has a law prohibiting dissemination of such material to minors; or

"(2) receives notice from an addressee that he no longer desires any such material,

such sender shall immediately remove the name of any such addressee from his mailing list, and cease distribution of such material to the addressee.

"(d) The Postmaster General shall have authority to promulgate rules and regulations to carry out the provisions of this section.

"(e) As used in this section—

"(1) 'nudity' means the showing of the human male or female genitals, public area, or buttocks with less than a full opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

"(2) 'sexual conduct' means act of masturbation, homosexuality, sexual intercourse, physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks, or, in the case of a female, physical contact with her breast;

"(3) 'sexual excitement' means the condition of human male or female genitals in a state of sexual stimulation or arousal;

"(4) 'sadomasochistic abuse' means flagellation or torture by or upon a person clad in undergarments, a mask, or bizare costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed; and

"(5) 'sender' means a person who mails for himself, or on whose behalf there is a mailing; and

"(6) 'sexually provacative material' means any material which—

"(A) is tangible, including any device, and used or adapted, or capable of being used or adapted, to depict or arouse (through readings, sound, touch, or observation) interest in nudity, sexual conduct, sexual excitement, or sadomasochistic abuse; or

"(B) solicits or offers to send matter of the type described in subparagraph (A) of this paragraph."

(b) The analysis of chapter 5 of title 39, United States Code, immediately preceding section 4001, is amended by adding at the end thereof the following new item:

"4011. Mailing sexually provocative material.".

SEC. 2. (a) Chapter 71 of title 18, United States Code is amended by adding at the end thereof the following new section:

"§ 1466. Mailing sexually provocative material

"(a) A sender who deposits in, or causes to be deposited in, the mails any sexually provocative material in violation of section 4011 of title 39, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than $50,000 or imprisoned not more than five years, or both.

"(b) The terms 'sender' and 'sexually provocative material' shall have the same meaning given them in section 4011 of title 39.

(b) The analysis of chapter 71 of title 18, United States Code, immediately preceding section 1461, is amended by adding at the end thereof the following new item:

"1466. Mailing sexually provocative material.".

S. 2381

A bill to prohibit the mailing of pandering advertisements to deceased persons

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b) of section 4009 of title 39, United States Code, is amended to read as follows:

"(b) Upon receipt of notice from an addressee or from a survivor of a deceased addressee, that mail matter, determined by such addressee or survivor in his sole discretion to be of the character described in subsection (a) of this section, has been delivered to the address of the addressee, the Postmaster General shall issue an order, if requested by the addressee or survivor, to the sender of the mail matter directing the sender and his agents or assigns to refrain from further mailings to the named addresses."

(b) Subsection (i) of such section is amended—

(1) by striking out the word "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) the term 'survivor' means a person who is the son or daughter, nineteen years of age or over, of a deceased person or who is the surviving spouse of a deceased person."

S. 3220

A bill to protect a person's right of privacy by providing for the designation of obscene or offensive mail matter by the sender and for the return of such matter at the expense of the sender

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 53 of title 39, United States Code, is amended by adding at the end thereof the following new section:

"§ 4061. Designation and return of obscene or offensive mail matter

"(a)(1) In order to protect a person's right of privacy, the envelope or cover of any mail matter that includes any obscene mail matter or any mail that may be obscene or offensive shall be marked by the sender with the words 'The Enclosed Material May Be Obscene or Offensive to the Addressee'.

"(2) For purposes of this subsection—

"(A) 'obscene mail matter' or 'mail matter that may be obscene or offensive' means any matter which—

"(i) is tangible, including any device, and used or adapted, or capable of being used or adapted, to depict or arouse (through readings, sound, touch, or observation) nudity, interest in nudity, sexual conduct, sexual excitement, or sadomasochistic abuse; or

"(ii) solicits or offers to send matter of the type described in clause (i) of this subparagraph.

"(B) 'nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, the female breast with less than a fully opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

"(C) 'sexual conduct' means acts of masturbation, homosexuality, sexual intercourse, physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks, or, in the case of a female, physical contact with her breast;

"(D) 'sexual excitement' means the condition of human male or female genitals in a state of sexual stimulation or arousal; and

"(E) 'sadomasochistic abuse' means flagellation or torture by or upon a person clad in undergarments, a mask, or bizzare costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

"(b)(1) In order further to protect a person's right of privacy, any mail matter received by an addressee, and determined by him in his sole discretion to be obscene, may be returned to the sender through the mails, without prepayment of postage by the addressee, by placing the words 'Obscene Mail Matter' in the upper right hand corner of the address area of the envelope or other cover used to return such matter.

"(2) The sender shall pay, for each piece of mail matter returned under this subsection as being obscene, postage at the rates of first-class mail plus an additional service charge.

"(3) The service charge, which shall not be less than 50 cents for each piece, shall be determined and adjusted at least once each year by the Postmaster General and shall approximate the cost incurred by the Department with respect to the delivery of such matter and the collection of postage and other expenses incurred. The service charge shall be in lieu of any other charges assessed under this title for unpaid or part paid mail.

"(c) A sender who fails to mark the envelope or other cover of mail matter as required by subsection (a) of this section, or who refuses to pay the postage or the service charge for any piece of mail matter, returned under subsection (b) of this section as obscene or offensive, shall be subject to a civil penalty of $5,000 for each piece of such matter which is not marked or refused. A civil action to collect any such civil penalty may be brought by the United States in the district court of the United States for any judicial district in which the sender resides, has his principal place of business, or is found, or in the district court for the judicial district to which mail matter, subsequently resulting in the civil action to collect the civil penalty, was sent. Process of any such court for any such district issued in any such action may be served in any other judicial district.

"(d) The Postmaster General may prescribe such rules and regulations as may be necessary to carry out the provisions of this section."

(b) The analysis of such chapter, immediately preceding section 4051, is amended by adding at the end thereof the following new item:

"4061. Designation and return of obscene or offensive mail matter."

Mr. MANSFIELD. Mr. President, I am encouraged by the remarks of the distinguished Senator from North Carolina. I hope it will not take to long before these pornography bills are considered. I think the literature coming through the mail now is getting worse and worse. It is creating a problem, not only among senior members of families, the parents, but also among children who open the mail. I think it is disgraceful.

I must say, in all candor, that I have not yet given up the idea of introducing my bill on pornography as an amendment to the pending measure. I think I should state that to the distinguished Senator from North Carolina because I think it has taken too long a time to face up to the situation. It is about time we put into effect some kind of law which would protect the innocent and unwilling recipients of this type of literature and impose appropriate punishment on those responsible for sending it out. I think it is about time to do what we can—as we have done in the case of cigarettes—with respect to putting a label and warnings on this literature so that the recipients can be informed ahead of time and the literature can be returned at the sender's expense. In that way, perhaps, we can mitigate a situation which is becoming dangerous to the morale and the morals of this Nation.

Mr. President, I suggest the absence of a quorum, and it may be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 3113—DISCHARGE OF COMMITTEE ON RULES AND ADMINISTRATION FROM FURTHER CONSIDERATION

Mr. JORDAN of North Carolina. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of Senate bill 3113, which was referred to it on November 4, 1969, and that the measure be re-referred to the Committee on Government Operations.

The bill would provide for a separate session of Congress each year for the consideration of appropriation bills, would establish the calendar year as the fiscal year of the Government, and would make certain amendments to the Budget and Accounting Act of 1921. The subjects encompassed by the proposal are mainly within the jurisdiction of the Committee on Government Operations. I have discussed the pending request with the chairman of that committee, Senator McCLELLAN, and he has no objection thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSCRIPT OF THE CLOSED SESSION

Mr. ELLENDER. Mr. President, on December 15, 1969, during the consideration of the Department of Defense Appropriation Act for fiscal year 1970, the Senate had a closed session at which time there was a lengthy discussion of our activities in Laos.

Pursuant to a unanimous-consent request of the distinguished majority leader (Mr. MANSFIELD), I was given the responsibility of reviewing the transcript of the proceedings during the closed session and deleting any classified material.

Mr. President, I have completed this task and I am today returning the transcript to the chief reporter of the Senate in order that the declassified transcript may be printed in the permanent CONGRESSIONAL RECORD in accordance with the unanimous-consent agreement.

In determining what material should be deleted, I have followed the usual procedures with respect to classified material, and the practices of this body with respect thereto. I have also had prepared a copy of the transcript with security deletions indicated, which will be returned to the Secretary of the Senate for the use of any Member who desires to refer to this transcript in the future.

ORGANIZED CRIME CONTROL ACT OF 1969

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 30.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. Calendar No. 612, S. 30, a bill relating to the control of organized crime in the United States.

The PRESIDING OFFICER. Is there objection to the present consideration 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 an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Organized Crime Control Act of 1969."

STATEMENT OF FINDINGS AND PURPOSE

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

TITLE I—SPECIAL GRAND JURY

SEC. 101. (a) Title 18, United States Code, is amended by adding immediately after chapter 215 the following new chapter:

"Chapter 216.—SPECIAL GRAND JURY

"Sec.
"3331. Summoning and term.
"3332. Powers and duties.
"3333. Reports.
"3334. General provisions.

"§ 3331. Summoning and term

"(a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General or any designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at least once in each period of eighteen months unless another special grand jury is then serving. The grand jury shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed. If, at the end of such term or any extension thereof, a grand jury determines by majority vote that its business has not been completed, the court shall enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

"(b) If a district court within any judicial circuit fails to extend the term of a special grand jury upon application made by the grand jury pursuant to subsection (a) of this section, or enters an order for the discharge of such grand jury before it determines that it has completed its business, the grand jury, upon the affirmative vote of a majority of its members, may apply to the chief judge of the circuit for an order for the continuance of the term of the grand jury. Upon the making of such an application by the grand jury, the term thereof shall continue until the entry upon such application by the chief judge of the circuit of an appropriate order in conformity with the provisions of subsection (a) of this section. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

"§ 3332. Powers and duties

"(a) Each special grand jury when impaneled shall elect by majority vote a foreman and a deputy foreman from among its members.

"(b) It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district which are brought to the attention of the grand jury by the court or by any person.

"(c) Whenever the special grand jury impaneled within any judicial district determines by majority vote that the volume of business of the grand jury exceeds the capacity of the grand jury to discharge its obligations, the grand jury may apply to the district court to impanel an additional special grand jury for that district. Upon any such application and a showing of need, such court shall order an additional grand jury to be impaneled. If the district court declines to hear such an application, or to grant such application after hearing, the grand jury may apply to the chief judge of the circuit for an order impaneling an additional special grand jury for that district. Such chief judge shall hear and determine such application at the earliest practicable time, and shall have jurisdiction to enter thereon such orders as may be required to provide for the impaneling of an additional grand jury within the judicial district for which such application was made.

"(d) Whenever the special grand jury determines by majority vote that any attorney or investigative officer or agent appearing on behalf of the United States before the grand jury for the presentation of evidence with respect to any matter has not performed or is not performing his duties diligently or effectively, the grand jury may transmit to the Attorney General in writing a statement of the reasons for such determination, together with a request for the designation by the Attorney General of another attorney or investigative officer or agent to appear before the grand jury for that purpose. Upon receipt of any such request, the Attorney General shall promptly cause inquiry to be made as to the merits of the allegations made by the grand jury and shall take whatever action he finds appropriate to provide for the United States' prompt and effective representation before such grand jury.

