

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff)	case no. 10-00162-01/23-CR-W-FJ6
)	(Request Judicial Notice Hearing)
v.)	Rule 201(d)
)	
NaRicco T. Scott)	
)	
Defendant)	

JUDICIAL NOTICE OF EDUCATED FACTS. § RULE 201
IN SUPPORT OF NOTICE. NOTICE FOR UNCONSTITUTIONAL NON-
POSITIVE. LAW TITLE. TITLE 21.
THIS IS NOT TO BE MIS-CONSTRUED AS A MOTION
THIS IS JUDICIAL NOTICE.

I, NaRicco T. Scott, of majority age and sound mind competent to state the matter set forth herein, do affirm that the foregoing is true, correct, and complete, not misleading, with firsthand knowledge of the facts herewith. I do hereby exercise my rights as an American National Free State Citizen to rescind, to cancel, to render Null and Void, "Nun Pro Tune" both currently and retroactively to the time of signing or contracting verbally, based upon the constructive fraud and mis-representation perpetrated upon me by the federal government. I am proceeding Sui Juris at law, with special assistance, pursuant to the declaration in compliance with Title 28 USC 174 b(1)

“without the United States” under penalty or perjury, sworn to within the United States of America.

“Indeed no more than a Affidavit is necessary to make the
Prima Facie case” U.S. v. Kis 658 F. 2d 526, 536(7th cir 1981)
Cert Denied, 50 U.S.L.W. 2169; S.Ct. March 22, 1982.

That according to the office of the Law Revision Counsel, United States House of Representatives, <http://uscode.house.gov>, Telephone: 202-226-2411, Title 21 is a Non-Positive Law. Title of the United States Code, but in reality is an editorial compilation.

Non-Positive Law Titles, such as Title 21, used in the (Supra), to denote a criminal violation, to the U.S. Code are “Prima Facie” evidence of the law. (1 U.S.C. §204) and are “Presumed to be Law”, but are rebuttable by production of prior Unrepealed Acts of Congress at variance with the code.

OFFICE OF THE LAW REVISION CODE

UNITED STATES HOUSE OF REPRESENTATIVES

Positive Law Titles are legal evidence of the Law and need no further authoritative citation as prior acts concerning those titles have been repealed. Under section 205 (e)(1) of House Resolution No. 988. 93d. Congress, as enacted into Law by Public Law 93-554 (2 U.S.C., 285 (b)(1). The office of the Revision Counsel is an independent office in the United States House of Representatives.

The function of the Office of the Law Revision Counsel is to maintain and improve the United States Code, which is the official Codification of Federal Statutory Law. House Resolution No. 988, 93d section 205 (c)(1). I, the undersigned has broken no law as it pertains to Title 21 of the United States Code in said (supra). Wickard v. Filburn 317 US 111, 129-131 (1942); U.S. v. Landa. I, the undersigned am not a party to any contract or agreement to the Federal Corporate Government. Church of Scientology v. U.S. D.O.J 612 F. 2d 417, 425 (1979). The indictment handed down by the Jury Foreperson has not stipulated and identified the liability of the Statutes as they apply or operate on I, the undersigned. Islin v. LaCosta 147. F.2d, 791, 795 (1943). “The Oath of Office requires the public official in his/her foreign state capacity to uphold the Constitutional Form of Government or face consequences. Article 4 Section 4.” I, the undersigned has been denied a Constitutional Secured Right to face my accuser. Nor have I brought any claim or injury or damage in open court. 6th Amendment to the Constitution; Rule 17 Federal Rules of Civil Procedure. The plaintiff has usurped authority not delegated by Congress. 9th Amendment, 10th Amendment.

The Public Law 94-381 states that United States District Court are admiralty courts under Article I, which changes the Federal Courts into Administrative Courts under Executive Branch of the Federal Government without any Constitutional authority whatsoever. Senate Report 94-204; Mookini v. U.S. 303 U.S. 201 (1938); Balzar v. Puerto Rico 258 U.S. 298 (1922).

The better way of stating this is to say: “there are no common law offenses (or crimes) against the United States. See: U.S. v. Britton, 108 US 199, 206 (1882); U.S. v. Eaton, 144 US 677, 687 (1891); U.S. v. Gradwell, 243 US 476, 485 (1916); Donnelly v.

U.S., 276 US 505-511 (1927); Jerome v. U.S. 92 F.2d 753 (1937). The common law is not a source for [Federal] criminal jurisdiction as it is in the states, United States v. Grossman 1 F.2d 941, 050-951 (1924).

If Congress tries to make a common law offense a crime (such as libel, drugs, theft, robbery, murder, kidnapping, arson, rape, abortion, assault, fraud, etc...), which have no relation to an enumerated power, it is an unconstitutional act. Congress can declare nothing to be a crime except where it is based upon delegated power. Thus:

“Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may define piracies and felonies committed on the high seas, and offense against the Law of Nations (Art. I, §8), but there is no reference to a common law authority. Every power is [a] matter of definite and positive grant; and the very powers that are granted cannot take effect until they are exercised through the medium of a law.” U.S. v. Worald, 2 Dall (2 US) 384, 391 (1798). (Emphasis added)**

A constitution is not to be made to mean one thing at one time and another at some other time when circumstances have changed, as perhaps to make a different rule in the case seem desirable.

