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February 7, 2003

The Honorable John G. Koeltl
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

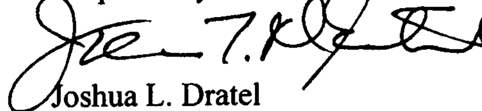
Re: United States v. Lynne Stewart,
02 Cr. 395 (JGK)

Dear Judge Koeltl:

Enclosed please find a Memorandum of Law *Amicus Curiae* respectfully submitted on behalf of the National Association of Criminal Defense Lawyers, in support of defendant Lynne Stewart's motion to dismiss Count Five of the Indictment in the above-entitled case. Ms. Stewart's counsel and the government have both consented orally to the filing of this *Amicus* Memorandum of Law. The original Memorandum of Law has been filed with the Clerk of the Court.

Accordingly, it is respectfully requested that the Court accept and consider this Memorandum of Law *Amicus Curiae*.

Respectfully submitted,



Joshua L. Dratel
Co-Chair
Amicus Curiae Committee
National Association of
Criminal Defense Lawyers

JLD/eb
Encl.

cc: Christopher Morvillo
Assistant United States Attorney

Michael E. Tigar, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

AHMED ABDEL SATTAR,
MOHAMMED YOUSRY, and
LYNNE STEWART,

Defendants.

02 CR 395 (JGK)

MEMORANDUM OF LAW FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STEWART'S MOTION TO DISMISS COUNT FIVE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, :

v. : 02 CR 395 (JGK)

AHMED ABDEL SATTAR,
MOHAMMED YOUSRY, and
LYNNE STEWART,

Defendants. :

- -x

MEMORANDUM OF LAW FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT STEWART'S MOTION TO DISMISS COUNT FIVE

Preliminary Statement

The National Association of Criminal Defense Lawyers (hereinafter "NACDL") respectfully submits this Memorandum of Law *Amicus Curiae* in support of defendant Lynne Stewart's pre-trial motion to dismiss Count Five of the Indictment against her.

Count Five of this Indictment charges Ms. Stewart with violating 18 U.S.C. §1001, a false statement statute, alleging that Ms. Stewart made three promises with respect to her future conduct. For purposes of this brief, we assume that the government is alleging that Ms. Stewart intended to break those promises when made.

The Supreme Court has held that a false promise cannot be the basis for a conviction under a similar false statement statute. *Williams v. United States*, 458 U.S. 279, 284 (1982). The decision in *Williams,* together with the absence of any reference to false promises in Section 1001 (in contrast to federal statutes that explicitly criminalize the making of false promises), the settled common law meaning of false representations (which excluded false promises), the legislative history of Section 1001 (which provides

no support for a broad reading of the statute), and the rule of lenity, compel the conclusion that a false promise does not violate Section 1001.

Upholding this count would permit under Section 1001 the criminalization of every breach of a government contract -- requiring the government to prove only that the contractor intended to breach. And it is difficult to imagine a breach of contract case in which there would be no evidence from which the jury could infer an intent to breach. Because the government's interpretation of §1001 "would make a surprisingly broad range of unremarkable conduct a violation of federal law," *Williams*, 458 U.S. at 286, it should be rejected.

A broad reading of the statute would also invite absurd results because a false statement statute carries with it no intent to defraud. *See Williams*, 458 U.S. 279 n. 8. If a defendant made a false promise and thereafter decided nevertheless to keep the promise, the statute would permit a prosecution, even if all statements of existing fact in the statement were true and the promise was ultimately honored. The government's construction would also apply the statute to situations in which the issue implicated by the false promise was never ultimately addressed, thereby never even presenting the issue as to whether any "statement" was "false."

Applying the principle that a statement or representation that is literally true cannot be the basis for a criminal prosecution under Section 1001 prevents such an absurdity. *See United States v. Diogo*, 320 F.2d 898 (2d Cir. 1963). A promise is literally true because the only statement or representation being made is, in effect, "I

promise," not a statement about the speaker's subjective intent. Indeed, subjective intent is irrelevant to a false statement prosecution.[1]

Statement of Interest

NACDL is a District of Columbia non-profit organization whose membership is comprised of over 10,000 lawyers and 28,000 affiliate members representing every state. NACDL was founded in 1958 to promote study and research in the field of criminal law; to disseminate and advance knowledge of the law in the area of criminal practice; and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. NACDL members serve in positions bringing them into daily contact with the criminal justice system in the state and federal courts.