"§ 3333. Reports

"(a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon com-

pletion of its original term, or each extension thereof, submit to the court a report—

"(1) concerning noncriminal misconduct, malfeasance or misfeasance in office by a public officer or employee as the basis for a recommendation of removal or disciplinary action; or

"(2) stating that after investigation of a public officer or employee it finds no misconduct, malfeasance or misfeasance, or neglect in office by him, provided that such public officer or employee has requested the submission of such report; or

"(3) proposing recommendations for legislative, executive, or administrative action in the public interest based upon stated findings; or

"(4) regarding organized crime conditions in the district.

"(b) The court to which such report is submitted shall examine it and the minutes of the special grand jury and, except as otherwise provided in subsections (c) and (d) of this section, shall make an order accepting and filing such report as a public record only if the court is satisfied that it complies with the provisions of subsection (a) of this section and that—

"(1) the report is based upon facts revealed in the course of an investigation authorized by subsection (b) of section 3332 and is supported by the preponderance of the evidence; and

"(2) when the report is submitted pursuant to paragraph (1) of subsection (a) of this section, each person named therein was afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraphs (3) and (4) of subsection (a) of this section, it is not critical of an identified person.

"(c)(1) An order accepting a report pursuant to paragraph (1) of subsection (a) of this section and the report shall be sealed by the court and shall not be filed as a public record, subject to subpena or otherwise made public (i) until at least thirty-one days after a copy of the order and report are served upon each public officer or employee named therein and an answer has been filed or the time for filing an answer has expired, or (ii) if an appeal is taken, until all rights of review of the public officer or employee named therein have expired or terminated in an order accepting the report. No order accepting a report pursuant to paragraph (1) of subsection (a) of this section shall be entered until thirty days after the delivery of such report to the public officer or body pursuant to paragraph (3) of subsection (c) of this section. The court may issue such orders as it shall deem appropriate to prevent unauthorized publication of a report. Unauthorized publication may be punished as contempt of the court.

"(2) Such public officer or employee may file with the clerk a verified answer to such a report not later than twenty days after service of the order and report upon him. Upon a showing of good cause, the court may grant such public officer or employee an extension of time within which to file such answer and may authorize such limited publication of the report as may be necessary to prepare such answer. Such an answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in said report, and, except for those parts thereof which the court determines to have been inserted scandalously, prejudiciously, or unnecessarily, such answer shall become an appendix to the report.

"(3) Upon the expiration of the time set forth in paragraph (1) of subsection (c) of this section, the United States attorney shall deliver a true copy of such report, and the appendix, if any, for appropriate action to each public officer or body having jurisdiction, responsibility or authority over each public officer or employee named in the report.

"(d) Upon the submission of a report pursuant to subsection (a) of this section, if the court finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter, it shall order such report sealed and such report shall not be subject to subpena or public inspection during the pendency of such criminal matter, except upon order of the court.

"(e) Whenever the court to which a report is submitted pursuant to paragraph (1) of subsection (a) of this section is not satisfied that the report complies with the provisions of subsection (b) of this section, it may direct that additional testimony be taken before the same grand jury, or it shall make an order sealing such report, and it shall not be filed as a public record, subject to subpena or otherwise made public until the provisions of subsection (b) of this section are met. A special grand jury term may extend beyond thirty-six months in order that such additional testimony may be taken or the provisions of subsection (b) of this section may be met.

"(f) As used in this section, 'public officer or employee' means any officer or employee of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any political subdivision, or any department, agency, or instrumentality thereof.

"§ 3334. General provisions

"The provisions of chapter 215, title 18, United States Code, and the Federal Rules of Criminal procedure applicable to regular grand juries shall apply to special grand juries to the extent not inconsistent with sections 3331, 3332, or 3333 of this chapter.

(b) The table of contents of part II, title 18, United States Code, is amended by adding immediately after

"215. Grand Jury ..... 3321"

the following new item:

"215. Special Grand Jury ..... 3331."

SEC. 102. (a) Subsection (a), section 3500, chapter 223, title 18, United States Code, is amended by striking "to an agent of the Government" following "the defendant".

(b) Subsection (d), section 3500, chapter 223, title 18, United States Code, is amended by striking "paragraph" following "the court under" and inserting in lieu thereof "subsection".

(c) Paragraph (1), subsection (e), section 3500, chapter 223, title 18, United States Code, is amended by striking the "or" following the semicolon.

(d) Paragraph (2), subsection (e), section 3500, chapter 223, title 18, United States Code, is amended by striking "to an agent of the Government" after "said witness" and by striking the period at the end thereof and inserting in lieu thereof: "; or (3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.".

TITLE II—GENERAL IMMUNITY

SEC. 201. (a) Title 18, United States Code, is amended by adding immediately after part IV the following new part:

"PART V.—IMMUNITY OF WITNESSES

"Sec.
"6001. Definitions.
"6002. Immunity generally.
"6003. Court and grand jury proceedings.
"6004. Certain administrative proceedings.
"6005. Congressional proceedings.

"§ 6001. Definitions

"As used in this part—

"(1) 'agency of the United States' means any executive department (as defined in 80 Stat. 948; 80 Stat. 378 (5 U.S.C. sec. 101)), a military department (as defined in 80 Stat. 378 (5 U.S.C. sec. 102)), the Atomic Energy Commission, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Civil Aeronautics Board, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

"(2) 'other information' includes any book, paper, document, record, recording, or other material;

"(3) 'proceeding before an agency of the United States' means any proceeding before such an agency with respect to which it is authorized to issue subpenas and to take testimony or receive other information from witnesses under oath; and

"(4) 'court of the United States' means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court, and the Court of Military Appeals.

"§ 6002. Immunity generally

"Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

"(1) a court or grand jury of the United States,

"(2) an agency of the United States, or

"(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. No such testimony or other information so compelled under the order or evidence or other information which is obtained by the exploitation of such testimony may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

"§ 6003. Court and grand jury proceedings

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States, a grand jury of the United States or the Department of Justice, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this chapter.

"(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

"(1) the testimony or other information

from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

"§ 6004. Certain administrative proceedings

"(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States other tha nthe Department of Justice, the agency may issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this chapter.

"(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

The agency may issue such an order ten days after the day on which it served the Attorney General with notice of its intention to issue the order or upon approval of the Attorney General.

"§ 6005. Congressional proceedings.

"(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this chapter.

"(b) Before issuing an order under subsection (a) of this section, a United States district court shall find that—

"(1) in the case of a proceeding before either House of Congress, the request for such an order has been approved by an affirmative vote of a majority of the Members present of that House;

"(2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and

"(3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.

"(c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify."

(b) The table of parts for title 18, United States Code, is amended by adding at the end thereof the following new item:

"V. Immunity of Witness..... 6001."

SEC. 202. The third sentence of paragraph (b) of section 6 of the Commodity Exchange Act (69 Stat. 160; 7 U.S.C. 15) is amended by striking "49 U.S.C. 12, 46, 47, 48, relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses" and by inserting in lieu thereof the following: "(49 U.S.C. § 12), relating to the attendance and testimony of witnesses and the production of documentary evidence,".

SEC. 203. Subsection (f) of section 17 of the United States Grain Standards Act (82 Stat. 768; 7 U.S.C. § 87f (f)), is repealed.

SEC. 204. The second sentence of section 5 of the Act entitled "An Act to regulate the marketing of economic poisons and devices, and for other purposes", approved June 25, 1947 (61 Stat. 168; 7 U.S.C. § 135c), is amended by inserting after "section", the following language: ", or any evidence which is obtained by the exploitation of information,".

SEC. 205. Subsection (f) of section 13 of the Perishable Agricultural Commodities Act, 1930 (46 Stat. 536; 7 U.S.C. § 499m(f)), is repealed.

SEC. 206. (a) Section 16 of the Cotton Research and Promotion Act (80 Stat. 285; 7 U.S.C. § 2115), is amended by striking "(a)" and by striking subsection (b).

(b) The section heading for such section 16 is amended by striking ": Self-Incrimination".

SEC. 207. Clause (10) of subsection (a) of section 7 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898 (52 Stat. 847; 11 U.S.C. § 25(a)(10)), is amended by inserting after the first use of the term "testimony" the following language: ", or any evidence which is obtained by the exploitation of such testimony,".

SEC. 208. The fourth sentence of subsection (d) of section 10 of the Federal Deposit Insurance Act (64 Stat. 882; 12 U.S.C. § 1820 (d)), is repealed.

SEC. 209. The seventh paragraph under the center heading "DEPARTMENT OF JUSTICE" in the first section of the Act of February 25, 1903 (32 Stat. 904; 15 U.S.C. § 32), is amended by striking ": Provided, That" and all that follows in that paragraph and inserting in lieu thereof a period.

SEC. 210. The Act of June 30, 1906 (34 Stat. 798; 15 U.S.C. § 33), is repealed.

SEC. 211. The seventh paragraph of section 9 of the Federal Trade Commission Act (38 Stat. 722; 15 U.S.C. § 49), is repealed.

SEC. 212. Subsection (d) of section 21 of the Securities Exchange Act of 1934 (48 Stat. 899; 15 U.S.C. § 78u(d)), is repealed.

SEC. 213. Subsection (c) of section 22 of the Securities Act of 1933 (48 Stat. 86; 15 U.S.C. § 77v(c)), is repealed.

SEC. 214. Subsection (e) of section 18 of the Public Utility Holding Company Act of 1935 (49 Stat. 831; 15 U.S.C. § 79r(e)), is repealed.

SEC. 215. Subsection (d) of section 42 of the Investment Company Act of 1940 (54 Stat. 842; 15 U.S.C. § 80a-41(d)), is repealed.

SEC. 216. Subsection (d) of section 209 of the Investment Advisers Act of 1940 (54 Stat. 853; 15 U.S.C. § 80b-9(d)), is repealed.

SEC. 217. Subsection (c) of section 15 of the China Trade Act, 1922 (42 Stat. 953; 15 U.S.C. § 155(c)), is repealed.

SEC. 218. Subsection (h) of section 14 of the Natural Gas Act (52 Stat. 828; 15 U.S.C. § 717m(h)), is repealed.

SEC. 219. The first proviso of section 12 of the Act entitled "An Act to regulate the interstate distribution and sale of packages of hazardous substances intended or suitable for household use," approved July 12, 1960 (74 Stat. 379; 15 U.S.C. § 1271), is amended by inserting after "section" the following language: ", or any evidence which is obtained by the exploitation of such information,".

SEC. 220. Subsection (e) of section 1415 of the Interstate Land Sales Full Disclosure Act (82 Stat. 596; 15 U.S.C. § 1714(e)), is repealed.

SEC. 21. Subsection (g) of section 307 of the Federal Power Act (49 Stat. 856; 16 U.S.C. § 825f(g)), is repealed.

SEC. 222. Subsection (b) of section 835 of title 18, United States Code, is amended by striking the third sentence thereof.

