



Public Corruption and
Government Ethics
after
McDonnell v.
United States

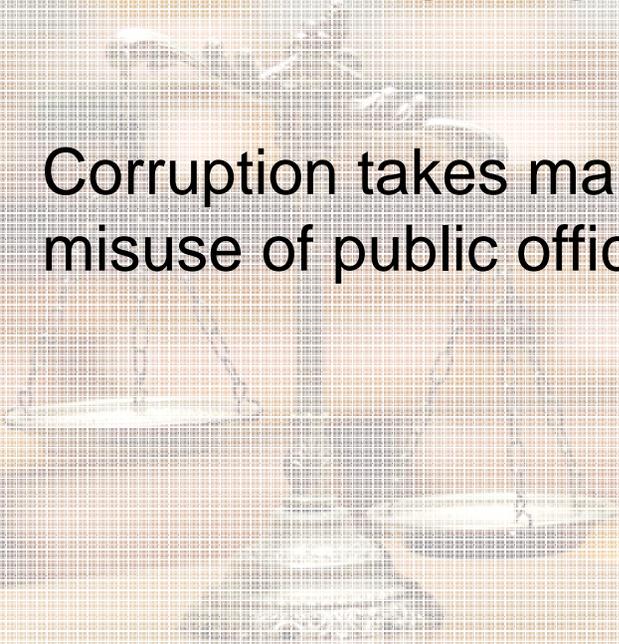
Randall D. Eliason
Indiana Legal & Ethics Conference
December 1, 2016

The Definition of Corruption

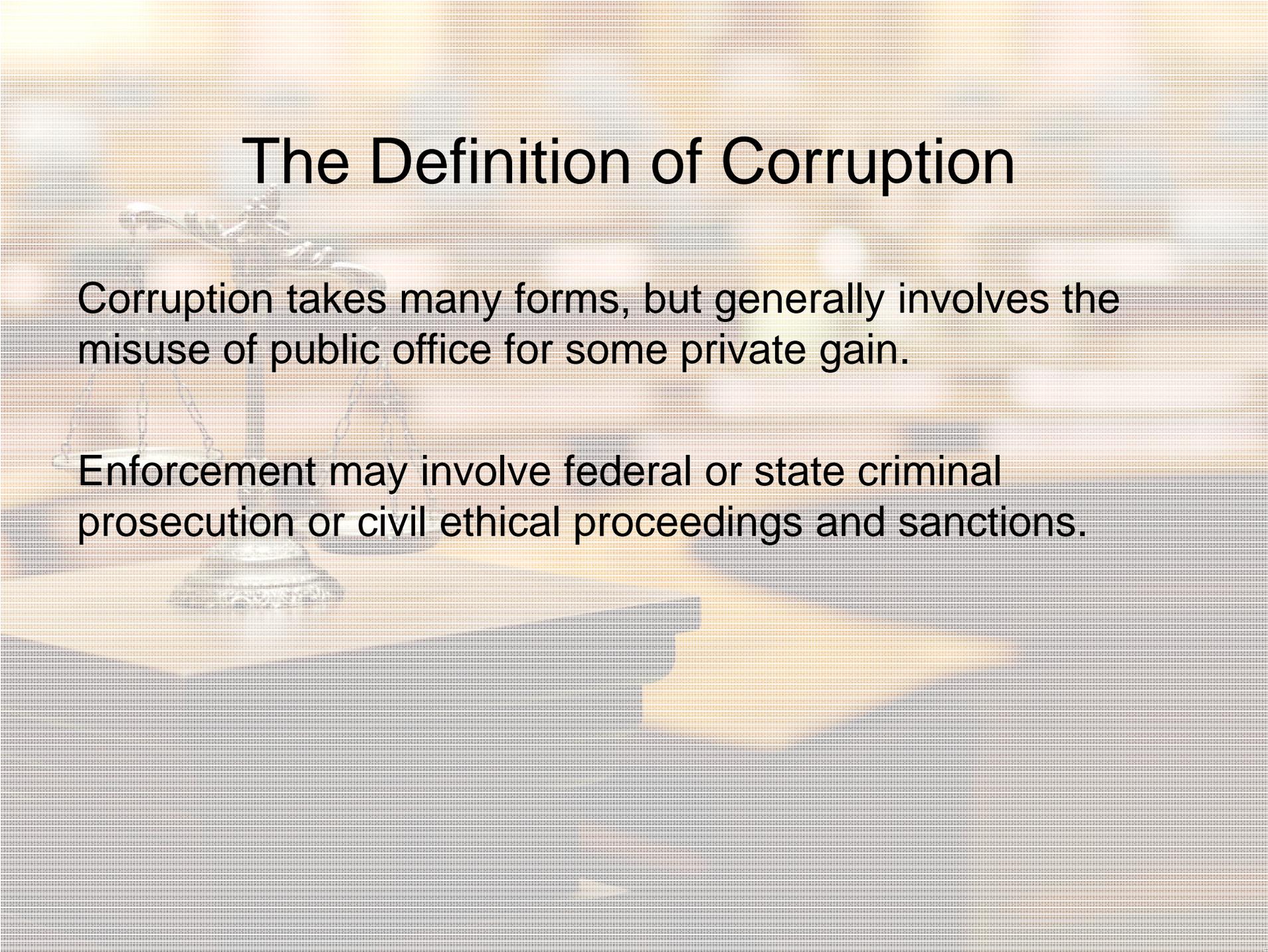


The Definition of Corruption

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Enforcement may involve federal or state criminal prosecution or civil ethical proceedings and sanctions.