NACDL is the only national bar organization working on behalf of public and private criminal defense lawyers. The American Bar Association recognizes the NACDL as an affiliated organization and awards it full representation in the ABA House of Delegates. NACDL is dedicated to the preservation and improvement of our adversary system of justice.

The NACDL is vitally interested in the scope of substantive federal criminal law, particularly when, as here, the government seeks to expand the reach of a criminal statute beyond its proper application.

[1] The only Second Circuit case directly addressing the question presented in this brief, *United States v. Uram*, 148 F.2d 187 (2d Cir. 1945), was decided under a prior and different version of the statute, 18 U.S.C. §80 (*see infra* Point B), almost 40 years before *Williams* and almost 20 years before *Diogo*, and did not discuss the issues presented in this brief.

Argument

COUNT 5 MUST BE DISMISSED BECAUSE 18 U.S.C. § 1001 DOES NOT PROSCRIBE FALSE PROMISES

A. The Plain Language of the Statute Does Not Include False Promises.

Title 18 Section 1001 prohibits "false, fictitious or fraudulent statement[s] or representation[s]." While at least eight federal criminal statutes in Title 18 alone explicitly and specifically criminalize false "*promises*," Section 1001 makes no mention of promises.[2] "A court should presume that [a] statute says what it means," *Aslanidis v. United States Lines, Inc.*, 7 F.3d 1067, 1072 (2d Cir. 1993), and should not add to the words used by Congress, thereby distorting the statute's plain language. *See Wetzler v. Federal Deposit Insurance Corp.*, 38 F.3d 69, 74 (2d Cir. 1994). This Court should therefore conclude that the plain language of the statute excludes false promises from its reach.

False statement statutes proscribe the making of false factual representations, which are different from false promises. A promise is not a factual assertion at all; it cannot be characterized as "true" or "false;" and it therefore does "not involve the making of a 'false statement.'" *Williams v. United States*, 458 U.S. 279, 284 (1982). "[P]romises or opinions are too general and difficult to substantiate to be considered statements of fact." *Indemnified Capital Investments, SA v. R.J. O'Brien & Associates, Inc.*, 12 F.3d 1406, 1413 (7th Cir. 1993).

Williams is particularly instructive as to the difference between a false statement of fact and a false promise. In *Williams*, the defendant deposited several checks that were

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[2] Those eight statutes are: 18 U.S.C. §§ 157, 1031, 1341, 1343, 1344, 1347, 1348, 2314.

not supported by sufficient funds. He was indicted and convicted of violating 18 U.S.C. §1014, which prohibits the making of a false statement for the purpose of influencing the actions of a federally insured institution. Noting that a check "contains an unconditional promise or order to pay a sum certain in money," the Court held that a check "is not a factual assertion at all," but instead is a promise that "cannot be characterized as "true" or "false," and reversed the conviction.[3]

In addition, with respect to Section 1001, when Congress uses terms that have accumulated settled meaning under the common law, a court must infer, unless the statute otherwise dictates, that Congress intends to incorporate the established meaning of these terms. *Neder v. United States*, 527 U.S. 1, 21 (1999). Specifically, a false representation is a common-law term that carries the elements that the common law has defined it to include. *Field v. Mans*, 516 U.S. 59, 69 (1995). While common law fraud required "a material false representation or omission of an existing fact," *Caputo v. Pfizer, Inc.*, 267 F.3d 181, 191 (2nd Cir. 2001), common law distinguished *actual* fraud, which required an intent to defraud, from false pretenses or false representations that did *not*.

Intent to defraud is, in fact, the essence of prohibitions on false promises. *Bixby's Food Systems, Inc. v. McKay*, 193 F.Supp.2d 1053, 1065 (N.D. Ill. 2002). Thus, federal false promise statutes require a scheme or artifice or intent to defraud, *see* statutes cited in footnote 1 *infra,* while Section 1001 contains none of those elements. Similarly, at common law, false pretenses fraud was limited to "a misrepresentation as to some existing fact, and *not a mere promise as to the future*." *Neder,* 527 U.S. at 24, *quoting*

[3] Congress then enacted 18 U.S.C. §1344 to explicitly proscribe false promises to financial institutions--- and included an intent to defraud as an element. *See* Point C *infra*.