SEC. 223. (a) Section 895 of title 18 United States Code, is repealed.

(b) The table of sections of chapter 42 of such title is amended by striking the item relating to section 895.

SEC. 224. (a) Section 1406 of title 18, United States Code, is repealed.

(b) The table of sections of chapter 68 of such title is amended by striking the item relating to section 1406.

SEC. 225. Section 1954 of title 18, United States Code, is amended by striking "(a) Whoever" and inserting in lieu thereof "Whoever" and by striking subsection (b) thereof.

SEC. 226. The second sentence of subsection (b), section 2424, ttile 18, United States Code is amended by striking "but no person" and all that follows in that subsection and inserting in lieu thereof: "but no information contained in the statement or any evidence which is obtained by the exploitation of such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section."

SEC. 227. (a) Section 2514 of title 18, United States Code, is repealed effective four years after the effective date of this Act.

(b) The table of sections of chapter 119 of such title is amended by striking the item relating to section 2514.

SEC. 228. (a) Section 3486 of title 18, United States Code is repealed.

(b) The table of sections of chapter 223 of such title is amended by striking the item relating to section 3486.

SEC. 229. Subsection (e) of section 333 of the Tariff Act of 1930 (46 Stat. 699; 19 U.S.C. § 1333(e)), is amended by striking ": Provided, That" and all that follows in that subsection and inserting in lieu thereof a period.

SEC. 230. The first proviso of section 703 of the Federal Food, Drug and Cosmetic Act, approved June 25, 1938 (52 Stat. 1057; 21 U.S.C. § 373), is amended by inserting after "section" the following language: ", or any evidence which is obtained by the exploitation of such evidence,".

SEC. 231. (a) Section 4874 of the Internal Revenue Code of 1954 is repealed.

(b) The table of sections of part III of subchapter (D) of chapter 39 of such Code is amended by striking the item relating to section 4874.

SEC. 232. (a) Section 7493 of the Internal Revenue Code of 1954 is repealed.

(b) The table of sections of part III of subchapter (E) of chapter 76 of such Code is amended by striking the item relating to section 7493.

SEC. 233. (a) Subchapter (E) of chapter 75 of the Internal Revenue Code of 1954 is repealed.

(b) The table of subchapters for chapter 75 of the Internal Revenue Code of 1954 is amended by striking the item

"Subchapter E. . . . Immunity.'

SEC. 234. Paragraph (3) of section 11 of the Labor Management Relations Act, 1947 (49 Stat. 455; 29 U.S.C. § 161(3)), is repealed.

SEC. 235. The third sentence of section 4 of the Act entitled "An Act to provide that tolls on certain bridges over navigable waters of the United States shall be just and reasonable and for other purposes", approved August 21, 1935 (49 Stat. 671; 33 U.S.C. § 506), is repealed.

SEC. 236. Subsection (f) of section 205 of the Social Security Act (42 U.S.C. § 405(f)) is repealed.

SEC. 237. Paragraph c of section 161 of the Atomic Energy Act of 1954 (68 Stat. 948; 42 U.S.C. § 2201(c)), is amended by striking the third sentence thereof.

SEC. 238. The last sentence of the first

paragraph of subparagraph (h) of the paragraph designated "Third" of section 7 of the Railway Labor Act (44 Stat. 582; 45 U.S.C. § 157), is repealed.

SEC. 239. Subsection (c) of section 12 of the Railroad Unemployment Insurance Act (52 Stat. 1107; 45 U.S.C. § 362(c), is repealed.

SEC. 240. Section 28 of the Shipping Act of 1916 (39 Stat. 737; 46 U.S.C. § 827), is repealed.

SEC. 241. Subsection (c) of section 214 of the Merchant Marine Act, 1936 (49 Stat. 1991; 46 U.S.C. § 1124(c)), is repealed.

SEC. 242. Subsection (i) of section 409 of the Communications Act of 1934 (48 Stat. 1096; 47 U.S.C. § 409(i)), is repealed.

SEC. 243. (a) The second sentence of section 9 of the Interstate Commerce Act (24 Stat. 382; 49 U.S.C. § 9), is amended by striking "; the claim" and all that follows in that sentence and inserting in lieu thereof a period.

(b) Subsection (a) of section 316 of the Interstate Commerce Act (54 Stat. 946; 49 U.S.C. § 916(a)) is amended by striking the comma following "part I" and by striking ", and the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

(c) Subsection (a) of section 417 of the Interstate Commerce Act (49 U.S.C. § 1017 (a)), is amended by striking the comma after "such provisions" and by striking ", and of the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),".

SEC. 244. The third sentence of section 3 of the Act entitled "An Act to further regulate Commerce with foreign nations and among the States", approved February 19, 1903 (32 Stat. 848; 49 U.S.C. § 43), is amended by striking "; the claim" and all that follows in that sentence down through and including "*Provided*, That the provisions" and inserting in lieu thereof ". The provisions".

SEC. 245. The first paragraph of the Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. § 46), is repealed.

SEC. 246. Subsection (i) of section 1004 of the Federal Aviation Act of 1958 (72 Stat. 792; 49 U.S.C. § 1484(i)), is repealed.

SEC. 247. The ninth sentence of subsection (c) of section 13 of the Internal Security Act of 1950 (81 Stat. 798; 50 U.S.C. § 792(c)), is repealed.

SEC. 248. Section 1302 of the Second War Powers Act of 1942 (56 Stat. 185; 50 U.S.C. App. § 643a), is amended by striking the fourth sentence thereof.

SEC. 249. Paragraph (4) of subsection (a) of section 2 of the Act entitled "An Act to expedite national defense, and for other purposes", approved June 28, 1940 (54 Stat. 676; 50 U.S.C. App. § 1152(a)(4)), is amended by striking the fourth sentence thereof.

SEC. 250. Subsection (d) of section 6 of the Export Control Act of 1949 (63 Stat. 8; 50 U.S.C. App. § 2026 (b)) is repealed.

SEC. 251. Subsection (b) of section 705 of the Act of September 8, 1950, to amend the Tariff Act of 1930 (64 Stat. 816; 50 U.S.C. § 2155(b)), is repealed.

SEC. 252. In addition to the provisions of law specifically amended or specifically repealed by this title, any other provision of law inconsistent with the provisions of part V of title 18, United States Code (added by title II of this Act), is to that extent amended or repealed.

TITLE III—RECALCITRANT WITNESSES

SEC. 301. (a) Chapter 119, title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1826. Recalcitrant witnesses

"(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of the court proceeding or of the term, including extensions, of the grand jury before which such refusal to comply with the court order occurred.

"(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement, unless there is substantial possibility of reversal. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than 30 days from the filing of such appeal."

(b) The analysis of chapter 119, title 28, United States Code, is amended by adding at the end thereof the following new item:

"1826. Recalcitrant witnesses.".

SEC. 302. (a) The first paragraph of section 1073, chapter 49, title 18, United States Code, is amended by inserting "or (3) to avoid contempt proceedings for alleged disobedience of any lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such State to conduct investigations of alleged criminal activities," immediately after "is charged,".

(b) The second paragraph of section 1073, chapter 49, title 18, United States Code, is amended by inserting immediately after "held in custody or confinement" a comma and adding "or in which a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed,".

TITLE IV—FALSE DECLARATIONS

SEC. 401. (a) Chapter 79, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1623. False declarations before grand jury or court

"(a) Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any materially false declaration or makes or uses any other information, including any book, paper, document, record, recording or other material, knowing the same to contain any materially false declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"(b) This section is applicable whether the conduct occurred within or without the United States.

"(c) An indictment or information for violation of this section alleging that the defendant under oath has made contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury of the United States, need not specify which declaration is false. In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made manifestly contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. Where the contradictory declarations are made in the same continuous court or grand jury proceeding, an admission by a person in that same continuous court or grand jury proceeding of the falsity of his contradictory declaration shall bar prosecution under this section if, at the time the admission is made, the false declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

"(d) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence."

(b) The analysis of chapter 79, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1623. False declarations before grand jury or court."

TITLE V—PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

SEC. 501. The Attorney General of the United States is authorized to provide for the security of Government witnesses, potential Government witnesses, and the families of Government witnesses and potential witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity.

SEC. 502. The Attorney General of the United States is authorized to rent, purchase, or construct protected housing facilities and to otherwise offer to provide for the health, safety, and welfare of witnesses and persons intended to be called as Government witnesses, and the families of witnesses and persons intended to be called as Government witnesses in legal proceedings instituted against any person alleged to have participated in an organized criminal activity whenever, in his judgment, testimony from, or a willingness to testify by, such a witness would place his life or person, or the life or person of a member of his family or household, in jeopardy. Any person availing himself of an offer by the Attorney General to use such facilities may continue to use such facilities for as long as the Attorney General determines the jeopardy to his life or person continues.

SEC. 503. As used in this title, 'Government' means the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof. The offer of facilities to witnesses may be conditioned by the Attorney General upon reimbursement in whole or in part to the United States by any State or any political subdivision, or any department, agency, or instrumentality thereof of the cost of maintaining and protecting such witnesses.

SEC. 504. There is hereby authorized to be appropriated from time to time such funds as are necessary to carry out the provisions of this title.

TITLE VI—DEPOSITIONS

SEC. 601. (a) Chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3503. Depositions to preserve testimony

"(a) Whenever due to exceptional circumstances it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved, the court at any time after the filing of an indictment or information may upon motion of such party and notice to the parties order that the testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

"(b) The party at whose instance a deposition is to be taken shall give to every party

reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination, and shall produce him at the examination and keep him in the presence of the witness during the examination. A defendant not in custody shall have the right to be present at the examination, but his failure, absent good cause shown, to appear after notice and tender of expenses shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

"(c) If a defendant is without counsel, the court shall advise him of his rights and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel of his own choice. If it appears that a defendant cannot bear the expense of the taking of the deposition, the court may direct that the expenses of travel and subsistence of the defendant and his attorney for attendance at the examination shall be paid by the Government. In such event the marshal shall make payment accordingly.

"(d) A deposition shall be taken and filed in the manner provided in civil actions. On request or waiver by the defendant the court may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. Such request shall constitute a waiver of any objection to the taking and use of the deposition based upon its being so taken.

"(e) The Government shall make available to the defendant for his examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the Government and which the Government would be required to make available to the defendant if the witness were testifying at the trial.

"(f) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions."

(b) The analysis of chapter 223, title 18, Unted States Code, is amended by adding at the end thereof the following new item:

"3503. Depositions to preserve testimony."

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

PART A—SPECIAL FINDINGS

SEC. 701. The Congress finds that (1) hearing and reviewing claims that evidence offered in proceedings was obtained by the exploitation of allegedly unlawful acts and is therefore inadmissible in evidence are major causes of undue expense and delay in the administration of justice and distract effort, time, and emphasis of Government officials and the public from fundamental issues; (2) present rules and practices of disclosure incident to hearing and reviewing such claims can and will unduly permit parties to obtain much information unrelated to such claims and otherwise privileged, inhibit communication by Government informants, endanger the lives and safety of such informants, Government agents and others, cause unjustified harm to reputations of third persons, compromise national security and other criminal and civil investigations, interfere with prosecutions and civil actions, impair Federal-State cooperation in law enforcement and endanger the security of the United States; (3) when such claims concern evidence of events occurring years after the allegedly unlawful acts, those consequences of litigation and disclosure are aggravated and the claims often cannot reliably be determined; and (4) when the allegedly unlawful act has occurred more than five years prior to the event in question, there is virtually no likelihood that the evidence offered to prove the event has been obtained by the exploitation of that allegedly unlawful act.