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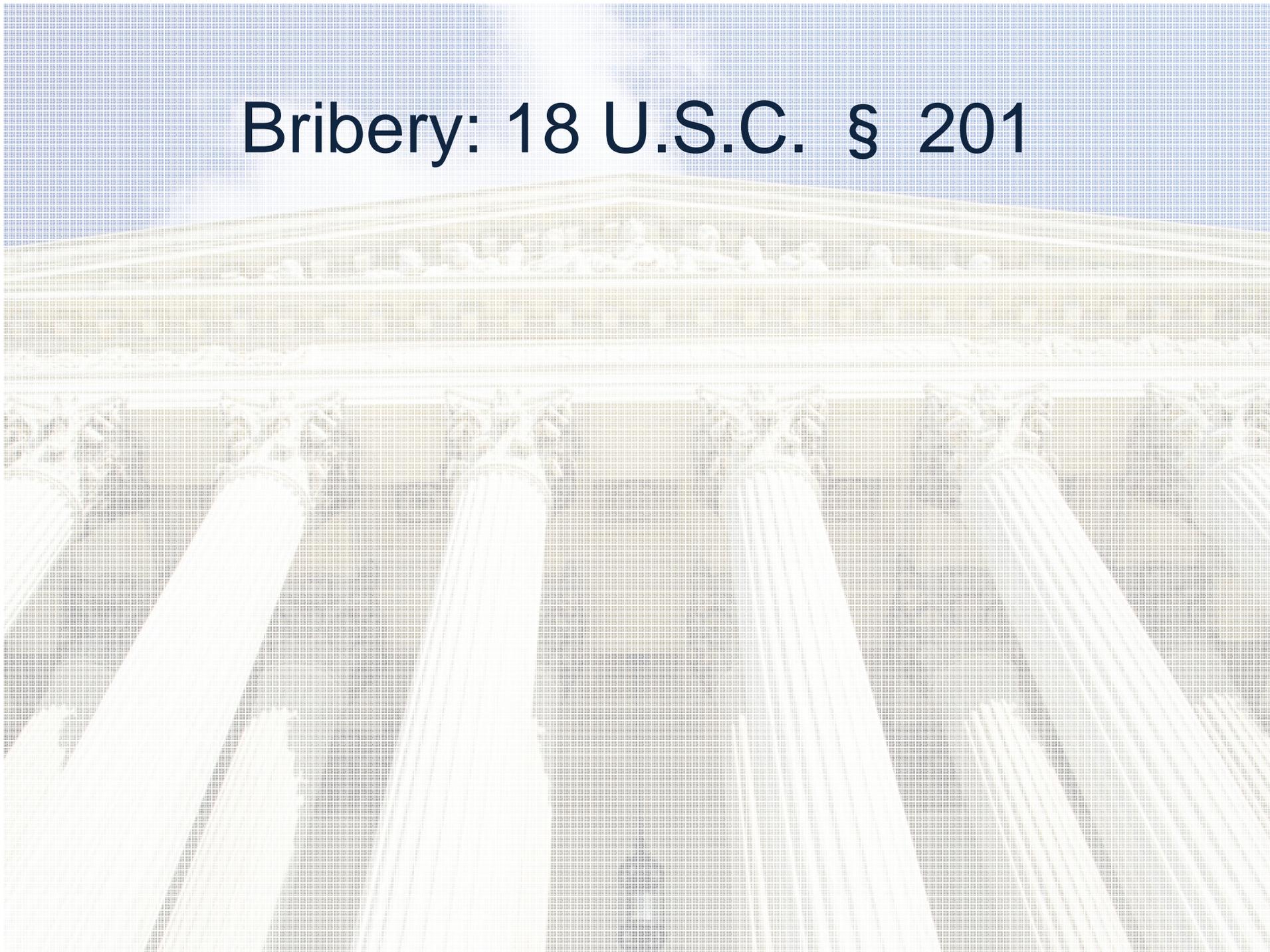
Bribery applies to both sides of the transaction.

Key Federal Corruption Statutes

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These laws are used by federal prosecutors and federal law enforcement to prosecute federal, state and local corruption in federal court.

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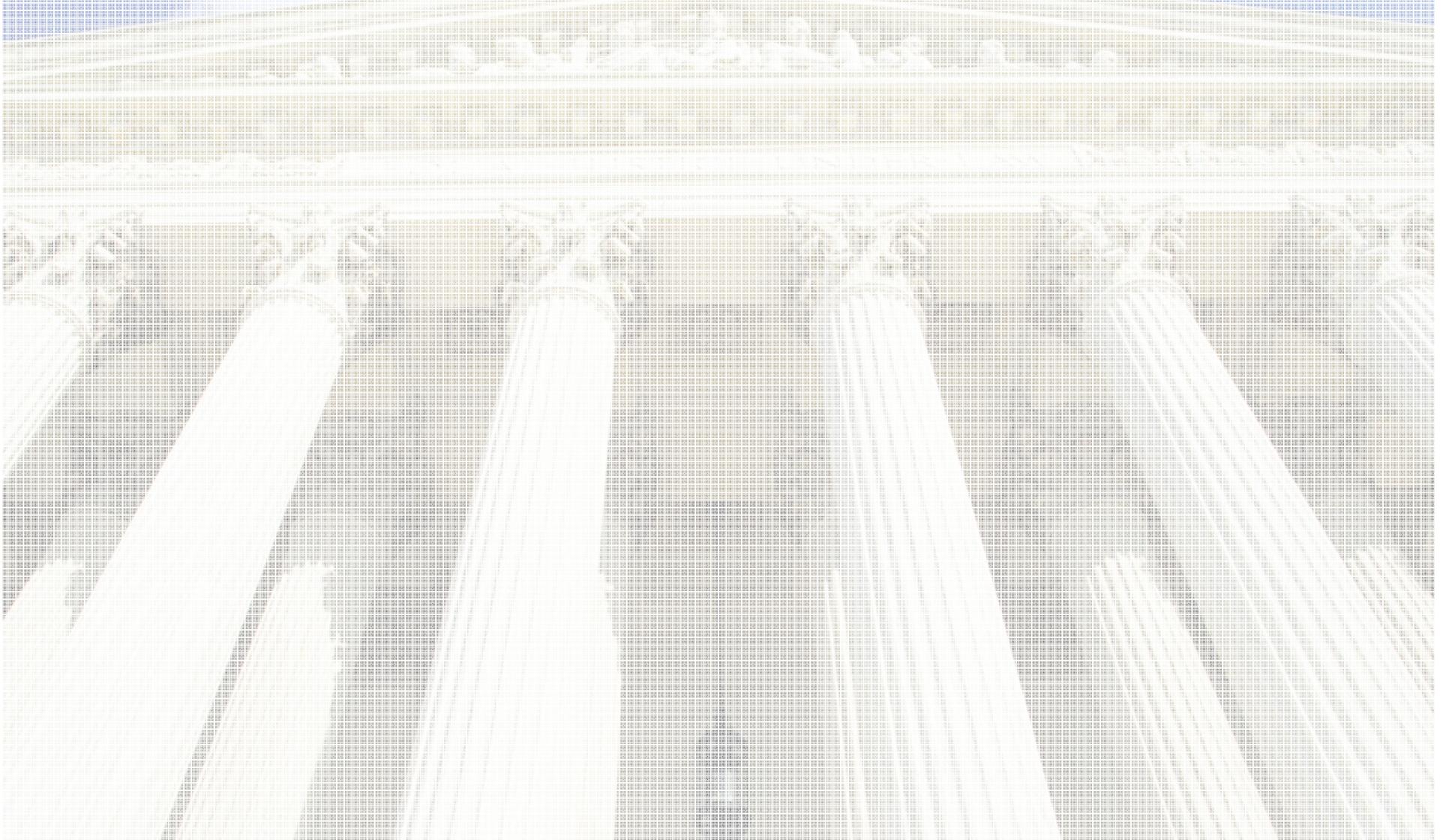
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Section 201 also prohibits gratuities: gifts given because of an official act but with no *quid pro quo*.