Durland v. United States, 161 U.S. 306, 312 (1896) (emphasis added). Even larceny by false pretense did not include larceny by false promise. *See People v. Norman*, 85 N.Y.2d 609, 619 (1995). Thus, at common law, absent an intent to defraud, proscriptions on false statements or representations did not include false promises.

The Second Circuit has recognized these principles in holding that a statement or representation that is literally true cannot be the basis for a criminal prosecution under Section 1001, even if the statement or representation is misleading. *See United States v. Diogo*, 320 F.2d 898 (2d Cir. 1963). A promise is literally true because the only statement or representation being made is, in effect, "I promise," not a statement as to the speaker's subjective intent.

Indeed, subjective intent is irrelevant to a false statement prosecution. *See United States v. Rothhammer*, 64 F.3d 554, 557-58 (10th Cir. 1995) (the subjective intent of the maker of a false promissory is not relevant or material to whether a false statement has been made under 18 U.S.C. §1014). A prosecution for false representations cannot be grounded on the omission of an explanation of what was *not* true about the statement, *Diogo*, 320 F.2d at 905, such as the speaker's intent. Holding otherwise "would distort the language of the statute and assimilate the separate offense of concealment into the different one of false representations solely because of a similarity of prohibited objectives." *Id.*

Finally, the eight federal statutes that criminalize false promises also criminalize false or fraudulent representations. Thus, in order to conclude that false or fraudulent representations include false promises, this Court would have to conclude that Congress used unnecessary and redundant words in each of those statutes. Instead, the Court

should give each word its ordinary meaning and presume that Congress chose different words for a reason. Indeed, it is a cardinal principle of statutory construction that the court's duty is to give effect, when possible, to every word of a statute. *See, e.g., Duncan v. Walker*, 533 U.S. 167, 174 (2001). The government's reading of Section 1001 would require this Court to ignore that principle.

B. The Legislative History of Section 1001 Does Not Support Broad Reading of the Statute to Include False Promises

The legislative history of Section 1001 also fails to provide any support for a broad reading of the statute to include false promises. Absent support in the legislative history for a broad reading of a criminal statute, the Court should decline the invitation to do so. *Williams*, 458 U.S. at 287.

In 1918, when Congress enacted the first federal criminal statute prohibiting the making of a false statement in matters within the jurisdiction of any federal agency, it required an intent to defraud. Act of October 23, 1918, ch. 194, 40 Stat. 1015. At the same time, that statute was limited to false statements made with intent to cause "pecuniary or property loss." *United States v. Cohn*, 270 U.S. 339 (1926).

In 1934, the 1918 Act was amended, deleting both the intent to defraud and the pecuniary or property loss elements. The 1934 Act made it a crime to:

1. present a false claim[4];
2. falsify, conceal or cover up by any trick, scheme or device a material fact;
3. make any false, fictitious or fraudulent statement or representation; or

[4] Amendments in 1948 placed the false claims portion of the statute elsewhere, and reduced the punishment for a violation of the statute from 10 years to 5 years. Act of June 25, 1948, ch.645, Pub.L. 772. It was intended to make no other substantive changes.

4. make or use a wide variety of false writings or documents knowing the same to contain any false, fictitious or fraudulent statement or entry.

Act of June 18, 1934, ch 587, 48 Stat. 996, 18 U.S.C. §80.

The acknowledged, indisputable purpose of the 1934 Act was stated in a report of the Senate Judiciary Committee of May 28, 1934:

> [t]he first two committee amendments were proposed by the Department of the Interior for the purpose of reaching a large number of *cases involving the shipment of "hot" oil, where false papers are presented* in connection therewith, and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation, *and false certificates are made as to the actual wages paid.*

Id. Sen. Rep. No. 1202, 73rd Cong., 2d Sess. (Judiciary Committee, May 28, 1934). (emphasis supplied).[5] This legislative history not only fails to provide any basis for a broad reading of the statute, it provides the opposite: a firm basis for concluding that the Act was *not* intended to include false promises.

