by Joseph DeMaio, ©2011



Is the Congressional Research Service criminally liable for purposely obfuscating Obama’s ineligibility for the presidency?

(Jul. 4, 2011) — **Editor’s Note:** For background information on the Congressional Research Memos, please see Mr. DeMaio’s previous essays [here](#), [here](#) and [here](#).

### Introduction

Following up once again on the continuing saga of Barack Obama’s eligibility problem – perhaps better described as a continuing and unresolved glacial-paced ordeal – a new issue arises. The issue surfaces within the related question of “who-knew-what-and-when-did-they-know-it?” at the Congressional Research Service (“CRS”) concerning an April 3, 2009 legal memo it released.

As previously noted [here](#) at The Post & Email regarding the requirement of federal law – 2 U.S.C. § 166(d)(1) – that the CRS perform its duties “without partisan bias,” the evidence mounts daily – and sometimes hourly – that two CRS memoranda prepared (at least in part by a CRS lawyer, Mr. Jack Maskell), seem more to be template models for stealth partisan bias than shining examples of CRS “products” free of partisan bias. This conclusion has particular relevance to the April 3, 2009 memo in question. Moreover, those above Mr. Maskell in the CRS management hierarchy, if they knew of the problems, may also be implicated.

To reiterate, from all appearances, the April 3, 2009 CRS “Maskell Memorandum” (hereinafter “CRS Memo”) addressing presidential eligibility, intentionally and substantively modified the language of the U.S. Supreme Court decision in *Perkins v. Elg*, 307 U.S. 325 at 330, in order to accomplish the result sought. The modification, through application of a grammatical ellipsis, seems clearly calculated to have made it appear that the Supreme Court has already strongly intimated, if not outright held, that if one is a “native born citizen,” then one is also a “natural born Citizen” under Article II, Section 1, Clause 5 of the Constitution. Moreover, the ellipsis seems also calculated to allow the author of the memo, Mr. Maskell (and/or whomever else participated in its design and structure), to contend, in support of Mr. Obama’s purported constitutional eligibility, that the parents of the person involved in *Elg* were non-U.S. citizens, when in

fact both parents were naturalized U.S. citizens before their daughter, Marie Elg, was born. Accordingly, not only are these CRS Memo assertions demonstrably wrong, they may also constitute criminal acts.

Stated otherwise, the use of the ellipsis could not have been done inadvertently, but had to have been performed knowingly and willfully, and had the effect of falsifying, concealing or covering up material factual matters present in the Supreme Court's *Elg* decision. Moreover, the action taken (*i.e.*, responding to congressional requests for the preparation of a legal memo addressing presidential eligibility under the Constitution) was plainly within the jurisdiction of the Congress, both under federal law – 2 U.S.C. § 166(d)(1) – as well as the Constitution — Article 2, Section 1, Clause 4 regarding the formal tallying of electoral college votes.

Do not feel confused if you find all of this difficult to follow...because it is. One must review a number of prior posts here and carefully follow the byzantine trail utilized by those behind the CRS Memo to “reverse-engineer” the conclusion it has peddled – thus far, with great success – to the Congress. But again, just remember what Sherlock Holmes observed: “The perfect crime is the one that is never detected.” The forum provided by The P&E and other sites has now allowed anyone and everyone both to detect and to examine in detail the perfidy which through those now in power passes for “hope” and “change” in Washington, D.C.

Accordingly, as soon as a new President and Attorney General are sworn into office in 2013 – it being a fantasy to believe that any action would be forthcoming under the current regime in power – an investigation should be undertaken as to whether the actions of personnel at the CRS in preparing, reviewing, approving and disseminating the “Maskell Memorandum,” with its ellipsis deletion, constitute violations of and criminal offenses under the federal “Fraud and False Statements” statute, 18 U.S.C. § 1001.

Moreover, if in fact the April 3, 2009 CRS Memo confirms that those who had a hand in its drafting, review, finalization and distribution to the Congress have violated 18 U.S.C. § 1001, can any less be said of those with a hand in crafting and marketing fraudulent documents such as, say, birth certificates (or images of them posted to the Internet) purporting to establish constitutional eligibility?

## **18 U.S.C. § 1001**

The federal statute at issue is [18 U.S.C. § 1001](#). The law, originally passed in 1934 as an amendment to 18 U.S.C. § 80 of the federal criminal code, was intended by Congress to penalize the knowing and willful acts of falsifying, concealing or covering up by trick, scheme or device any material fact within the jurisdiction of any federal agency, including the Congress. The act also criminalizes the acts of knowingly and willfully making material false, fictitious or fraudulent statements or representations, including false writings or documents knowing that the same contain any materially false, fictitious or fraudulent statements or entries. Significantly, the statements or writings which might

constitute the basis for the offense need not be made under oath, the violation of which would otherwise constitute a separate offense under forgery or perjury laws.