PART B—LITIGATION CONCERNING SOURCES OF EVIDENCE

SEC. 702. (a) Chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3504. Litigation concerning sources of evidence

"(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States, a State or a political subdivision thereof—

"(1) upon a claim, by a party aggrieved, that evidence is inadmissible because it is the primary product of an unlawful act or of lawful compulsion and grant of immunity, or because it was obtained by the exploitation of an unlawful act or of evidence given under lawful compulsion and grant of immunity, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act or compulsion;

"(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act or of lawful compulsion and grant of immunity, or because it was obtained by the exploitation of an unlawful act or of evidence given under lawful compulsion and grant of immunity, shall not be required unless such information may be relevant to a pending claim of such inadmissibility and such disclosure is in the interest of justice; and

"(3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act or of evidence given under lawful compulsion and grant of immunity, if such event occurred more than five years after such allegedly unlawful act or compulsion.

"(b) As used in this section—

"(1) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States; and

"(2) 'unlawful act' means any act in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto."

(b) The analysis of chapter 223, title 18, United States Code, is amended by adding at the end thereof the following new item:

"3504. Litigation concerning sources of evidence."

SEC. 703. This title shall apply to all proceedings, regardless of when commenced, occurring after the date of its enactment. Paragraph (3) of subsection (a) of section 3504, chapter 223, title 18, United States Code, shall not apply to any proceeding in which all information to be relied upon to establish inadmissibility was possessed by the party making such claim and adduced in such proceeding prior to such enactment.

TITLE VIII—SYNDICATED GAMBLING

PART A—SPECIAL FINDINGS

SEC. 801. The Congress finds that (1) illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof; (2) illegal gambling is dependent upon facilities of interstate commerce for such purposes as obtaining odds, making and accepting bets, and laying off bets; (3) money derived from or used in illegal gambling moves in interstate commerce or is handled through the facilities thereof; (4) paraphernalia for use in illegal gambling moves in interstate commerce; and (5) illegal gambling enterprises are facilitated by the corruption and bribery of State and local officials or employees responsible for the execution or enforcement of criminal laws.

PART B—OBSTRUCTION OF STATE OR LOCAL LAW ENFORCEMENT

SEC. 802. (a) Chapter 73, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1511. Obstruction of State or local law enforcement

"(a) It shall be unlawful for two or more persons to participate in a scheme to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business, if—

"(1) one or more of such persons does any act to effect the object of such a scheme;

"(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, who is responsible for the enforcement of criminal laws of such State or political subdivision; and

"(3) one or more of such persons participates in an illegal gambling business.

"(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

"(i) is a violation of the law of a State or political subdivision thereof;

"(ii) involves five or more persons who participate in the gambling activity; and

"(iii) has been or remains in operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

"(2) 'gambling includes pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

"(d) Whoever violates this section shall be punished by a fine of not more than $20,000 or imprisonment for not more than five years, or both."

(b) The analysis of chapter 73, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1511. Obstruction of State or local law enforcement."

PART C—ILLEGAL GAMBLING BUSINESS

SEC. 803. (a) Chapter 95, title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1955. Prohibition of illegal gambling businesses

"(a) Whoever participates in an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

"(i) is a violation of the law of a State or political subdivision thereof;

"(ii) involves five or more persons who participate in the gambling activity; and

"(iii) has been or remains in operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

"(2) 'gambling' includes pool-selling, bookmaking, maintaining slot machines, roulette

wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

"(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) For the purposes of this section, if it is found that a gambling business has five or more persons who participate in such business and such business operates for two or more successive days, the probability shall have been established that such business receives gross revenue in excess of $2,000 in any single day.

"(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture procedures, and condemnation of vesesls, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

"(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity."

(b) The analysis of chapter 95, title 18, United States Code, is amended by adding at the end thereof the following new item:

"1955. Prohibition of illegal gambling businesses."

PART D—COMMISSION TO REVIEW NATIONAL POLICY TOWARD GAMBLING

ESTABLISHMENT

SEC. 804. (a) There is hereby established two years after the effective date of this Act a Commission on the Review of the National Policy Toward Gambling.

(b) The Commission shall be composed of fifteen members appointed as follows:

(1) four appointed by the President of the Senate from Members of the Senate, of whom two shall be members of the majority party, and two shall be members of the minority party;

(2) four appointed by the Speaker of the House of Representatives from Members of the House of Representatives, of whom two shall be members of the majority party, and two shall be members of the minority party; and

(3) seven appointed by the President of the United States from persons specially qualified by training and experience to perform the duties of the Commission, none of whom shall be officers of the executive branch of the Government.

(c) The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

(d) Eight members of the Commission shall constitute a quorum.

DUTIES

SEC. 805. (a) It shall be the duty of the Commission to conduct a comprehensive legal and factual study of gambling in the United States and existing Federal, State, and local policy and practices with respect to legal prohibition and taxation of gambling activities and to formulate and propose such changes in those policies and practices as the Commission may deem appropriate. In such study and review the Commission shall—

(1) review the effectiveness of existing practices in law enforcement, judicial administration, and corrections in the United States and in foreign legal jurisdictions for the enforcement of the prohibition and taxation of gambling activities and consider possible alternatives to such practices; and

(2) prepare a study of existing statutes of the United States that prohibit and tax gambling activities, and such a codification, revision or repeal thereof as the Commission shall determine to be required to carry into effect such policy and practice changes as it may deem to be necessary or desirable.

(b) The Commission shall make such interim reports as it deems advisable. It shall make a final report of its findings and recommendations to the President of the United States and to the Congress within the four-year period following the establishment of the Commission.

(c) Sixty days after the submission of its final report, the Commission shall cease to exist.

POWERS

SEC. 806. (a) The Commission or any duly authorized subcommittee or member thereof may, for the purpose of carrying out the provisions of this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers and documents as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such subcommittee or member. Subpenas may be issued under the signature of the Chairman or any duly designated member of the Commission, and may be served by any person designated by the Chairman or such member.

(b) In the case of contumacy or refusal to obey a subpena issued under subsection (a) by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

(c) The Commission shall be "an agency of the United States" under subsection (1), section 6001, title 18, United States Code for the purpose of granting immunity to witnesses.

(d) Each department, agency, and instrumentality of the executive branch of the Government including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to call upon the departments, agencies, and other offices of the several States to furnish, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

COMPENSATION AND EXEMPTION OF MEMBERS

SEC. 807. (a) A member of the Commission who is a Member of Congress or a member of the Federal judiciary shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(b) A member of the Commission who is not a Member of Congress or a member of the Federal Judiciary shall receive $100 per diem when engaged in the actual performance of duties vested in the Commission plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

STAFF

SEC. 808. (a) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

(b) In making appointments pursuant to this subsection, the Chairman shall include among his appointments individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

EXPENSES

SEC. 809. There are hereby authorized to be appropriated to the Commission such sums as may be necessary to carry this title into effect.

PART E—GENERAL PROVISIONS

SEC. 810. Paragraph (c), subsection (1), section 2516, title 18, United States Code, is amended by adding "section 1511 (obstruction of State or local law enforcement)" after "section 1510 (obstruction of criminal investigations)," and by adding "section 1955 (prohibition of business enterprises of gambling)," after "section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plans),".

SEC. 811. No provision of this title indicates an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of a State or possession, or a political subdivision of a State or possession, on the same subject matter, or to relieve any person of any obligation imposed by any law of any State or possession, or a political subdivision of a State or possession.

TITLE IX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

SEC. 901. (a) Title 18, United States Code, is amended by adding immediately after chapter 95 thereof the following new chapter:

"Chapter 96.—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

"Sec.
"1961. Definitions.
"1962. Prohibited racketeering activities.
"1963. Criminal penalties.
"1964. Civil remedies.
"1965. Venue and process.
"1966. Expedition of actions.

"1967. Evidence.
"1968. Civil investigative demand.

"§ 1961. Definitions

"As used in this chapter—

"(1) 'racketeering activity' means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (b) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment), section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501 (c) (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the manufacture, importation, receiving, concealment, buying, selling or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

"(2) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

"(3) 'person' includes any individual or entity capable of holding a legal or beneficial interest in property;

"(4) 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

"(5) 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter;

"(6) 'unlawful debt' means a debt (A) which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to gambling or usury, and (B) which was incurred in connection with the business of gambling or the business of lending money or a thing of value at a usurious rate, where the usurious rate is at least twice the permitted rate;

"(7) 'racketeering investigator' means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

"(8) 'racketeering investigation' means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

"(9) 'documentary material' includes any book, paper, document, record, recording, or other material; and

"(10) 'Attorney General' includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

"§ 1962. Prohibited activities

"(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

"(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

"(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

"(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

"(e) A violation of this section shall be deemed to continue so long as the person who committed the violation continues to receive any benefit from the violation.

"§ 1963. Criminal penalties

"(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

"(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

"§ 1964. Civil remedies

"(a) The district courts of the United States shall have jurisdicton to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

"(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

"(c) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

"§ 1965. Venue and process

"(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

"(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

"(c) In any civil or criminal action or proproceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, sub-

penas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

"(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

§ 1966. Expedition of actions

"In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine such action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

"§ 1967. Evidence

"In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings shall be open to the public, and no order closing any such proceeding shall be made or enforced.

"§ 1968. Civil investigative demand

"(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary material relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceedings thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such, person to produce such material for examination.

"(b) Each such demand shall—

"(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

"(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

"(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assemble and made available for inspection and copying or reproduction; and

"(4) identify the custodian to whom such material shall be made available.

"(c) No such demand shall—

"(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

"(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

"(d) Service of any such demand or any petition filed under this section may be made upon a person by—

"(1) delivering a duly executed copy thereof any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

"(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

"(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

"(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

"(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

"(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

"(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

"(5) Upon the completion of—

"(i) the racketeering investigation for which any documentary material was produced under this chapter, and

"(ii) any case or proceeding arising from such investigation,

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

"(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

"(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

"(i) designate another racketeering investigator to serve as custodian thereof, and

"(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

"(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

"(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

"(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

"(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented,

and to enter such order or orders as may be required to carry into effect the provisions of this section."

(b) The table of contents of part I, title 18, United States Code, is amended by adding immediately after

"95. Racketeering ..... 1951"

the following new item:

"96. Racketeer Influenced and Corrupt Organizations ..... 1961"

SEC. 902. (a) Paragraph (c), subsection (1), section 2516, title 18, United States Code, is amended by inserting at the end thereof between the parenthesis and the semicolon ", section 1963 (violations with respect to racketeer influenced and corrupt organizations)".