In stark contrast, when enacting the Major Fraud Act of 1988, 18 U.S.C. §1031, to combat government contract fraud, Congress explicitly contrasted that statute with common law misrepresentation as to some existing fact, and not a mere promise, stating its intent that Section 1031 include everything designed to defraud by representations as to the past or present, or suggestions *and promises as to the future.* S. Rep. No. 100-503,

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[5] *See* Statement by Senator King, the Senator in charge of the amendatory act, 78 Cong. Rec. 11270-71, 73rd Cong., 2d Sess. (1934) (the purpose of the amendment is to permit "an investigation and prosecute persons who are engaged in the 'kick-back' practice. *They make false returns, claiming that they paid certain amounts to their employees, when they have not done so.* This bill just amends the law so as to give the Federal Government authority to deal with that class of cases") (emphasis supplied). A copy of that Report is appended hereto as Exhibit 1.

at 12 (1988). Also, as noted above, Congress explicitly required a scheme or artifice or intent to defraud in Section 1031.

Thus, the legislative history of Section 1001 does not require a broad reading of the statute and instead cautions that the words used therein must be limited to their ordinary meaning.

C. **The Rule of Lenity Requires a Narrow Reading of the Statute.**

When interpreting a criminal statue that does not explicitly reach the conduct in question, courts should be reluctant to base an expansive reading of the statute on inferences. *See Williams*, 458 U.S. at 286 (applying rule of lenity to a false statements statute). As the Surpeme Court has instructed, "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before [choosing] the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *United States v. Bass*, 404 U.S. 336, 347 (1971).

This canon of statutory construction is particularly appropriate when, as here, a broad reading of the statute would render a wide range of conduct violative of federal law, and the legislative history fails to evidence congressional awareness of the statute's claimed scope. *See Williams*, 458 U.S. at 290; *see also United States v. Yermian*, 468 U.S. 63, 83 (1984) (Rehnquist, C.J., *dissenting*) (rule of lenity should require the government to prove that a defendant had actual knowledge that false statements under Section 1001 were made in a matter within federal agency jurisdiction). A broad reading of the statute would also invite absurd results when an intent to break a promise changes, because a false statement statute carries with it no intent to defraud. *See Williams*, 458 U.S. 279 n. 8.

The history of larceny by false promise in the State of New York is particularly instructive in considering the applicability of the rule of lenity to whether Section 1001 should be read to proscribe false promises. As noted above, larceny by false pretense requires a false statement about some prior or existing fact. Most courts, including the New York Court of Appeals, held that a promise accompanied by an intention not to perform could not constitute the crime of larceny by false pretense. *See People v. Norman*, 85 N.Y.2d 609, 618 (1995); *Chaplin v. United States*, 157 F.2d 697, 698 (C.A.D.C. 1946) (gathering cases).

As the Court in *Norman* explained, "[t]he judicial reluctance to criminalize such conduct was principally derived in concerns about jailing individuals for mere nonpayment of debt and in the courts' sensitivity to the potential chilling effect that criminalizing such conduct might have on business." *Id.* at 618-19. In fact, in 1965, when the New York Legislature chose to criminalize larceny by false promise, it specifically provided that: (1) the inference of guilty intent may not be drawn solely from the fact that the defendant's promise was not performed; and (2) the facts and circumstances must exclude to a moral certainly every hypothesis except that of the defendant's intention or belief that the promise would not be performed. *See* New York Penal Law §155.05[2][d]. The Legislature included these protections "[b]ecause of continuing concerns about the need to avoid prosecution for conduct constituting only civil breach of contract." *Norman*, 85 N.Y.2d at 619.

Because Section 1001 does not require an intent to defraud or contain any other language limiting its potentially broad application to conduct that otherwise could not be

the basis of a criminal prosecution, this Court should apply the rule of lenity and not judicially expand the statute to include false promises.

D. *United States v. Shah* Was Wrongly Decided.

In *United States v. Shah*, 44 F.3d 285 (5th Cir. 1995), the Fifth Circuit held that a violation of Section 1001 could be based solely on a false promise, reasoning that a false promise is a false statement of present intent, and that a statement of intent is a fact capable of being false. *Shah* was decided after *Williams* and explicitly reached the issue of the distinction between false statements of existing fact and false promises of future performance, unlike prior cases.