[A] court or legislative by the intention of its founders would be justly chargeable with reckless disregard of official oath and public duty (28 USC § 453; 18 USC § 162) if it did so.

What the court is to do therefore, is declare the law as written, T.M. Cooley, "A Treatise on the Constitutional Limitation", 5th Ed. Pp. 54-55, rather than swayed by political ambition and the unlawful usurpation of police powers.

UNPROMULGATED REGULATORY STATUTES

A.P.A. AND F.R.A. VALIDITY

"An individual cannot be prosecuted for violating the act unless he violates implementing regulations." U.S. v. Reinis, 794 F.2d 506, 508 (1986); U.S. v. Murphy, 809 F.2d 1427 (1987).

The Federal statutory provisions under which movant was charged are unpromulgated in the Federal Register (FR) and possess no published implementing authorities in the Code of Federal Regulations (CFR). The Federal statutory provisions under which movant was charged have not been promulgated in the Federal Register or the Code of Federal Regulations, as required under 44 USC § 1505 et seq., and 5 USC § 601. Therefore, it is true that this court has no right to adjudicate sanctions for violations of unpromulgated regulatory statutes, thus these particular Federal statutory provisions, §841 of Title 21 USC, lack the force and effect of law and are mis-applied beyond the parameters of Rule 54 (c)-Acts of Congress, and Federal Rules of Criminal Procedure.

In order for a contrary intent to be facilitated, delegations of authority and implementing regulations must be published in the Federal Register; -but were not for relevant statutes here at the time of alleged commission.

There is a readily available method for discerning which Statutes at Large, and which Statutes contained within the Fifty (50) Titles of the United States Code (USC), possess either “restricted application” or “general applicability” to the several states and the population at large. This method is through consulting the Parallel Tables of Authorities and Rules, which begin at page 729 of 2001 index, volume to the Code of Federal Regulations (CFR), its authority is located at 1 CFR § 8.5(a).

THE A.P.A. AND F.R.A. AS APPLIED

The Administrative Procedure Act (APA), is located at 5 USC §§ 552 et seq., and the Federal Register Act (FRA) located at 44 USC § 1505, provide the means for determining which statutes in any given act of congress are applicable within Federal areas, and which statutes have “general applicability”.

At § 1505(a)(1) of Title 44 USC, you read that if a statute is not published in the Federal Register, **then the application of the statutory provision is restricted to federal agencies, or persons acting in their capacity as officers, agents or, employees of the federal government.**

In Hotch v. U.S., 212 F.2d 280, @ 280 (9th Cir.), the court stated: Under our system of law, no act is punishable as a crime unless it is specifically condemned by the Common Law or by a statutory enactment of the legislature”, see: 22 Corpus Juris Secundum, Law § 17.

The A.P.A. and the F.R.A. must be read as part of every Congressional delegation of authority, unless specifically excepted. Those acts require publication, irrespective of actual notice, as a prerequisite to the “issuance” of a regulation making certain acts criminal. Administrative proscription cannot subject the informed person to criminal prosecution.

While ignorance of the law is no excuse or defense, it is also true that a law which has not been properly enacted and contains no implementing regulations, is not a law of “general applicability” and therefore, a person cannot be guilty of any crime against the “United States of America”.

In Wei v. Robinson, 246 F.2d 739 (7th Cir, 1957) cert. denied, the Supreme Court stated: “contents of the Federal Register Act and the Code of Federal Regulations are **prima facie evidence, of the original text and are required to be judicially noted.**” In Wolfson v. U.S., 492 F.2d 1386, 204 S.Ct @ 83 (1974), “**when regulations are published** in the Federal Register, they give legal notice of their contents to all who may be affected thereby”. In Shafer v. U.S., 229 F.2d 124, cert. denied, 76 S.Ct 78, 351 US 931, the court stated: “The publication of a document in the Federal Register creates a rebuttable **presumption of validity.**” (Refer to: Fed. Reg. Act, § 1 et. Seq., 44 USC § 301 et. seq.)(Emphasis added)

In U.S. v. Mersky, 361 US 431, 438, 4 L.Ed 2d 423 (1960), the Supreme Court stated: “**Once promulgated**, these regulations called for by the statute itself, have force of law, and violations thereof incur criminal prosecution.” (Emphasis added).