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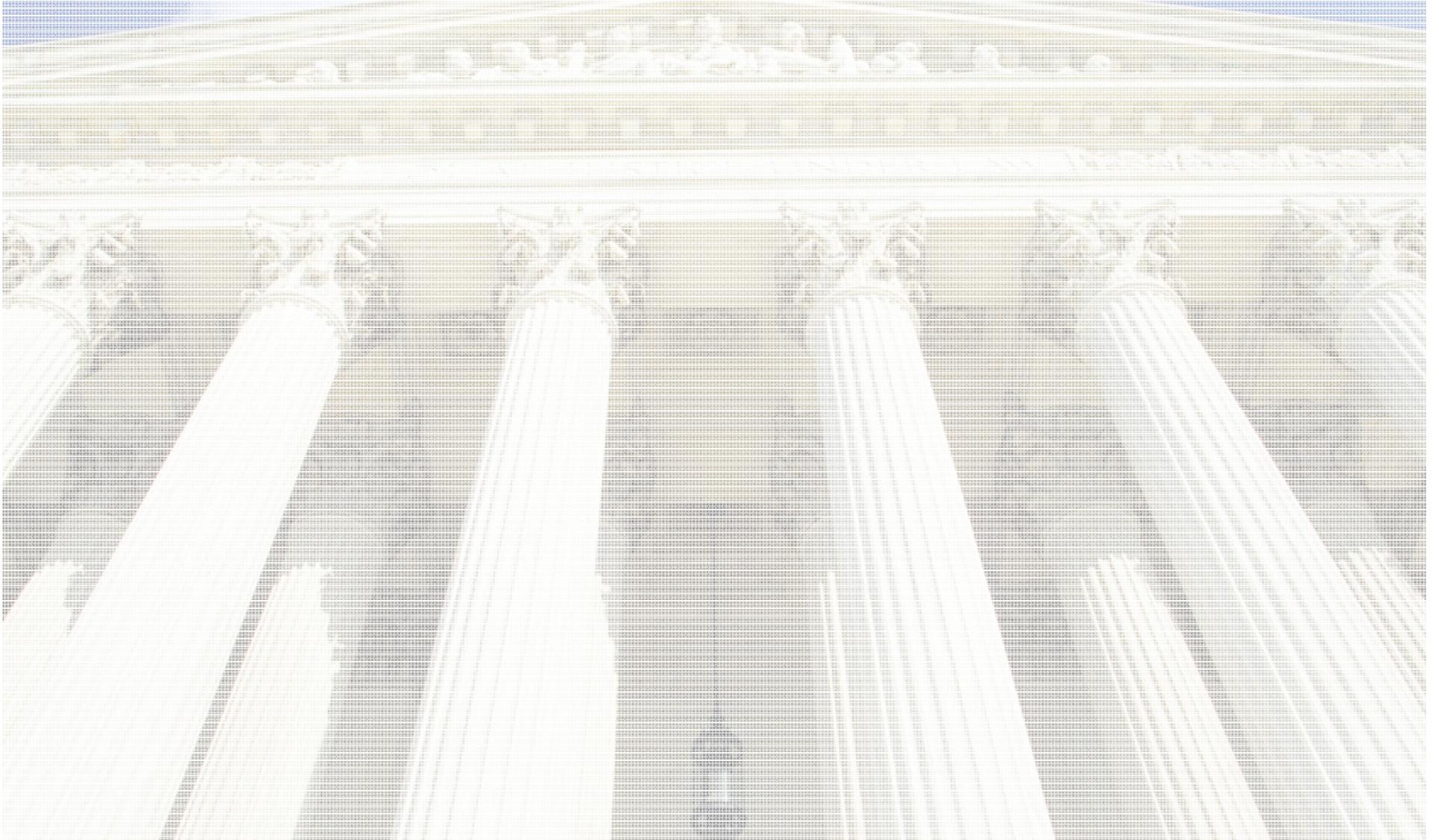
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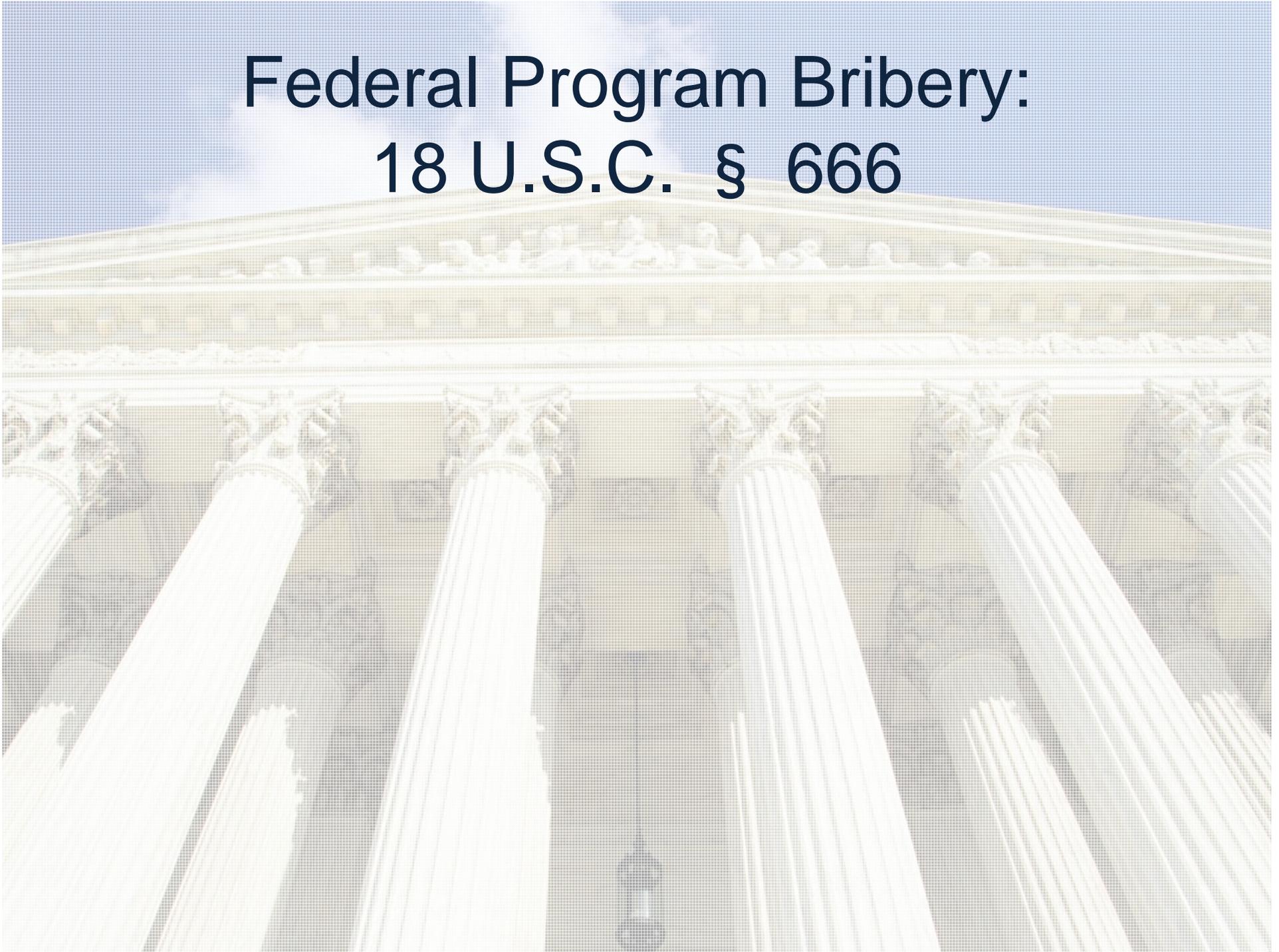