However, the decision in *Shah* stands alone, and in contrast to the decision of the Tenth Circuit in *Rothhammer*, in failing to acknowledge dispositive language in the Supreme Court's decision in *Williams*. Moreover, the *Shah* opinion failed to examine the legislative history of Section 1001, did not consider the differences between false promise statutes and Section 1001, and simply ignored the rule of lenity applied to the federal false statement statute in *Williams*.

In *Shah*, the government had evidence that one day before Shah promised not to disclose prices, he suggested to another bidder that they do so. After the document containing the promise was sent to the government, the other bidder contacted the government, and the government thereafter tape-recorded telephone conversations with the defendant in which prices were exchanged. Shah argued that a promise of future performance could not, as a matter of law, constitute a violation of Section 1001.

The Court -- and the government -- conceded that a broken promise is not alone a basis for criminal liability. The government argued, however, that intent may render a promise "true" or "false" when made. *Id.* at 290.

The Court focused on that part of the decision in *Williams* that held that a check was not a statement at all. The Court ignored the acknowledgment in *Williams* that a check was a promise to pay, erroneously stating "the Supreme Court did not hold that a check was a promise and therefore not a statement." *Id.* at 291. Thus, the decision in *Shah* concluded that *Williams* had not answered the question whether "a promise can be construed as 'a factual assertion.'" *Id.* The Court in *Shah* affirmed the verdict, holding that because the jury had evidence of Shah's intent before he made the promise as well as after he made the promise, it could infer that the promise was false when made.

Thus, while the Court and the government in *Shah* abjured basing a criminal prosecution on a mere breach of contract, the only other evidence supplied in addition to the breach was an intention to breach. It is difficult to imagine a breach of contract case in which there would be no evidence from which a jury could infer an intent to breach. Under *Shah,* the jury could use that evidence to find an intent to breach at the time the contract was made.

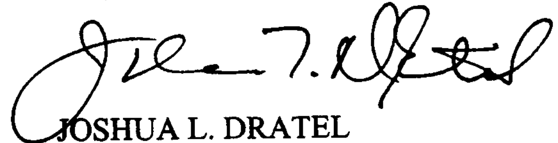
In sum, the government's interpretation of §1001 "would make a surprisingly broad range of unremarkable conduct a violation of federal law," and should be rejected. *See Williams*, 458 U.S. at 286.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that Count Five of the Indictment should be dismissed.

Dated: February 7, 2003
New York, New York

Respectfully submitted,



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Calendar No. 1280

73d Congress, 2d Session } SENATE { Report No. 1202

INJURY TO GOVERNMENT PROPERTY AND PROPERTY BEING CONSTRUCTED UNDER CONTRACT FOR THE WAR AND NAVY DEPARTMENTS

May 28 (calendar day, May 29), 1934.—Ordered to be printed

Mr. King, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 8912]

The Committee on the Judiciary, to whom was referred the bill (H.R. 8912) to amend section 35 of the Criminal Code of the United States, having considered the same, report favorably thereon to the Senate with amendments and recommend that the bill as amended do pass.

The bill amends section 35 of the Criminal Code so as to provide penalties for willful injuries to or depredations against any property of the United States, any of its branches or departments, or any corporations in which the United States is a stockholder, and any property which is in the course of manufacture or construction for the War or Navy Departments.

The first two committee amendments were proposed by the Department of the Interior for the purpose of reaching a large number of cases involving the shipment of "hot" oil, where false papers are presented in connection therewith, and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation, and false certificates are made as to the actual wages paid. The third amendment is a clarifying amendment to remove an apparent ambiguity in the House bill.

The need for this legislation is well set forth in a letter from the Attorney General to the chairman of the House Committee on the Judiciary, commenting on S. 1846 of the Seventy-second Congress, a bill similar to the bill herewith reported. A copy of the Attorney General's letter is attached hereto and made a part of this report.

MARCH 23, 1934.

Hon. HATTON W. SUMNERS,
Chairman Committee on the Judiciary, House of Representatives.

MY DEAR MR. CHAIRMAN: Enclosed herewith is a copy of S. 1846, Seventy-second Congress, a bill to amend section 35 of the Criminal Code of the United States, which I shall be pleased to have you introduce and support.