(b) Subsection (3), section 2517, title 18, United States Code, is amended by striking "criminal proceedings in any court of the United States or of any State or in any Federal or State grand jury proceeding" and inserting in lieu thereof "proceeding held under the authority of the United States or of any State or political subdivision thereof".

SEC. 903. The third paragraph, section 1505, title 18, United States Code, is amended by inserting "or section 1968 of this title" after "Act" and before "willfully".

SEC. 904 (a) The provisions of this title shall be liberally construed to effectuate its remedial purposes.

(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person.

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

SEC. 1001. (a) Chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3575. Increased sentence for dangerous special offenders

"(a) Whenever an attorney charged with the prosecution of a defendant in a court of the United States for an alleged felony committed when the defendant was over the age of twenty-one years has reason to believe that the defendant is a dangerous special offender such attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special offender who upon conviction for such felony is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special offender. In no case shall the fact that the defendant is alleged to be a dangerous special offender be an issue upon the trial of such felony or in any manner be disclosed to the jury.

"(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, the court shall, before sentence is imposed, hold a hearing before the court alone. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. In connection with the hearing, the defendant and the United States shall be informed of the substance of such parts of the presentence report as the court intends to rely upon, except where there are placed in the record compelling reasons for withholding particular information, and shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for a term not to exceed thirty years. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

"(c) This section shall not prevent the imposition and execution of a sentence of death or of imprisonment for life or for a term exceeding thirty years upon any person convicted of an offense so punishable.

"(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special offender to less than any mandatory minimum penalty prescribed by law for such felony.

"(e) A defendant is a special offender for purposes of this section if—

"(1) on two or more previous occasions the defendant has been convicted in a court of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, and for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony; or

"(2) the defendant committed such felony as part of a pattern of conduct which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

"(3) such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct.

A conviction shown to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In determining under paragraph (1) of this subsection whether the defendant has been convicted on two more previous occasions, conviction for offenses charged in separate counts of a single charge or pleading, or in separate charges or pleadings tried in a single trial, shall be deemed to be conviction on a single occasion. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such conduct.

"(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felony is required for the protection of the public from further criminal conduct by the defendant.

"(g) The time for taking an appeal from a conviction for which sentence is imposed after proceedings under this section shall be measured from imposition of the original sentence.

"§ 3576. Review of sentence

"With respect to any sentence imposed on the defendant after proceedings under section 3575, a review may be taken by the defendant or the United States or both to a court of appeals. Any review by the United States shall be taken at least five days before expiration of the time for taking a review or appeal by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review by the United States after the time has expired. A court extending the time for taking a review by the United States shall extend the time for taking a review or appeal by the defendant for the same period. The court of appeals may, after considering the record, including the presentence report, information submitted during the trial of such felony and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be increased or otherwise changed to the disadvantage of the defendant only on review taken by the United States and after hearing. Any withdrawal of review taken by the United States shall foreclose change to the disadvantage but not change to the advantage of the defendant. Any review taken by the United States may be dismissed on a showing of abuse of the right of the United States to take such review.

"§ 3577. Use of information for sentencing

"No limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

"§ 3578. Conviction records

"(a) There is established within the Federal Bureau of Investigation of the Department of Justice a central repository for written judgments of conviction.

"(b) Upon the conviction of a defendant in a court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of one year, the court shall cause to be affixed to a copy of the written judgment of conviction the fingerprints of the defendant together with certification by the court that the copy is a true copy of the written judgment of conviction and that the fingerprints are those of the defendant, and shall cause the copy to be forwarded to the central repository.

"(c) Copies maintained in the central repository shall not be public records. Attested copies thereof—

"(1) may be furnished for law enforcement purposes on request of a court or law enforcement or corrections officer of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

"(2) may be furnished for law enforcement purposes on request of a court or law

enforcement or corrections officer of a State, any political subdivision, or any department, agency or instrumentality thereof, if a statute of such State requires that, upon the conviction of a defendant in a court of the State or any political subdivision thereof for an offense punishable in such court by death or imprisonment in excess of one year, the court cause to be affixed to a copy of the written judgment of conviction the fingerprints of the defendant together with certification by the court that the copy is a true copy of the written judgment of conviction and that the fingerprints are those of the defendant, and cause the copy to be forwarded to the central repository; and

"(3) shall be admissible in any court of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof."

(b) The analysis of chapter 227, title 18, United States Code, is amended by adding at the end thereof the following new items:

"3575. Increased sentence for dangerous special offenders.
"3576. Review of sentence.
"3577. Use of information for sentencing.
"3578. Conviction records."

SEC. 1002. Section 3148, chapter 207, title 18, United States Code, is amended by adding "or sentence review under section 3576 of this title" immediately after "sentence".

TITLE XI—GENERAL PROVISIONS

SEC. 1101. If the provisions of any part of this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

PRIVILEGE OF THE FLOOR

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the following members of the staff of the Subcommittee on Criminal Laws and Procedures be allowed on the floor of the Senate for the duration of the consideration of S. 30: G. Robert Blakey, Emon A. Mahoney, and Russell M. Coombs.

Mr. HRUSKA. Mr. President, may we add the names of Wallace Johnson and Dan Wherry on behalf of the minority members of the Senate?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the committee amendment to S. 30 in the nature of a substitute be agreed to, and that the bill as thus amended be considered as original text for the purpose of amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. McCLELLAN. Mr. President, this is an important measure. It is quite lengthy. It has 11 separate titles, 10 of which are substantive. The measure deals with several vital aspects of our law enforcement machinery, and it is designed to strengthen and improve the evidence-gathering process in the field of organized crime and racketeering.

In view of what I conceive to be the importance of this measure, I shall discuss these various titles somewhat comprehensively in my remarks this afternoon. I do so because it is my hope—and I trust this is not a vain hope—that this measure will, on final passage, be unanimously approved by the Seante. I say this because this bill has been processed with most meticulous care, with consultations with most competent sources. I think I know the Members of this body—and, I believe, every Member of the Senate—want to enact whatever legislation is necessary to strengthen the arm of the law and law enforcement in this country, so that society may be protected, the impositions of organized criminals will not be placed on our people, and the streets of our communities may at least be made comparatively safe again someday.

At the outset, I ask unanimous consent that I may have printed in the RECORD at this point a brief synopsis of the bill.

There being no objection, the synopsis was ordered to be printed in the RECORD, as follows:

SYNOPSIS OF S. 30

TITLE I—GRAND JURY

Sets up a special grand jury to sit for extended terms, insulated from improper judicial influence and authorized, subject to careful safeguards, to issue grand jury reports.

TITLE II—IMMUNITY

Authorizes the grant of legislative, administrative and judicial immunity to obtain testimony over objections of self-incrimination.

TITLE III—RECALCITRANT WITNESSES

Provides for civil contempt proceedings to deal with recalcitrant witnesses.

TITLE IV—FALSE DECLARATIONS

Eliminates outmoded evidentiary and pleading restrictions (two-witness, direct evidence and contradictory statements rules) in prosecutions of those who give false testimony in grand jury or court proceedings.

TITLE V—WITNESS FACILITIES

Extends to organized crime witnesses and families physical facilities in which they may be protected.

TITLE VI—DEPOSITIONS

Makes possible, subject to constitutional protections, depositions from witnesses in danger of reprisal by organized crime.

TITLE VII—REGULATION OF LITIGATION CONCERNING SOURCES OF EVIDENCE

Sets aside Supreme Court's decision in *Alderman* v. *United States*, giving criminal defendants direct access to government files and establishes instead a court review procedure. Provides also for "statute of limitations" on suits alleging unlawful governmental conduct.

TITLE VIII—SYNDICATED GAMBLING

Makes bribery in connection with illegal gambling business affecting interstate commerce unlawful. In addition, prohibits the illegal gambling business affecting interstate commerce itself.

TITLE IX—CORRUPT ORGANIZATIONS

Prohibits infiltration of legitimate organizations by racketeers or proceeds of racketeering activities where interstate commerce is affected. Authorizes civil remedies comparable to anti-trust to prevent violation of law by divestiture dissolution or reorganization.

TITLE X—SPECIAL OFFENDER SENTENCING

Provides for imposition of increased punishment (up to 30 years) for convicted "habitual" criminals, "professional" criminals and "organized crime" leaders.

Mr. McCLELLAN. Mr. President, more than 3,000 years ago, an Egyptian king caused to be made a survey of the resources of his kingdom, in which he recorded with pride his achievements. One passage in the survey discloses to us his ideas of the fundamentals by which the soundness of a system of criminal justice might be tested:

> I made the land safe so that even a lone woman could go on her way freely and none would molest her.
> I rescued the humble from their oppressors.
> I made every man safe in his home.
> I preserved the lives of those who sought my court of justice.
> The people were well content under my rule. (Quoted in *The Illinois Crime Survey* at 5 (1929).)

Just 8 months ago, the President of this great Nation forwarded to the Congress his "Message on Organized Crime," in which he tragically observed:

> Today, organized crime has deeply penetrated broad segments of American life. In our great cities, it is operating prosperous criminal cartels. In our suburban areas and smaller cities, it is expanding its corrosive influence. Its economic base is principally derived from its virtual monopoly of illegal gambling, the numbers racket, and the importation of narcotics. To a large degree, it underwrites the loansharking business in the United States and actively participates in fradulent bankruptcies. It encourages street crime by inducing narcotic addicts to mug and rob. It encourages housebreaking and burglary by providing efficient disposal methods for stolen goods. It quietly continues to infiltrate and corrupt organized labor. It is increasing its enormous holdings and influence in the world of legitimate business. To achieve his end, the organized criminal relies on physical terror and psychological intimidation, on economic retaliation and political bribery, on citizen indifference and governmental acquiescence. He corrupts our governing institutions and subverts our democratic processes. For him, the moral and legal subversion of our society is a life-long and lucrative profession. (Doc. No. 91-105, House of Representatives 91st Con., 1st Sess. at 1-2 (1969).)

Mr. President, it is with these sobering contrasts in mind that we should begin debate today on S. 30, the Organized Crime Control Act of 1969, a debate which is the culmination of a year of detailed study, hearings, and consultations, and a result of one of the most thoroughly gratifying bipartisan efforts in which I have participated since coming to the Senate.

The process had its start on January 15, 1969, when, along with my distinguished colleagues, the Senators from Nebraska (Mr. HRUSKA), North Carolina (Mr. ERVIN), and Alabama (Mr. ALLEN), I introduced S. 30, the "Organized Crime Control Act." It continued though the introduction of seven other bills designed to deal with organized crime, which now appear with revisions in the 10 substantive titles of S. 30. Senators EASTLAND (S. 2022), MUNDT (S. 2022), ERVIN (S. 30 and S. 2122), HRUSKA (S. 30, S. 1623, S. 1861, S. 2022, S. 2122 and S. 2292) and TYDINGS (S. 975 and 976) and the late Senator Dirksen (S. 2022) joined me in introducing some of these measures or introduced other bills that are now reflected in S. 30.