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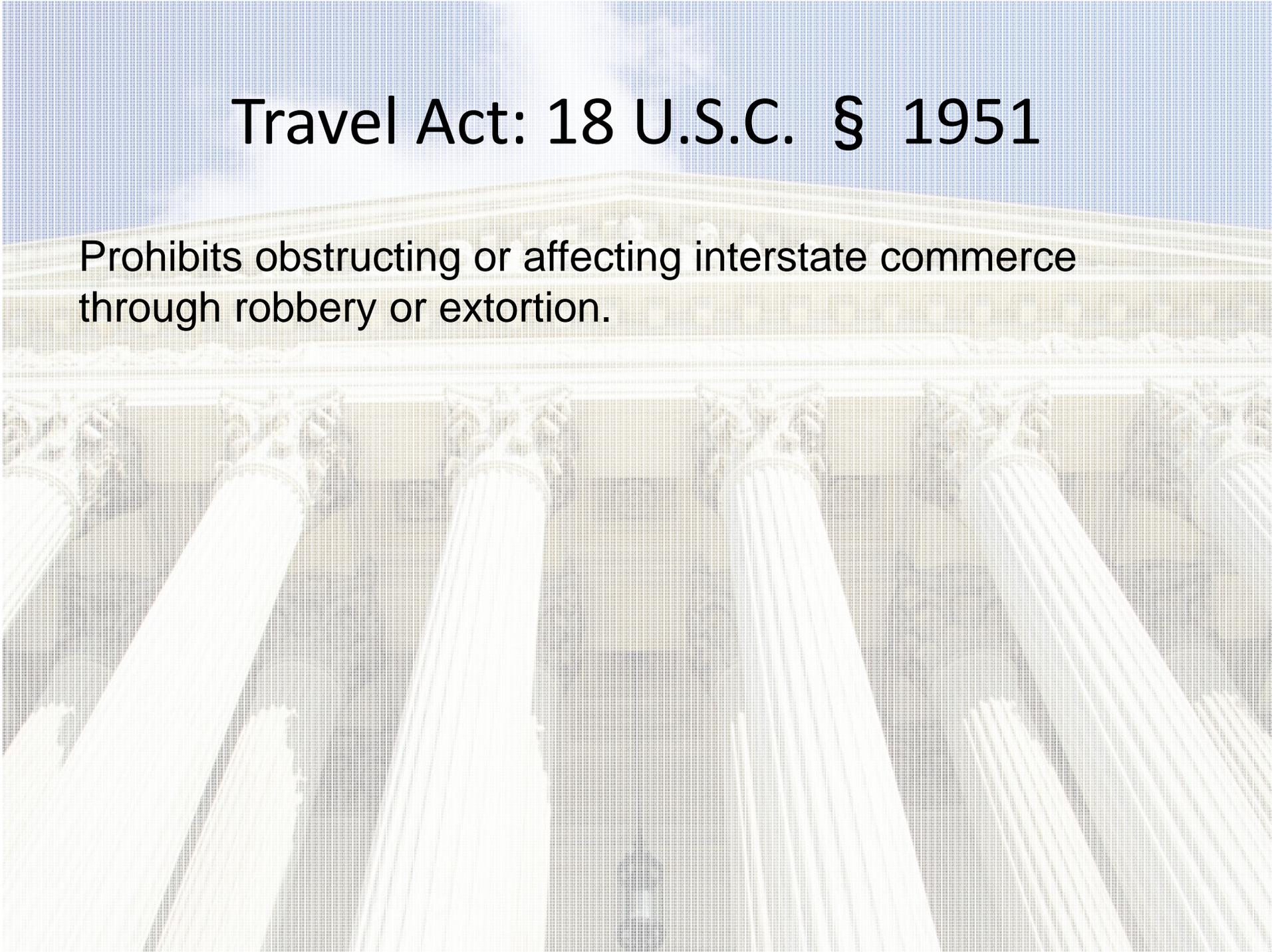
The bribe must be in connection with business worth more than \$5,000.