The result is that neither the Statute nor the Regulation is complete without the other, and only together do they have any force and effect. The construction of one necessarily involves the construction of the other. In the context of criminal prosecutions, **the rule of strict construction must be applied in the interpretation of an administrative regulation to which penal consequences attach under the Statute authoring the promulgation of the regulation.**

An individual cannot be prosecuted for violating a Statute, unless he violates an implementing regulation. For a similar view, see: U.S. v. Two Hundred Thousand Dollars, 590 F.Supp. 846 (S.D. Fla. 1984); and specifically states at 1 CFR § 1; **“All regulations must be published in the Federal Register to have applicability and legal effect.”** (Emphasis added)

The Supreme Court stated in U.S. v. Weldon, 377 US 95 (1964), that: “Under 1 U.S.C. § 294(a), which provides that the United States Code establishes prima facie the laws of the United States and that when titles of the Code are enacted into positive law, the text thereof, is legal evidence of the law contained therein....If construction of a section of the United States Code, which has not been enacted into positive law, is necessary, recourse must be had in the original Statutes themselves and a changed arrangement by the codifier, without the approval of Congress, should be given no weight.” (See: Stephen v. U.S., 319 US 423 (1943); Best Foods v. U.S., 147 F.Supp. 749, 37 Cust. Ct. 1 (1956); Peart v. Motor Vessel Bering Explorer, 373 F.Supp. 927 (1974)).

The law provides that when implementing regulations are at variance with the statutory provisions for which they are intended to promulgate, that they fail to give proper notice under the Due Process Clause of the Federal Constitution or the “Fair Notice” doctrine, set out under U.S. v. Nevers, 7 F.3d 59 (5th Cir. 1993).

Administrative regulations in order to be valid must be also consistent with, and not contrary to, ‘the statutes under which they are promulgated’.

Neel v. U.S., 266 F.Supp. @ 10. “[I]t is necessary for the court to square the regulation against the statute that it purports to implement comparing the sphere of authority to each.” Western Union Teleg. Co. v. F.C.C., 541 F.2d 346 (3rd Cir. 1976), cert. denied, 429 US 1029 (1977). “Failure to prove an essential element mandates that the conviction cannot stand.” Jackson v. Virginia, 443 US 307, 61 L.Ed 2d 560, 573 (1979); Thompson v. Louisville, 362 US 199, 4 L.Ed 2d 654 (1960). “The Due Process Clause requires that prosecution to prove, beyond reasonable doubt, all of the elements included in the definition of the offenses of which the defendant is charged. Patterson v. New York, 432 US 197, 210 (1977).

Movant’s charges requires dismissal where the government omitted from the Grand Jury instructions the element of statutes never being promulgated to Code in the same measure both House and Senate, and not to be found in the implemented CFRs. Nor is there a competent enactment. “Instructions not requiring proof of every element of a crime, violates due process and requires reversal of conviction.” Sullivan v. Louisiana, 508 US 275, 281, 113 S.Ct 2078 2080-2081 (1993). The government undermined the Grand Jury’s responsibility to determine that the movant committed an offense against the laws of the ‘United States’.

“Tampering with the administration of justice involves far more than just the injury to a criminal defendant, being a wrong against the institution set up to protect and safeguard the public at large.” Hazel-Atlas Glass Co. v. Hartford Empire co., 322 US 238, 246, 88 L.Ed 1250 (1944).

The interstate commerce element is essential to establish jurisdiction and prove **every element** of the offense(s). Applying the rationale of the Supreme Court in U.S. v. Mechanik, 475 US 66, 70, 106 S.Ct 938, 941, 89 L.Ed 2d 50 (1989), and U.S. v. Hooker, 841 F.2d 1225, like the decision in Hooker, movant maintains that the harmless error analysis of Mechanik, cannot be applied here because the court had no powers to convict movant on count(s) which failed to expressly allege an effect on interstate or intrastate commerce.

The indictment did not allege a Federal crime, by means of a connection with interstate commerce. This action deprives Scott of a basic protection from charges not found by and not even presented to the Grand Jury, which indicted him (see: Orfield, Criminal Procedure: from Arrest to Appeal, p. 243).

Movant asserts his Fifth and Sixth amendment right of Due Process, in arguing that he was never indicted by the Grand Jury for affecting any commerce.

Finally, Title 21 of the United States Code is a non-positive law title, that has not been certified constitutionally by the Supreme Court of the United States. Neither has this title been enacted into law by Congress. This statute is clearly un-constitutional, and I, NaRicco T. Scott, respectfully asks this court to allow Justice to satisfy the appearance

of justice. Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960) and dismiss all charges with prejudice.

Wherefore, I, NaRicco T. Scott asks this court with humility to dismiss all charges. I am requesting that the charges, indictment against me be dismissed; I be allowed to proceed with civil action as a form to rectify this egregious abuse of my safeguarded rights, and I be immediately released from Federal custody, awarded monetary damages for suffrages, compensation of each day I am illegally detained within Federal custody and subjected to mental anguish and anxiety.

Respectfully Submitted, Sui Juris at law

NaRicco T. Scott, pro se

100 Highway Terrace (22266045)

Leavenworth, Kansas 66048

CERTIFICATE OF SERVICE

I, NaRicco T. Scott, Sui Juris at law, hereby certify that I properly placed notice. Judicial Notice of Educated Facts. § Rule 201. In support of Notice. Notice for Unconstitutional non-positive. Law title. Title 21 in an envelope, sealed the envelope and mailed it with first class postage, at C.C.A., Correction Corporation of America, at 100 Highway Terrace, Leavenworth, Kansas, 66048. On this 31st day of, May, 2011.

NaRicco T. Scott