President Nixon, of course, added strength to our efforts to develop this legislation with his "Message on Organized Crime," of April 23, last year, in which he observed:

For two decades now, since the Attorney General's Conference on Organized Crime in 1950, the Federal effort has slowly increased. Many of the nation's most notorious racketeers have been imprisoned or deported and many local organized crime business operations have been eliminated. But these successes have not substantially impeded the growth and power of organized criminal syndicates. Not a single one of the 24 Cosa Nostra families have been destroyed. They are more firmly entrenched and more secure than ever before.

It is vitally important that Americans see this alien organization for what it is—a totalitarian and closed society operating within an open and democratic one. It has succeeded so far because an apathetic public is not aware of the threat it poses to American life. This public apathy has permitted most organized criminals to escape prosecution by corrupting officials, by intimidating witnesses and by terrorizing victims into silence.

As a matter of national "public policy," I must warn our citizens that the threat of organized crime cannot be ignored or tolerated any longer. It will not be eliminated by loud voices and good intentions. It will be eliminated by carefuly conceived, well-funded and well-executed action plans. Furthermore, our action plans against organized crime must be established on a long-term basis in order to relentlessly pursue the criminal syndicate. This goal will not be easily attained. Over many decades organized crime has extended its roots deep into American society and they will not be easily extracted. Our success will first depend on the support of our citizens who must be informed of the dangers that organized crime poses. Success also will require the help of Congress and the State and local governments. (Doc. No. 91-105, House of Representatives, 91st Cong., 1st Sess., at 2 (1969.))

Extensive hearings were begun in March and continued in June, and gradually the various bills were worked into S. 30 to form an integrated, comprehensive organized crime control measure. The subcommittee solicited the views of experts and interested organizations and worked closely with the Department of Justice. Indeed, the Department was most helpful and made a number of valuable suggestions that have now been incorporated in the bill.

Mr. President, the product of this process is a bill which has been carefully drafted to cure a number of debilitating defects in the evidence-gathering process in organized crime investigations, to circumscribe defense abuse of pretrial proceedings, to broaden Federal jurisdiction over syndicated gambling and its corruption where interstate commerce is affected, to attack and to mitigate the effects of racketeer infiltration of legitimate organizations affecting interstate commerce, and to make possible extended terms of incarceration for the dangerous offenders who prey on our society. In addition, the bill incorporates the best of the recommendations of the President's Crime Commission, the National Commission on Reform of Federal Criminal Laws, the American Bar Association Project on Minimum Standards of Criminal Justice, the Model Penal Code, the Model Sentencing Act, and witnesses who represented the National Council on Crime and Delinquency, the Association of Federal Investigators, the New York County Lawyers Association, the American Civil Liberties Union, the New York State Commission of Investigations, the National Association of Counties and the New York State Bar Association. The bill has been endorsed in principle by such diverse groups as the National Chamber of Commerce and the International Association of Chiefs of Police. I am pleased to say, too, that the Department of Justice now supports each and every title of S. 30 as reworked and amended in the subcommittee and the full committee. This bill embodies, in short, what the committee believes is the most appropriate response that this Congress can make to the special challenge that organized crime poses to the well-being of our Nation.

Mr. President, the Attorney General, in his testimony before the subcommittee, aptly observed:

Too few Americans appreciate the dimensions of the problem of organized crime; its impact on all America, and what must be done to reduce—and ultimately eradicate—its sinister and erosive effects. (Hearings at 107-08.)

Mr. President, America has had to contend with some form of organized crime since the founding of our Republic. Nevertheless, it has only been in this last half century that these criminal groupings have begun seriously to threaten the very integrity of our Nation and the well-being of such large segments of our people.

"Organized crime groups," the President's Crime Commission observed in 1967, "are known to operate in all sections of the Nation." (The Challenge of Crime in a Free Society, Report on the President's Commission on Law Enforcement and Administration of Justice at 171 (1967).) The most influential of these groups, the 26 families of La Cosa Nostra, estimated to have a total membership of some 3,000 to 5,000, operate, however, primarily in New York, New Jersey, Illinois, Florida, Louisiana, Michigan, Pennsylvania, and Rhode Island. The internal organization of these families is patterned after the ancient Mafia groups of Sicily. They are, however, more than mere criminal cartels. The final report of the Permanent Subcommittee on Investigation's examination into the internal structure of organized crime put it this way:

There exists in the United States today a criminal organization that is directly descended from and is patterned upon the centuries-old Sicilian terrorist society, the Mafia. This organization, also known as Cosa Nostra, operates vast illegal enterprises that produce an annual income of many billions of dollars. This combine has so much power and influence that it may be described as a private government of organized crime. (S. Rept. No. 72, *Organized Crime and Illicit Traffic in Narcotics*, 85th Cong., 1st Sess., at 117 (1965).)

These groups are chiefly active in syndicated gambling, the importation, and distribution of narcotics, and loan sharking, each an offense which is parasitic, corrupting, and predatory in character. Economically, the price tag of organized crime may be conservatively put at twice that of all other crime combined.

Organized crime groups, moreover, have not confined their villainy to traditional criminal endeavors, but have increasingly undertaken to subvert legitimate businesses and unions. For example, a leading young union leader—and founder of the new Independent Party in New York City—was identified in the subcommittee hearings by the Department of Justice as a captain in the Gambino "family."—Hearings at 127. More important, these criminals have, in some localities, established corrupt alliances within the processes of our democratic society: with the police, prosecutors, courts, and legislatures.

All of this is, of course, disturbing. But the most serious aspect of the challenge that organized crime poses to our society is the degree to which its members have succeeded in placing themselves above the law. Since 1960, the date meaningful statistics began to be collected, the combined efforts of the various Federal investigative agencies have resulted in only 235 indictments involving 328 defendants identified as members of La Cosa Nostra. These leaders, moreover, have been notoriously successful in "getting off" even in those relatively few cases in which the evidence has warranted the prosecution. Our studies indicate that members of La Cosa Nostra have obtained dismissal or acquittal on the charges leveled against them more than twice as often, for their numbers, as ordinary offenders: 69.7 percent as against 34.8 percent—See 115 CONGRESSIONAL RECORD S14429, daily ed., November 17, 1969. Indeed 17.6 percent of the group of La Costa Nostra defendants we studied—representing the leadership structure of key families—were able to obtain acquittals or dismissals of cases against them five or more times each. The final report in 1965 of the Permanent Subcommittee on Investigations' examination into organized crime and narcotics summed it up this way:

The crime leaders are experienced, resourceful, and shrewd in evading and dissipating the effects of established procedures in law enforcement. Their operating methods, carefully and cleverly evolved during several decades of this century, generally are highly effective foils against diligent police efforts to obtain firm evidence that would lead to prosecution and conviction.

The crime chieftains, for example, have developed the process of "insulation" to a remarkable degree. The efficient police forces in a particular area may well be aware that a crime leader has ordered a murder, or is an important trafficker in narcotics, or controls an illegal gambling network, or extorts usurious gains from "shylocking" ventures. Convicting him of his crimes, however, is usually extremely difficult and sometimes is impossible, simply because the top-ranking criminal has taken the utmost care to insulate himself from any apparent physical connection with the crime or with his hireling who commits it. (Report at 2.)

Mr. President, this intolerable degree of immunity from legal accountability must be put to an end. No civilized society can long permit the operation within it of an underworld organization as powerful and as immune from social accountability as La Cosa Nostra. The success story of this group is symbolic of the breakdown of law and order increasingly characteristic of our society. To hold the

allegiance of the now law-abiding, society must show each man that no man is above the law. The loopholes through which the leaders of organized crime now escape the processes of our law must be closed. Justice and public safety demand no less, and it is to this end that S. 30 has been carefully drafted.

Mr. President, I have referred to the fact that this bill has 11 titles, and I shall now proceed briefly to discuss the separate titles of the bill.

TITLE I—SPECIAL GRAND JURY

Mr. President, title I of S. 30 establishes special grand juries in the major metropolitan areas of our Nation lying in judicial districts having in excess of 4 million in population. This would include these districts: Massachusetts, eastern and southern district of New York, New Jersey, eastern and western district of Pennsylvania, southern district of Florida, eastern district of Michigan, northern and southern district of Ohio, northern district of Illinois, and the northern and southern districts of California. Where the Attorney General determines a need in other locations, special grand juries may also be convened on a case-by-case basis. These grand juries are required to meet at least once each 18-month period. All grand juries are broad based in composition under present law; special grand juries will also elect their foreman and deputy foreman, as is currently the petit jury practice. To insure that there is no arbitrary hampering of grand jury efforts, the jury is given the right to seek review of any dispute between the jury and the judge or the prosecutor.

Mr. President, I believe that the history of our Nation, and of other nations, reveals that a government which is deprived of the support of its citizens cannot effectively combat activity which is deemed criminal. These grand juries, selected at random from the community, and free of external or internal pressures, will be properly regarded as objective citizenry in their evaluation of criminal activities in their community. They, of course, will be guided by the prosecutor in their investigations, and their findings will be subject to review by the judge, but the grand jury will not be controlled. They are empowered to report their findings on the standing of their community with respect to organized crime and official corruption and misbehavior. They will be empowered to make suggestions for legislative and executive measures which will alleviate these community problems, thus passing on the benefit of their investigations.

Mr. President, who can be more qualified to evaluate the problems of drug traffic in the ghettos than the citizen who is exposed to this depravity on a daily basis? I do not believe that we can stop the drug traffic or solve any other problem associated with organized crime without the cooperation and participation of those who are the victims of the criminal activity.

The reporting functions of the grand jury in title I are a revival of the grand jury reporting powers which were a reason for the creation of the grand jury in England. Originally, the grand jury was an administrative device to keep the King in touch with the state of affairs in each community, and to insure that his officials performed their functions correctly, as well as a means of accusing those who violated the King's peace. This was and is citizen participation in government at its most basic level. As we are all aware, the difficulty of a central government in evaluating the needs and problems of local communities are as great today as they have ever been.

Grand jury report powers, although a revival in our present Federal system, have been retained from common law or statutorily enacted in several of our States. Their effectiveness as an instrument of reform was affirmed at our hearings by Frank S. Hogan, District Attorney of New York County. Mr. Hogan set out several examples of grand jury reports, and evaluated these reports as follows:

> Since 1947, some 20 reports have been submitted by various grand juries of New York County disclosing either the noncriminal misconduct of public officers or the existence of conditions in public agencies or areas of public interest which required corrective legislative or administrative action. I cite a few instances of the exercise of this grand jury power which, I believe, demonstrate its effectiveness. (Hearings at 353–54.)

I have obtained copies of reports from New Jersey and elsewhere. On December 5, 1969, for example, I placed a copy of a New Jersey report in the RECORD—S15751—so that each Member of this body could observe the work product of such a grand jury. At that time, I pointed out that the reports authorized by title I would be subject to even greater restrictions than those now obtaining in New Jersey. I believe, in short, that in title I we have fairly balanced the public need for discolsure with the individual's need for anonymity.