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Examples of Corruption Charges

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Lake County, IN sheriff and Mayor: honest services fraud and 666.



McDonnell v. United States (2016)

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Federal prosecutors charged Governor and Mrs. McDonnell with multiple counts of corruption based on their dealings with businessman Jonnie Williams.

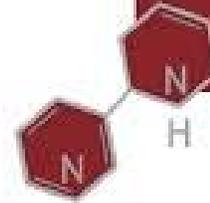


Star Scientific

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Anatabloc®

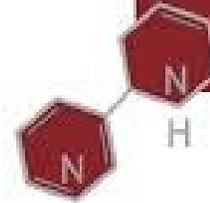


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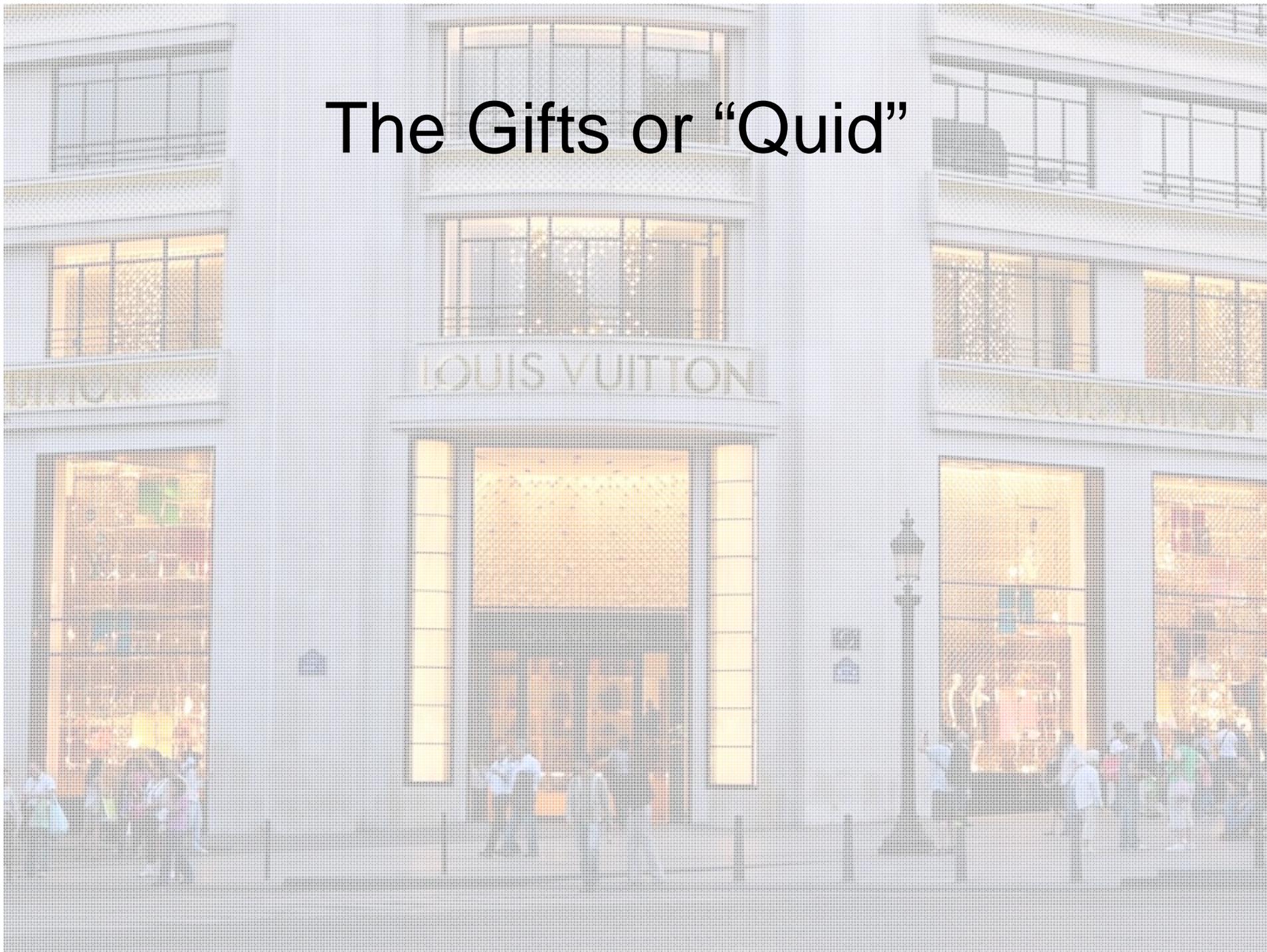
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Williams allegedly sought to have the Governor promote Star Scientific's products, including Anatabloc, within the Virginia government.