The bill proposes to amend section 35 of the Criminal Code so as to prohibit injury to and depredations against Government property wherever situated. Present law provides a penalty for the theft of Government property, but there are no Federal statutes under which prosecutions may be had for willful injury to property of the United States. The need for such legislation has arisen in the work of several departments of the Government. Airway beacons belonging to the United States and under the jurisdiction of the Department of Commerce have been installed upon leased lands and there are reports of considerable difficulty by reason of depredations committed at these beacons. A water-supply line which conducts the water supply for the United States Marine Hospital at Fort Stanton, N.Mex., has also suffered from vandalism. This pipe line is built for miles upon land which does not belong to the United States and upon which the United States has only an easement. It extends through sparsely popluated areas where the exercise of the closest supervision is impossible. Another occasion when the need for legislation of this nature was felt, was when the U.S.S. *Akron* was under construction for the Navy Department at Akron, Ohio. Acts of syndicalism were committed on the ship, which, if not discovered, might have caused a serious disaster.

Sincerely yours,

HOMER CUMMINGS,
Attorney General.

O

FEDERAL BUILDING AT EL PASO, TEX.

The bill (S. 1221) to make provision for suitable quarters for certain Government services at El Paso, Tex., and for other purposes, was announced as next in order.

Mr. KING. Mr. President, I will ask the Senator from Texas to explain the reason for this appropriation. Are the Government's activities at El Paso so great as to call for an additional building? It seems to me we are providing too many buildings in all parts of the United States at the expense of the taxpayers.

Mr. CONNALLY. Mr. President, as I recall this bill at the moment, the Federal Government some time ago had made an appropriation for the construction of additional buildings at El Paso, Tex.; but the site of this building was a piece of territory that is in dispute between the United States and Mexico, known as the "Chamizal." Probably Senators are familiar with it. It has been arbitrated. Because of that dispute as to title, the Government did not feel disposed to go on and construct the building on the disputed territory. This bill authorizes the Government to make a contract with private owners of land in order that the Government may utilize it, and not have any trouble with Mexico over the disputed title.

I will say to the Senator that the quarters are badly needed, and it has been recognized for years that they were badly needed. They would long since have been constructed except for this dispute as to the title of the land in this area.

Mr. KING. I have no objection.

There being no objection, the Senate proceeded to consider the bill, which was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That when the owners of lots 11, 12, 13, 14, 15, portions of lots 16 and 17, block 21, Campbell's Addition, El Paso, Tex. (hereinafter called the "owners"), have agreed to erect on such lots a building of such design, plan, and specifications as may be approved by the Secretary of the Treasury as suitable for the use of the Bureau of Immigration, the Bureau of Customs, the United States Public Health Service, and the Bureau of Plant Quarantine, the Secretary of the Treasury is authorized and directed to negotiate, and, subject to an appropriation therefor, lease such building and such lots from the owners for a term of 25 years after such building is ready for occupancy at a fair annual rental, subject to the limitations of section 322 of part II of the Legislative Appropriation Act for the fiscal year ending June 30, 1933, approved June 30, 1932. Such lease shall contain provisions—

(1) Giving the Secretary of the Treasury an option on behalf of the United States to purchase such building and such lots from the owners at any time during the term of the lease at a price which shall not exceed the total cost of construction of the building, plus the sum of $22,500 (the value of such lots), and less an allowance for depreciation of such building of not less than 4 percent per annum of the cost of construction computed from the date of readiness for occupancy up to the time of exercising such option.

(2) For a cancelation of the lease in the event that the lots on which the building is to be constructed are determined, judicially, or by agreement, to be lands subject to the jurisdiction of the United States of Mexico.

SEC. 2. There is authorized to be appropriated such amounts as may be necessary to pay the installments of rent provided for in such lease and, in the event the Secretary of the Treasury exercises the option to buy under such lease, to pay the purchase price of such building.

Mr. CONNALLY subsequently said: Mr. President, a few moments ago the Senate passed Order of Business 1275, being Senate bill 1221. In the meantime a similar House bill has come over. I ask unanimous consent to reconsider the vote by which the Senate bill was passed and that the House bill be substituted and passed in its stead and then that the Senate bill be indefinitely postponed.

The PRESIDING OFFICER. Is there objection?

There being no objection, the bill (H.R. 1731) to make provision for suitable quarters for certain Government services at El Paso, Tex., and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

The PRESIDING OFFICER. Without objection, Senate bill 1221 will be indefinitely postponed.