Mr. President, objections were voiced in our hearings and have been voiced on this floor to restoring to Federal Grand Juries these needed powers. These objections are not new. Indeed, they have been cogently analyzed and refuted before, particularly in the context of the enactment of the New York grand jury statute, on which title I is based. On December 18, 1969, I inserted in the RECORD—S17090—a most scholarly article from the Columbia Law Review which effectively takes up and answers each of these objections. I commend this article to this body once again. Here, however, I think it necessary to do no more than quote the position of the Department of Justice on title I:

> The principal objections to the use of grand jury reports seem to be that they violate the traditional secrecy of grand jury proceedings, they expose grand jurors to libel actions, they violate the principle of separation of powers, and, perhaps most importantly, they charge wrongdoing while effectively denying the use of a judicial forum in which to reply. Upon close examination, the first three of these reasons do not appear to have much merit. The problem of secrecy under Rule 6(e) of the Federal Rules of Criminal Procedure may, of course, be solved by statutory amendment. There is in fact already ample precedent under Rule 6(e) for violation of grand jury secrecy when the general welfare requires it. See, for example, *In Re Petition for Disclosure of Evidence Before October 1959 Grand Jury*, 184 F. Supp. 38 (E.D. Va. 1960), where Federal grand jury minutes were made available to a Commonwealth attorney for use in State grand jury proceedings.
>
> The libel objection can perhaps be discounted as the least troublesome since, in light of recent Supreme Court decisions on this subject, grand jurors actions in this regard are undoubtedly privileged.
>
> The argument that the grand jury reports contravene the principle of separation of powers proceeds on the theory that the grand jury, being an appendage of the court, should not invade the province of the legislative or executive branches and charge them with misconduct or inefficiency. This argument loses much of its force, however, when it is considered that historically the grand jury has for centuries exercised both the reporting and indicting functions, and the exercise of its reporting function is logically no more violative of the separation of powers principle than is the indictment of a governmental official for criminal conduct in the performance of his duties. In criticizing public officers and calling for improvements in the legislative and executive branches, moreover, the grand jury performs a function analogous to the courts function when it notes stautory defects and suggests that the legislature consider amendment. As New Jersey's late Chief Justice Arthur T. Vanderbilt observed, success of the separation of powers doctrine depends to some extent on the interaction and cooperation of the arms of Government, not on their total isolation from each other. See Vanderbilt, *The Doctrine of the Separation of Powers and Its Present Day Significance*, 43–45 (1953).
>
> Finally, on this point, it may be observed that since so much of Title I changes the basic character of the grand jury that in effect it is no longer merely an arm of the court, but a more independent body, the separation of powers argument is no longer a valid objection.
>
> Perhaps the most serious objection to grand jury reports is the charge that they are essentially lacking in fairness since they make a charge of wrongdoing but deny the "accused" a judicial forum in which to reply. In an attempt to meet this criticism, the New York legislature enacted a statute, New York Code of Criminal Procedure, section 253-a, effective July 1, 1964, which contains elaborate safeguards such as allowing a named individual an opportunity to testify before the grand jury and file an answer prior to the filing of a report, as well as allowing an appeal to a higher court before filing. The constitutionality of this New York statute was upheld in *In Re Grand Jury, January 1967*, 277 N.Y.S. 2d 105 (1967).
>
> Since the present proposal is almost word for word identical in its substantive provisions with the New York statute, we feel that it meets the necessary test of fairness against the charge that it makes an accusation without providing an adequate judicial forum for a denial.
>
> In sum then, we believe this revival of the grand jury's historical report making power, as narrowly circumscribed in this proposal, is constitutionally sound and we support it as being in the interest of good and effective government. (Hearings at 368–69.)

Mr. President, the public is becoming increasingly aware of the problem posed by organized crime in our Nation. The President's Crime Commission noted in early 1967 that:

> All available data indicate that organized crime flourishes only where it has corrupted local officials. (Report at 191.)

Numerous public and private organizations have since expressed agreement with this statement, including the Attorney General as recently as December 10,

1969, in commenting to the press on the recent shocking events in the State of New Jersey. We all know of our own knowledge that any criminal situation in this country can only exist where either the community supports its existence or the community lacks effective weapons to combat its existence.

The President's Crime Commission went on to recommend the establishment of investigative grand juries to combat organized crime. A means of preventing official interference with the juries and a grant of the report power were also recommended. We have taken these broad recommendations and refined them to produce the present title I.

Title I would also bring within the protection of 18 U.S.C. § 3500, grand jury minutes. Presently, uniform statutory rules govern the pretrial discovery of witness' statements in criminal cases. Grand jury statements, however, are not included within these rules, and diverse practices have developed. Title I would bring the practices into line with the now time-tested procedures of section 3500.

Mr. President, the time has come to implement these recommendations. We must add to the weapons available against organized crime, and we must enlist the citizenry in the fight in an effective manner.

TITLE II—GENERAL IMMUNITY

Mr. President, title II of S. 30 is a comprehensive immunity provision designed to replace more than 50 immunity statutes now in operation. When S. 30 was originally introduced its scope was limited to grand jury and court proceedings. It was designed to implement the recommendation of the President's Crime Commission that such a provision not only was necessary in the general administration of justice, but also was essential in the fight against organized crime. During the course of the hearings, however, the National Commission on the Reform of Federal Criminal Laws issued a report recommending that comprehensive reform and codification action be undertaken in this field. Accordingly, title II was reexamined in this context, and the decision was reached to go forward and properly to treat the overall problem in the administration of justice. Title II now provides for judicial, administrative, and congressional immunity grants, subject to carefully framed safeguards for individual liberties, where information which may be necessary for the public inteerst is likely to be refused to be provided on the basis of the privilege against self-incrimination.

Mr. President, the relation between the privilege against self-incrimination and immunity grants has been examined by our courts over a considerable period of time. In *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892), the Supreme Court invalidated an immunity statute which only prevented evidence from being used in subsequent court proceedings, where the evidence had been compelled under an immunity grant. The court stated:

> It could not, and would not prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. (142 U.S. at 564.)

In response Congress passed a "transaction immunity" statute, which provided that the person compelled to testify could not be prosecuted, under any circumstances, for the criminal activities concerning which he had testified. In *Brown* v. *Walker*, 161 U.S. 591 (1896), this statute was upheld, despite the argument that was made that the principle of *Counselman* should be extended to prevent self-degradation as well as self-incrimination. The court answered this contention:

> The authorities are numerous and very nearly uniform to the effect that, if the proposed testimony is material to the issue on trial, the fact that the testimony may tend to degrade the witness in public estimation does not exempt him from the duty of disclosure. A person who commits a criminal act is bound to contemplate the consequences of exposure to his good name and reputation and ought not to call upon the courts to protect that which he has himself esteemed to be of such little value. (161 U.S. at 605.)

The court also stated:

> Every good citizen is bound to aid in the enforcement of the law, and has no right to permit himself, under the pretext of shielding his own good name to be made the tool of others who are desirous of seeking shelter behind his privilege. (161 U.S. at 600.)

Immunity legislation remained at this point until 1964. In that year, the Supreme Court handed down *Malloy* v. *Hogan*, 378 U.S. 1 (1964), and *Murphy* v. *Waterfront Commission*, 378 U.S. 52 (1964). In order to make State immunity statutes valid, the court held that they must also protect against Federal prosecution. Drawing upon recently developed criminal procedure rulings on the derivative suppression of evidence, the court stated:

> We hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. (378 U.S. at 79.)

In a footnote, Mr. Justice Goldberg went on to state:

> The federal authorities have the burden of showing that their evidence is not tainted by establishing an independent, legitimate source for the disputed evidence. (*Id* at n. 18.)

This is the use-restriction immunity that is embodied in title II. Under it, once a witness has testified, he can only be prosecuted for the acts concerning which he has been immunized if the prosecution can "establish an independent, legitimate source for the disputed evidence."

The President of the United States on April 23, 1969, in his Message on Organized Crime, commended the basic concept of title II to the Congress, stating:

> I commend to the Congress for its consideration . . . [the proposal under which] . . . a witness could not be prosecuted on the basis of anything he said while testifying, but he would not be immune from prosecution based on other evidence of his offense. (Doc. No. 91-105, House of Representatives, 91st Cong., 1st Sess. at 5 (1969).)

Mr. President, in a concurring opinion in Murphy, Mr. Justice White stated:

> Immunity must be as broad as, but not harmfully and wastefully broader than, the privilege against self-incrimination. (378 U.S. at 107.)

This was but another way of saying that we ought not tolerate anything which gives, in the words of Mr. Justice Holmes in *Heike* v. *United States*, 227 U.S. 131, 144 (1913), a "gratuity to crime."

Mr. President, since Murphy, the trend in the laws of the States appears to be moving in escalating speed in the direction of "use-restriction" immunity. New York and California embraced use-restriction immunity in 1969. Today's New York Times contains a report of a unanimous decision of the New Jersey Supreme Court, which holds that the fifth amendment only requires protection from prosecution with regard to statements made under immunity and from "fruits" of compelled testimony. This is the theory embraced in title II of S. 30.

Mr. President, I ask unanimous consent that the text of The New York Times article appear at this point in my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 21, 1970]

JERSEY'S CRIME UNIT IS UPHELD ON RIGHT TO FORCE WITNESSES TO TESTIFY

TRENTON, January 20.—The power of the State Commission of Investigation to seek the indefinite imprisonment of witnesses who refuse to testify after being granted immunity from prosecution was unanimously upheld today by the New Jersey Supreme Court.

The decision by the state's highest court clears the way for an all-out investigation of organized crime and corruption and it places three reputed Mafia figures closer to prison terms on civil contempt charges sought by the state last summer.

The commission had been forced to hold off several new inquiries and the original one it undertook last year into charges of mob infiltration and political corruption in the Monmouth County shore community of Long Branch pending the outcome of its legal challenges to its most important power—its right to jail witnesses who refuse to talk after being assured that they would not be prosecuted for any disclosures they made.

The three reputed Mafia witnesses are Joseph (Joe Bayonne) Zicarelli, believed to be rackets boss in Hudson County; Anthony (Little Pussy) Russo, allegedly Mafia leader in Monmouth and Robert (Bobby Basile) Occhipinti, said to be a lieutenant in the Mafia family headed by Simone Rizzo (Sam the Plumber) DeCavalcante.

TROUBLE IS COMPOUNDED

The court decision only compounds Zicarelli's problems with the law since he was indicted by the statewide grand jury for conspiracy to murder late last year. As for Russo, he is free on bail pending an appeal of a six-year prison sentence on a perjury conviction for lying to a Monmouth County grand jury.

William F. Hyland, the investigation commission chairman, announced later that the full four-man commission would convene here tomorrow. Other sources reported that the commission would then ask Superior Court Judge Frank J. Kingfield to enforce the contempt citation ordered last summer and jail the three witnesses.

Although the lawyers for the three men could not be reached for comment tonight,

commission sources said they expected the three men to appeal the Supreme Court decision in the Federal courts now that they had exhausted every legal remedy in the state.

The court's decision, which was delivered by Chief Justice Joseph Weintraub, rejected every argument made in behalf of the three men, including one in which their lawyers contended that the commission presented their clients with an impossible dilemma.

If their clients talked, the lawyers argued, they faced certain execution at the hands of the mob. If they did not talk, they faced prison terms that could conceivably run for the rest of their lives. The lawyers contended that such a choice deprived their clients of due process safeguards embodied in the Fourth Amendment to the Constitution.