Anatabloc[®]



The Gifts or “Quid”



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- \$20,000 New York shopping spree
- \$12,000 catering bill for daughter’s wedding
- Rolex watch
- Multiple vacations and golf outings
- \$120,000 in no-interest, no-paperwork “loans”

The Alleged Official Acts or “*Quo*”

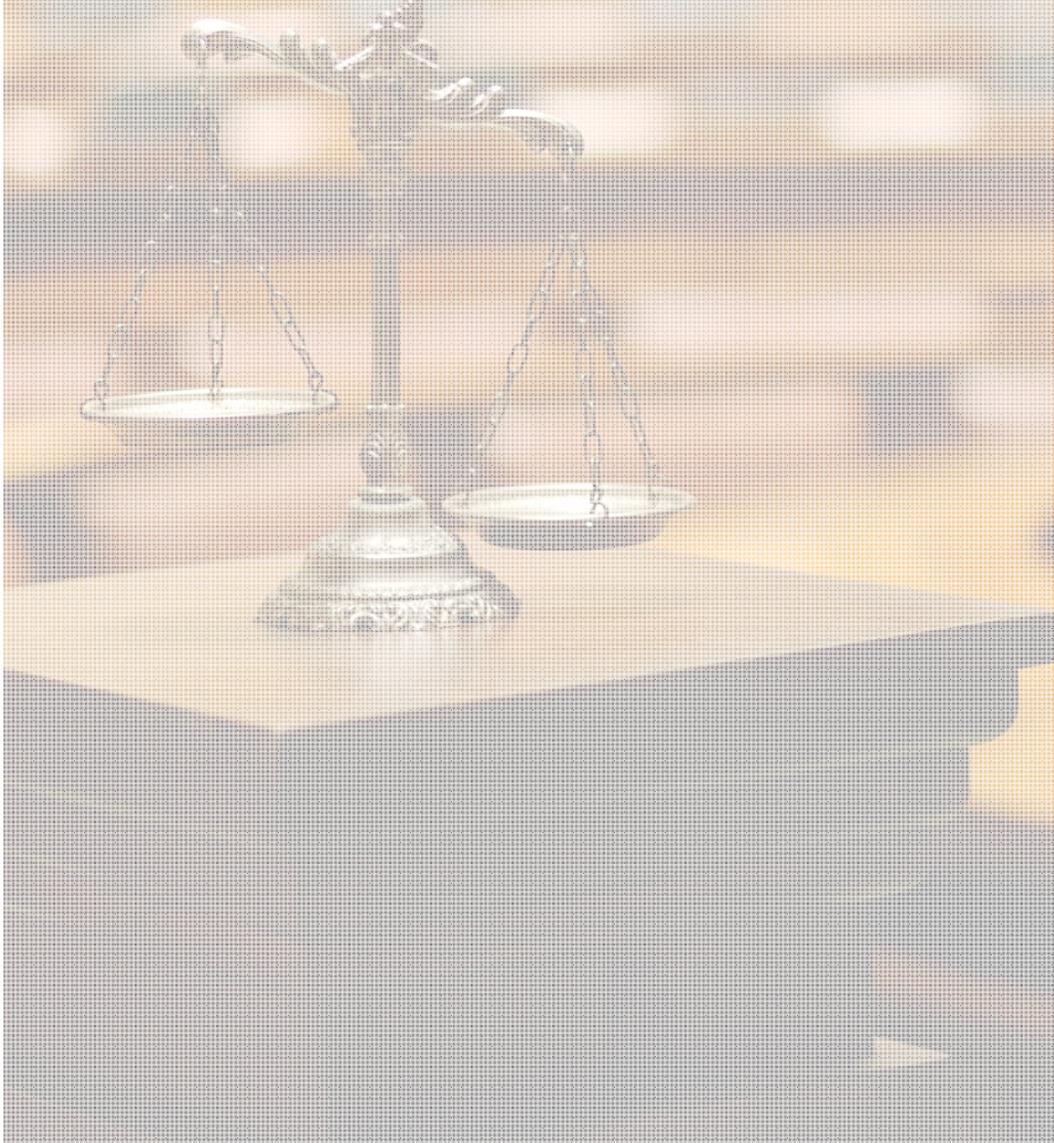


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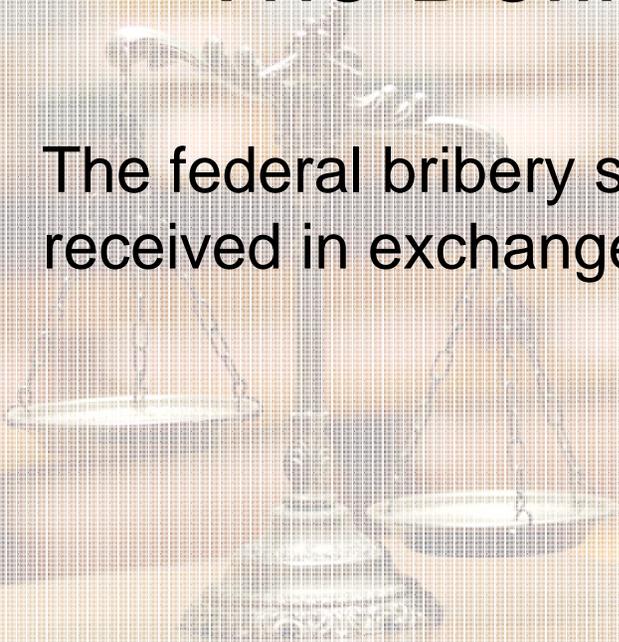
McDonnell asked various Virginia officials to meet with Williams to discuss Anatabloc, and hosted a product launch event at the Governor’s mansion attended by state officials and health researchers.