CUSTOMS EXAMINATION BUILDING, TAMPA, FLA.

The Senate proceeded to consider the bill (S. 2724) to provide for a customs examination building at Tampa, Fla.

Mr. KING. Mr. President, is it necessary to have another building in Tampa, Fla., at an expense of $150,000?

Mr. FLETCHER. Mr. President, I may say to the Senator that the facilities at Tampa for customs examinations are wholly inadequate. At the present time the business transacted in the warehouse consists largely of the classification of leaf tobacco by color. Approximately 60,000 packages of leaf tobacco require weighing and examination per annum, and on the commodity the greater part of an annual revenue of $1,664,806 is collected.

We need these facilities greatly. There must be light in order to make the proper examination and classification. The Department says:

> This Bureau on March 10, 1934, requested an allotment of Public Works Administration funds for the above purpose, but, in view of the fact that the great number of requests from the said fund now pending makes the granting of at least some of them uncertain, the Bureau is glad to endorse the above-named bill.

Mr. KING. Mr. President, is there not a building there now?

Mr. FLETCHER. There is a small building there now, but the light is partly shut off.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized to acquire at Tampa, Fla., a suitable site for and erect thereon a suitable building to provide the necessary space and facilities for the examination of customs at Tampa, Fla., the cost of the said building and the site therefor to not exceed the sum of $150,000, which said sum is authorized to be appropriated for said purpose.

BILL INDEFINITELY POSTPONED

The bill (S. 3659) authorizing the Oregon-Washington Bridge board of trustees to construct, maintain, and operate a toll bridge across the Columbia River at Astoria, Clatsop County, Oreg., was announced as next in order.

Mr. McNARY. Mr. President, recently this bill was adopted as an amendment to another bill by the House of Representatives, and I accepted the House amendment. I ask that the Senate bill be indefinitely postponed.

The PRESIDING OFFICER. Without objection, the bill will be indefinitely postponed.

COMMERCE IN PETROLEUM

The bill (S. 3495) to regulate commerce in petroleum, and for other purposes, was announced as next in order.

Mr. LONG. Mr. President, may I ask the Senator from Utah what this bill provides?

Mr. THOMAS of Utah. Mr. President, I think there is so much controversy over this measure at the present time that I suggest it go over.

The PRESIDING OFFICER. The bill will be passed over.

AMENDMENT OF CRIMINAL CODE

The bill (H.R. 8912) to amend section 35 of the Criminal Code of the United States was announced as next in order.

Mr. ROBINSON of Arkansas. Mr. President, I think the Senator from Utah should make a brief explanation of this bill, in view of its apparent importance.

Mr. KING. Mr. President, this is a measure which was brought to the attention of the Committee on the Judiciary by the Attorney General. It passed the House of Representatives unanimously, came to the Senate, and was reported from the Committee on the Judiciary unanimously.

It transpires that there is no law which will permit prosecution of persons for destroying Government property, beacon lights, and things of that kind. There is nothing which permits us to make an investigation and prosecute persons who are engaged in the "kick-back" practice. They make false returns, claiming that they paid certain amounts to their employees, when they have not done so. This bill just amends the law so as to give the Federal Government authority to deal with that class of cases.

Mr. ROBINSON of Arkansas. Mr. President, with that explanation, I am heartily in favor of the bill.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with amendments, on page 2, line 5, after the word "whoever", to strike out the words "for the pur-

pose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder"; on page 2, line 18, after the word "entry", to insert the words "in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder"; and on page 3, line 5, after the word "States", to strike out the words "or any branch or department thereof", so as to make the bill read:

Be it enacted, etc., That section 35 of the Criminal Code of the United States, as amended (U.S.C., title 18, secs. 80, 82, 83, 84, 85, and 86), be, and the same is hereby, amended to read as follows:

"SEC. 35. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, or shall willfully injure or commit any depredation against, any property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, or any property which has been or is being made, manufactured, or constructed under contract for the War or Navy Departments of the United States; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof; or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than $500 or imprisoned not more than 2 years, or both."