The leading Supreme Court case to have addressed the application of this statute is *United States v. Gilliland*, 312 U.S. 86 (1941). There, several defendants were charged by indictment with conspiracy and with having willfully caused to be made and used verified reports falsely and fraudulently stating the amount of petroleum produced from certain oil wells and the amount of petroleum received from certain producers. In holding that the 1934 congressional amendment to the Fraud and False Statements statutes applied, the Court noted (312 U.S. at 93): “The statute was made to embrace false and fraudulent statements or representations where these were knowingly and willfully used in documents or affidavits ‘in any matter within the jurisdiction of any department or agency of the United States.’ In this, there was no restriction to cases involving pecuniary or property loss to the government. The amendment indicated the congressional intent to *protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described.*” (Emphasis added)

Another Supreme Court case interpreting the statute, *Bryson v. United States*, 396 U.S. 64 (1969), upheld application of the statute to a union official who had filed a form with the National Labor Relations Board falsely denying his affiliation with the Communist Party. Citing its prior decision in *Gilliland*, the Court noted that under our legal system, there are numerous mechanisms established to respond to questions posed by the government or challenge the right of the government to ask questions in the first place, but “... lying is not one of them.” *Bryson*, 396 at 72. The Court went on to hold: “A citizen may decline to answer the question, or answer it honestly, *but he cannot with impunity knowingly and willfully answer with a falsehood.*” (Emphasis added). *Id.*

Here, not only is Mr. Maskell a citizen (although we know not whether he is a natural born Citizen), he is an attorney employed by the repository of the “nation’s best thinking,” charged with the statutory duty of truthfully responding to questions posed by the Congress as well as individual members of Congress “...without partisan bias.” By intentionally altering through ellipsis the language of *Perkins v. Elg* in order to eliminate from the original opinion certain facts which would preclude attainment of the objective seemingly sought – confirmation of a president’s constitutional eligibility as a native born citizen alone – it is difficult if not impossible to avoid the conclusion that the CRS Memo and its ultimate outcome are the direct result of “..falsifying, concealing or covering up by trick, scheme or device any material fact...” within the meaning of 18 U.S.C. § 1001.

Had the language sought to be excised from the *Elg* opinion – discussed in detail [here](#) – been merely omitted without ellipsis signal to the reader, the omission might have been deemed to be an “inadvertent error” or unfortunate, innocent “typo.” However, when the original documents are examined and the purported “quotes” from *Elg* utilized are compared in the text of the CRS Memo, it is plain that an ellipsis was consciously, intentionally and knowingly selected to replace the words being excised. The question remains: Why?

Insofar as other courts have addressed issues arising under 18 U.S.C. § 1001, they all echo the reasoning and rationale of the *Gilliland* and *Bryson* decisions. For example, the court in *United States v. Quirk*, 167 F.Supp. 462, 464 (E.D. Pa. 1958) stated: “The conduct Congress intended to prevent by [18 U.S.C. §] 1001 was the willful submission to federal agencies of *false statements calculated to induce agency reliance or action, irrespective of whether actual favorable agency action was, for other reasons, impossible. We think the test is the intrinsic capabilities of the false statement itself, rather than the possibility of the actual attainment of its end as measured by collateral circumstances.*” (Emphasis added) And the court in *United States v. Myers*, 131 F.Supp. 525, 531 (N.D. Cal. 1955) noted that the statute “...is in effect designed to *insure to the whole world, governmental employees and the general public alike, that any record, document, instrument or statement made by a governmental employee, great or small, in his official capacity and in the course of his official duties can be relied upon by all.*” (Emphasis added)

Taking into consideration all of these judicial pronouncements about the intent and operation of 18 U.S.C. § 1001, it is beyond evident that “something is rotten in the state of Denmark.” If people can be prosecuted for falsifying a petroleum report (*Gilliland*) or a form asking about membership in the Communist Party (*Bryson*) or a form relating to a home loan guarantee (*Quirk*) or a form regarding the sale of an automobile (*Myers*), what possible justification can exist for ignoring a memorandum to 535 members of Congress and their constituents (*i.e.*, everybody) that intentionally falsely manipulates and alters the language of a Supreme Court opinion in order to support its concocted conclusion that Barack Obama is eligible to the presidency as a natural born Citizen?

The answer these days, of course, is “prosecutorial discretion.” Under the regime in charge, the notion that those having a hand in the drafting and release of the CRS Memo – and whether within the CRS organization itself or elsewhere under “collegial exchanges of information” – might be subject to prosecution under 18 U.S.C. § 1001 is nonsense. Remember, this is an administration whose lawyers cannot see voter intimidation and a violation of the voting rights laws even when captured on [videotape](#) and yet can’t wait to sue states having the audacity to try to stem the flow of illegal aliens into the state (and, therefore, the country) because the federal government [refuses](#) seriously to do its job. The idea that anything close to an investigation, let alone charges, will result in lunacy. The regime and its “Justice Department” apparatchiks give new meaning to the term “lawless.” The only principle to which they adhere is expediency.

## **Conclusion**

Lamentably, it would appear that nothing will be done about the seemingly plain violation by the CRS and its personnel of either 2 U.S.C. § 166(d)(1) or 18 U.S.C. § 1001, at least on this administration’s watch. Again, if there are logical explanations for the ellipsis chicanery in the CRS April 3, 2009 Memo, they should be produced now. Yet the silence is deafening. Whether through comfortable ignorance or common cowardice, those in a position to do *something* about that which is “rotten in Denmark” will likely do *nothing*. A cynic might be tempted to conclude that they prefer to be

misled than to be told the truth. They “believe what they want to believe” are like the “useful idiots” through which unprincipled tyrants have in the past accomplished their ends.

Mind you, if Congress doesn’t care about the Constitution’s “natural born Citizen” presidential eligibility restriction, there is little reason to expect it will care about violations of mere statutes. Still, the record should be clear so that future historians (if any of those will be allowed to survive) can examine just how and why this shining “City on the Hill” was allowed to crumble into oblivion.

If those now in a position of power to do something fail to rise to the call, then the people must take matters into their own hands. Remember, November 4, 2012 is but sixteen months away, and a lot of additional damage can be done in that time. A lot.