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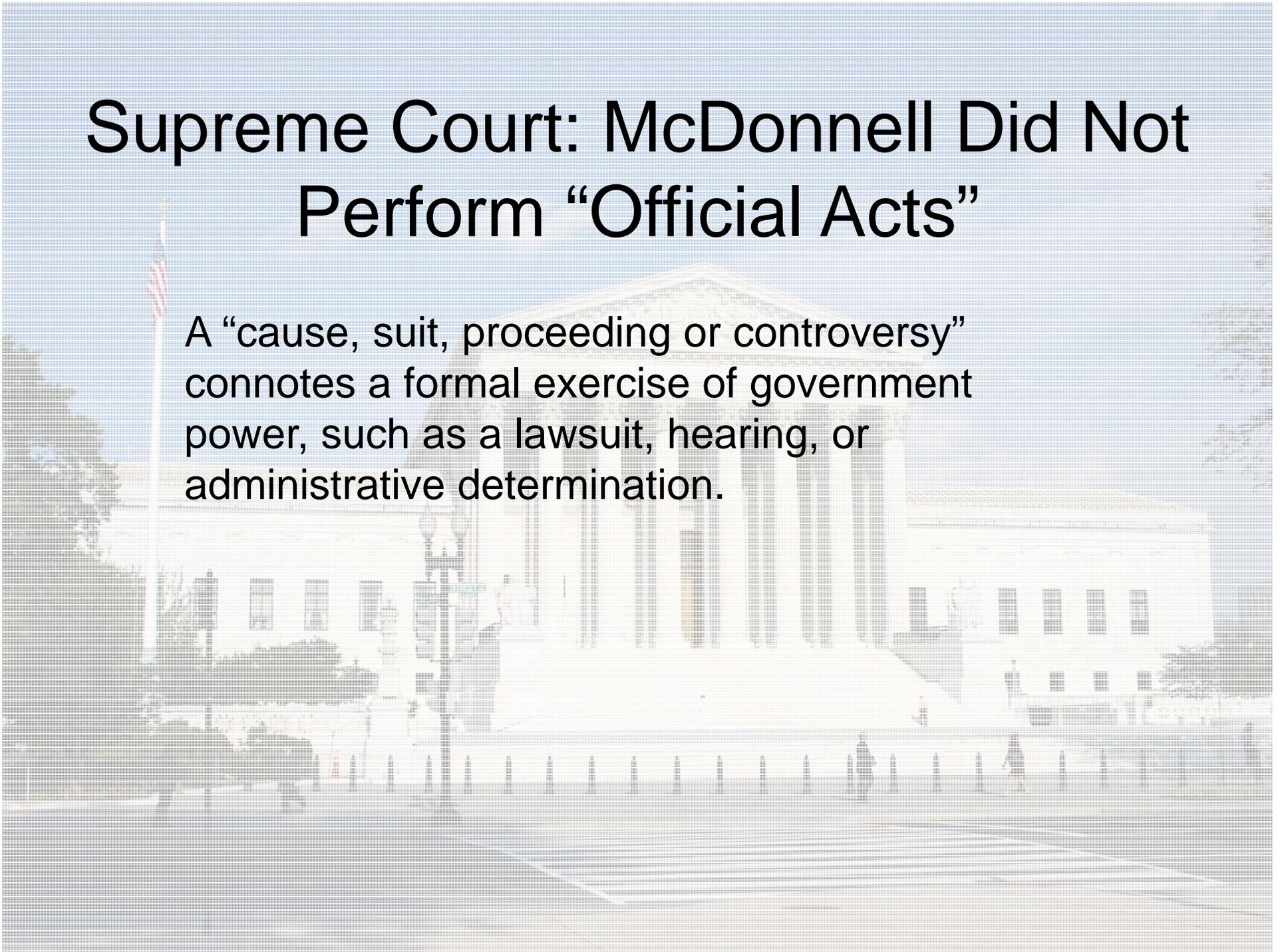
18 U.S.C. § 201(a)(3): “any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which by law may be brought before any public official”

Supreme Court: McDonnell Did Not Perform “Official Acts”



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Merely arranging meetings, making introductions, or hosting an event, without more, do not qualify.

The Supreme Court's Concern



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McDonnell's behavior may have been “tawdry” but it was not criminal.

By focusing solely on the “quo” and official act definition, the Court missed the larger picture of the corrupt relationship between Williams and the McDonnells.

The Post-McDonnell World

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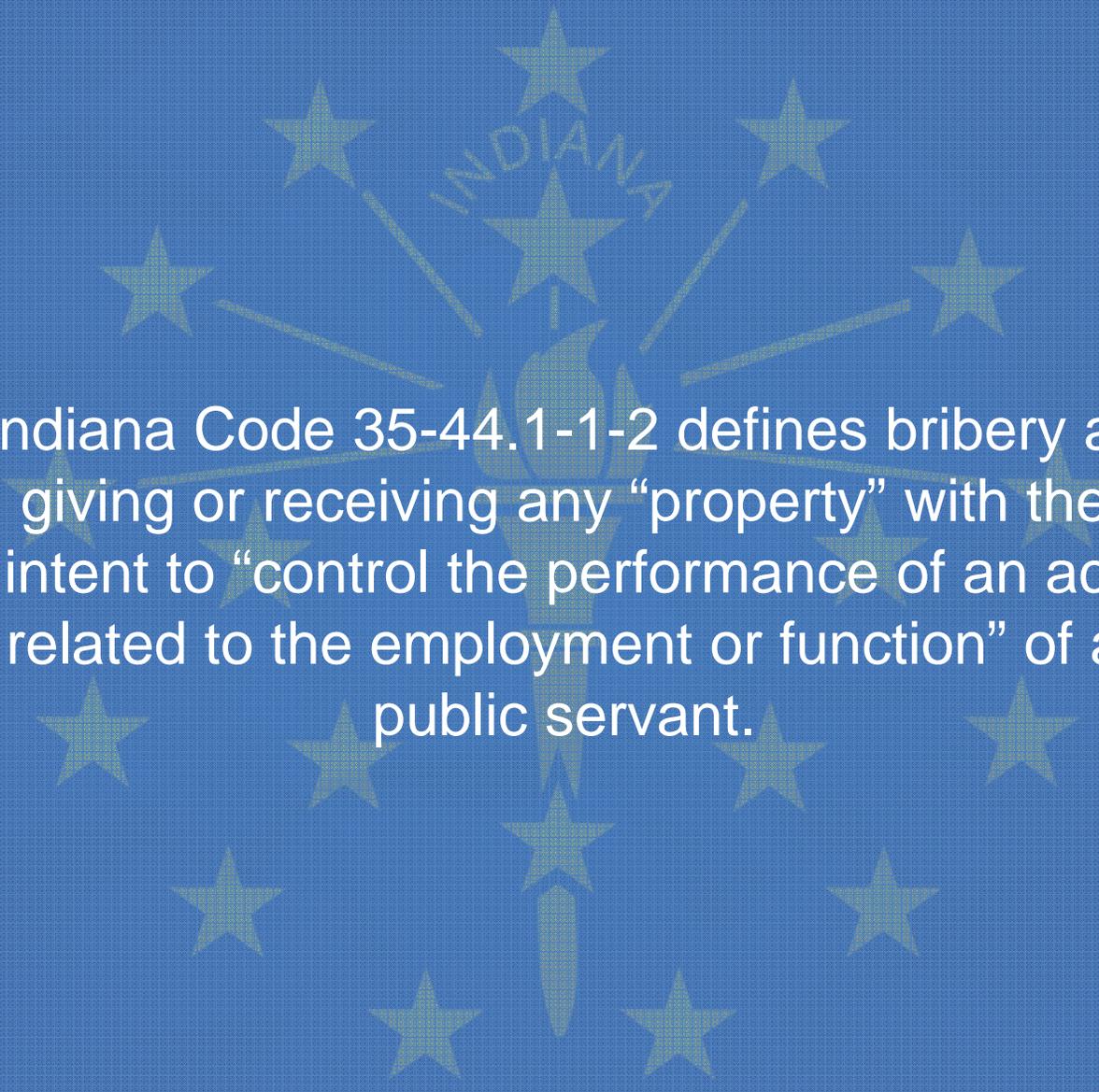
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State prosecution also remains an option.