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

MUNICIPAL PUBLIC WORKS, DOUGLAS CITY, ALASKA

The bill (H.R. 9371) to authorize the incorporated town of Douglas City, Alaska, to undertake certain municipal public works, including construction, reconstruction, enlargement, extension, and improvements of its water-supply system; and construction, reconstruction, enlargement, extension, and improvements to sewers, and for such purposes to issue bonds in any sum not exceeding $40,000, was considered, ordered to a third reading, read the third time, and passed.

MUNICIPAL PUBLIC WORKS, FAIRBANKS, ALASKA

The bill (H.R. 9402) to authorize the incorporated town of Fairbanks, Alaska, to undertake certain municipal public works, including construction, reconstruction, and extension of sidewalks, construction, reconstruction, and extension of sewers, and construction of a combined city hall and fire-department building, and for such purposes to issue bonds in any sum not exceeding $50,000, was considered, ordered to a third reading, read the third time, and passed.

WRITINGS OF GEORGE WASHINGTON

The Senate proceeded to consider the bill (S. 3178) authorizing the George Washington Bicentennial Commission to print and distribute additional sets of the writings of George Washington, which had been reported from the Committee on the Library with amendments, on page 3, line 7, after the word "Representative", to insert the words "one each to the libraries of the executive departments and independent establishments located in Washington City, which were not created after March 4, 1933"; on line 14, to strike out "1935" and to insert in lieu thereof "1934"; on line 16, after the words "distributed as", to strike out the words "the Commission" and to insert in lieu thereof the words "Library of Congress", so as to make the bill read:

Be it enacted, etc., That section 1 of the act entitled "An act to enable the George Washington Bicentennial Commission to carry out and give effect to certain approved plans", approved February 21, 1930, is amended by striking out all preceding the last sentence therein and inserting in lieu thereof the following:

"That the United States Commission for the Celebration of the Two Hundredth Anniversary of the Birth of George Washington established by the joint resolution entitled 'Joint resolution authorizing an appropriation for the participation of the United States in the preparation and completion of plans for the comprehensive observance of that greatest of all historic events, the bicentennial of the birthday of George Washington', approved December 2, 1924 (hereinafter referred to as the 'Commission'), is authorized and directed to prepare, as a congressional memorial to George Washington, a definitive edition of all his essential writings, public and private (excluding the diaries), including personal letters from the original manuscripts or first prints, and the general orders, at a cost not to exceed $56,000 for preparation of the manuscript. Such definitive edition shall be printed and bound at the Government Printing Office and shall be in about the same form as the already published diaries of George Washington and shall consist of 25 volumes, more or less. There shall be 3,000 sets of such edition, 2,000 of which shall be sold by the Superintendent of Documents (1) at a cost of $50 per set for sets sold to public libraries, and institutions and societies of learning, and (2) the remainder of the 2,000 sets, at $75 per set. The Commission shall, upon the publication of each volume of the remaining 1,000 sets, distribute copies of each such volume as follows: Two each to the President, the library of the Senate, and the library of the House of Representatives; 25 to the Library of Congress; 1 to each Member of the Cabinet; 1 each to the Vice President and the Speaker of the House of Representatives; 1 to each Senator, Representative in Congress, Delegate and Resident Commissioner; 1 each to the Secretary of the Senate and the Clerk of the House of Represenatives; 1 each to the libraries of the executive departments and independent establishments located in Washington City, which were not created after March 4, 1933; and 1 to each member and officer of the Commission. Every such recipient eligible to receive any volume or volumes of such writings at any time prior to the issue of the final volume (but not later than December 31, 1934) shall be entitled to receive a complete set of such writings. The remaining sets, if any, shall be distributed as the Library of Congress directs, including such number of sets as may be necessary for foreign exchange. The usual number for congressional distribution and for depository libraries shall not be printed."

SEC. 2. Section 1 of such act of February 21, 1930, is further amended by adding at the end thereof the following new paragraph:

"The 1,000 extra copies (heretofore privately printed) of the first volume of such writings shall be considered to have been authorized by the Commission and the Commission may accept a donation of such extra copies for distribution for reviews, advertising, and for such other promotional purposes as it may deem advisable. If the Commisison shall direct the Superintendent of Documents to sell any such extra copies of the first volume, he shall offer the same for sale at a cost per copy equal to the cost per copy of the first volume as computed under clause (2) of the third sentence of this section. Such extra copies shall be the only copies of any volume of the set distributed or sold separately."

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.