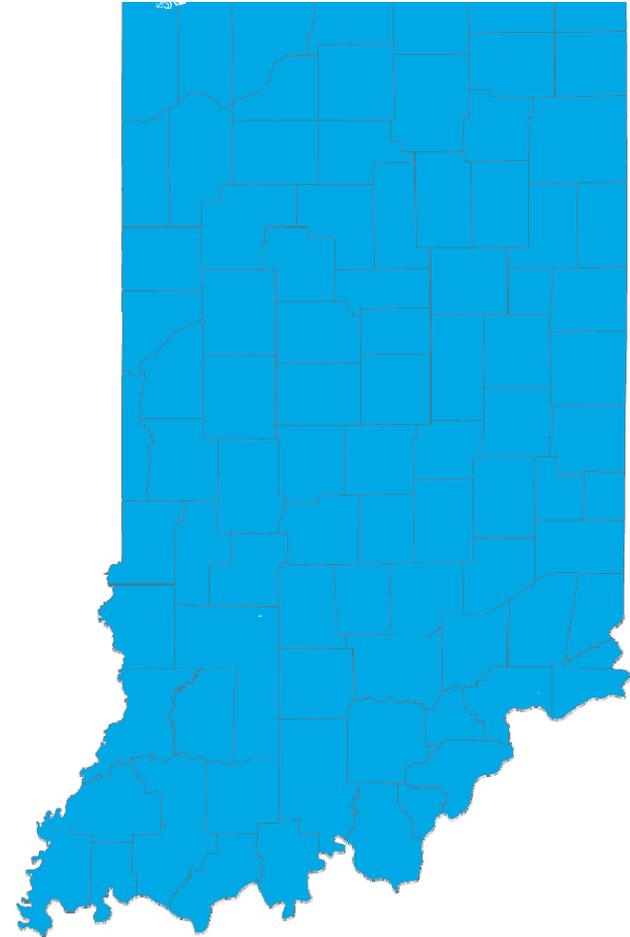
The background features a large, faint watermark of the Indiana State Seal. The seal is circular and contains a central figure of a Native American holding a bow and arrow. Above the figure is a banner with the word "INDIANA". The seal is surrounded by a ring of stars.

Indiana Code 35-44.1-1-2 defines bribery as giving or receiving any “property” with the intent to “control the performance of an act related to the employment or function” of a public servant.

Non-Criminal Remedies

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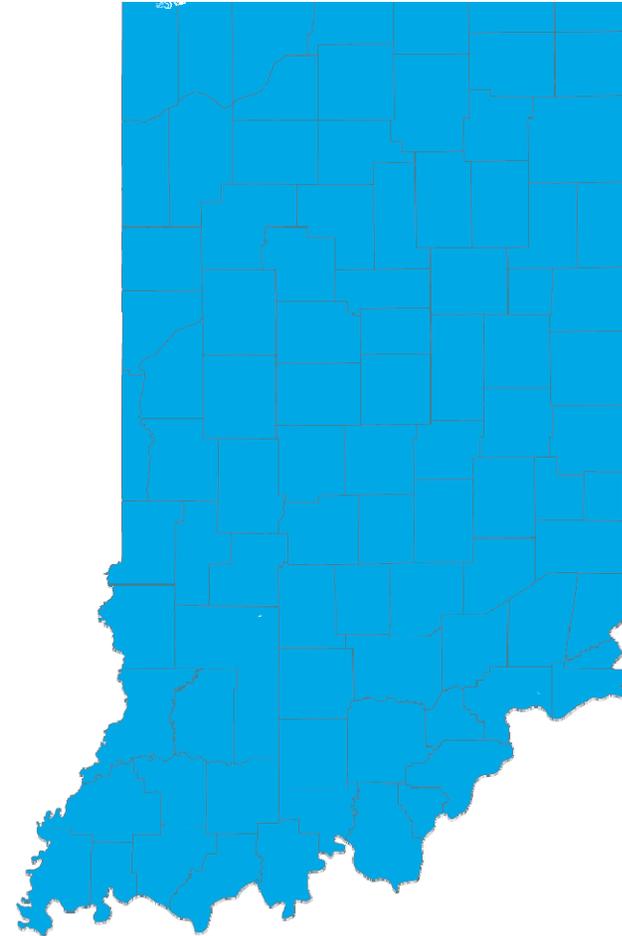
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Violations investigated by the OIG and cases heard by the State Ethics Commission.





Questions?

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