At a hearing last December, the courts rejected this argument as "fantastic beyond belief," an affront to the court.

ARGUMENT IS REJECTED

As for the legal argument that witness immunity violated Fifth Amendment protection against self-incrimination, the court declared that it did not and cited other similar rulings.

"We are satisfied," the court said, "that the Fifth Amendment does not require immunity from prosecution. An immunity of that breadth exceeds the protections of Fifth Amendment accords. More importantly, to find that demand in the Fifth Amendment would in practical terms deny state government access to facts it must have to meet its duty to secure the well-being of all citizens. We heretofore deemed the Constitution to require immunity against use of testimony rather than immunity from prosecution."

In essence, the court said the Fifth Amendment protected the three witnesses from prosecution resulting from anything they might say, and not from prosecution entirely. The court also repeated the Federal Court rule that states that the "fruits" of any "compelled testimony" may not be used in connection with any Federal prosecution.

Moreover the court said, "The role of the S.C.I. is not accusatory and the rights accorded to the individuals concerned are appropriate and adequate in light of the agency's mission and powers."

Unlike grand juries that seek indictments and prosecutors who seek convictions, the Investigation Commission seeks to publicize crime and corruption and report its findings to the public, the Governor and the Legislature.

Mr. McCLELLAN. Mr. President, in light of present derivative-suppression techniques, and Supreme Court decisions, to refuse to enact use-immunity legislation is to give a "gratuity to crime." In a society which is beseiged by organized crime, the U.S. Senate is in no position to hand out such gratuities. Title II would revoke the gratuity that the member of organized crime and others now enjoy under present immunity legislation and substitute for it carefully drafted legislation that both reforms and codifies the law in this field.

TITLE III—RECALCITRANT WITNESSES

Mr. President, neither the compulsory process of the grand jury nor a grant of immunity assures that the testimony of the witness will be obtained. When a witness is not in a position to invoke the privilege against self-incrimination, this does not mean that he will give his full cooperation during the investigation. At this point, however, the investigation may be continued through use of the contempt power.

The contempt power has roots that run deep in Anglo-American legal history, and under modern law there is no question that courts have the power to enforce compliance with their lawful orders. Current Federal laws expressly confirm this ancient power. When subpenaed before a grand jury, the witness must attend. The grand jury, however, has no power as such to hold a witness in contempt if he refuses to testify without just cause. To constitute contempt the refusal must come after the court has ordered the witness to answer specific questions. Two courses are open when a witness then refuses to testify after a proper court order: civil or criminal contempt.

Under civil contempt, the refusal is brought to the attention of the court, and the witness may be confined until he testifies; he is said to carry, as the Court noted in *In Re Nevitt*, 117 Fed. 449, 461 (8th Cir. 1902), "the keys of the prison in his own pocket." Usually, where contempt is clear, no bail is allowed when an appeal is taken. The confinement cannot extend beyond the life of the grand jury, although the sentence can be continued or reimpsed if the witness adheres to his refusal to testify before a successor grand jury.

Under criminal contempt, after a hearing, the witness may be imprisoned, not to compel compliance with, but to vindicate the court's order. Federal law requires a jury trial if the sentence to be imposed will exceed 6 months. No other limit is set.

Title III of S. 30 seeks to codify the civil contempt aspect of present law as it applies to grand jury and court proceedings in the area of the refusal to give required evidence. Upon such a refusal, the court is explicitly authorized to order the summary confinement of the witness, and it is provided that no bail shall be given to the witness pending the appeal, since this would undermine the coercive effect of the court's order and result in undue delay.

Mr. President, this is a vital investigative tool for the forces of law enforcement. The testimony of Mr. Paul Curran, chairman of the New York State Commission of Investigations, during subcommittee hearings on this title, underlines the necessity for such a provision:

> With this grant of immunity must be coupled the right of compulsory process to produce the witness, and also the right most importantly, to take meaningful action against recalcitrant witnesses. They must know that if after receiving immunity, they do not testify, they will go to jail until such time as they are prepared to testify. This provision of S. 30 for . . . [a] jail term will make it clear that the Government really means business. (Hearings at 178.)

Mr. President, title III also amends title 18, chapter 49, United States Code, section 1073, entitled "Flight to avoid prosecution or giving testimony" to include flight to avoid contempt proceedings. The pertinent changes in section 1073 read as follows:

> Whoever moves or travels in interstate or foreign commerce with intent either . . . (3) to avoid contempt proceedings for alleged disobedience of any lawful process requiring attendance and the giving of testimony or the production of documentary evidence before an agency of a State empowered by the law of such state to conduct investigations of alleged criminal activities, shall be fined not more than $5,000 or imprisoned not more than five years or both.

Mr. President, the need to make this change in the Federal Fugitive Felony Act was recently brought to light in organized crime investigations in New Jersey. Concerned over a growing awareness of the sinister influence of organized crime in the State, the New Jersey Legislature in 1968 created a State commission of investigation, which was modeled on New York's successful commission. In a hearing held in July of 1969, two mob figures, Robert "Bobby Basile" Ochipinti and Frank Cocchiaro, both lieutenants of Cosa Nostra boss Simone Rizzo "Sam the Plumber" De Cavalcante of New Jersey, after being subpenaed by the commission, walked out of the State House in Trenton during a break in the hearing and fled the State to avoid contempt charges for refusing to answer questions. Unlike a witness who flees to avoid grand jury or court testimony, these two mobsters could not be picked up by the FBI for unlawful flight. Instead, the time-consuming process of State extradition had to be undertaken.

Mr. President, this defect in the law may be easily remedied. With the addition of but a few words to the statute, it will be possible to use the FBI to help States such as New Jersey, now seeking to clean its own house, to help themselves.

TITLE IV—FALSE DECLARATIONS

Mr. President, title IV of S. 30 represents the best efforts of the committee to insure that truthful testimony will be given in our grand juries and courts.

Organized crime's defeat of investigations and prosecutions through the fabricated story has occasioned our reexamination of the law in this area. However, the reforms implemented by these rules of pleading and evidence ought not be artificially limited to organized crime cases. At present, Federal law interposes several impediments to securing truthful testimony. As we all are aware, the usual standard of proof in a criminal prosecution is proof beyond a reasonable doubt. Meeting that standard, however, is not sufficient to secure a conviction for perjury. If the proof is circumstantial and not direct, no conviction may be obtained. For reasons rooted in medieval law—possessing no contemporary relevance—the testimony of one witness, no matter how trustworthy, reliable or sufficient—standing alone—is not legally adequate for a perjury conviction.

To remedy this situation we have approved title IV, which implements the the President's Crime Commission recommendation:

> Congress and the States should abolish the rigid two-witness and direct-evidence rules in perjury prosecutions, but retain the requirement of proving an intentional false statement. (Report at 201.)

The Crime Commission reported that the incidence of perjury is higher in organized crime cases than in routine criminal matters. We all know that perjury prosecutions are rarely successful. The effect of this lack of success upon the initiation of prosecutions is obvious.

Again, we can easily infer the likelihood of perjury in instances of organized crime prosecutions, due to well-established witness-intimidation efforts of the underworld. The Department of Justice endorsed this provision, stating:

> We . . . agree with the recommendation of the President's Commission that abolition of these rules is desirable. (Hearings at 371.)

There are at least two other barriers to obtaining truthful testimony. Under present law, even if a witness makes two statements which are so patently contradictory that one or the other must be false, the prosecution must nevertheless prove which of the statements is false and then prove an intentional falsehood. In accord with the commission recommendation, the committee rightfully retained the requirement that an intent to falsify be shown. However, if one of two statements logically must be false, then title IV recognizes that fact.

The last impediment to the telling of truth is that under present Federal law one is not allowed to recant, correct untruthful statements, and escape prosecution. Therefore, at present a witness is discouraged from correcting untruthful testimony. Title IV would allow one to avoid criminal liability by correcting his testimony. Title IV would alloy one to apparent by other testimony that he is lying, or so long as he has not substantially misled the proceeding by his original untruthful testimony.

Mr. President, title IV encourages truth by facilitating the prosecution of those who have lied and by encouraging the correction of testimony without fear of prosecution. I am firm in my belief that this body should do everything in its power to make certain that there are no impediments to truthful testimony in the administration of justice in the Federal courts—in all cases as well as the more serious organized crime cases.

TITLE V—WITNESS PROTECTION FACILITIES

Mr. President, title V, providing witness facilities, was drafted in response to the overwhelming difficulty of insuring that witnesses in organized crime cases are produced alive and unintimidated at trial. If witnesses have a duty to give to society the benefit of their testimony, then surely society owes to them every protection it can offer. Title V affords broad power to the Attorney General to care for witnesses and their families as long as there is jeopardy to the life or person of a witness or a member of his family. The Attorney General may offer these facilities to witnesses, but of course cannot require them to accept his offer.

This title is also in response to a recommendation of the President's Crime Commission. It has the full support of the Department of Justice. It is not necessary for me to recount horror stories showing the extent of torture and terrorism practiced by organized crime in its efforts to prevent unfavorable testimony. Suffice it for present purposes to note the testimony of the Attorney General that between 1961 and 1965, the organized crime program, despite attempts to offer protection, lost 25 informants. Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 89th Congress, first session, part 3, at 1158—1965. More need not be added. All Members of this body are aware of the need to protect Government witnesses against retribution by mob enforcers.

TITLE VI—DEPOSITIONS

Mr. President, title VI deals with the taking of depositions to preserve evidence in Federal criminal cases. Such a measure was included in S. 30 when it was introduced, and its provisions were revised and improved considerably while the bill was in committee.

The proposed section would expand the present right of a defendant under rule 15 of the Federal Rules of Criminal Procedure to seek court permission to take the deposition of his own witnesses, and would extend the same right to the Government. Like rule 15, the section would permit such depositions only for the purpose of preserving a party's own evidence, not for the purpose of discovering the opponent's evidence. At the same time, the proposed section contains full guarantees of the defendant's rights to counsel and to cross-examination of the deponent. Title VI is designed to fill a gap in our criminal procedure that sometimes is important in other than syndicate cases, but most frequently is a frustrating problem in organized crime prosecutions.

The leaders of organized crime daily conduct their criminal activities and shady businesses by intimidating citizens and bribing officials. In the rare case in which the Government can overcome the difficulties in gathering evidence and can obtain an indictment, it is an all too common step for the Mafia boss to resort to the same techniques, intimidation and bribery of witnesses, in order to obtain a dismissal of the charge or a not guilty verdict. Should witnesses prove stubborn and honest, some organized crime figures have shown little hesitation to murder witnesses. The distinguished senior Senator from Maryland (Mr. TYDINGS), in giving the subcommittee testimony based in part on his own experience as U.S. Attorney for Maryland, aptly stated:

> Unimplicated witnesses have been, and are now, regularly bribed, threatened, or murdered. Scores of cases have been lost because key witnesses turned up in rivers in concrete boots. Victims have been crushed—James Bond like—along with their automobiles by hydraulic machines in syndicate-owned junkyards. (Hearings at 161.)

Title VI is designed to protect that evidence, and evidence in other cases in danger of destruction or loss, in two ways.

By authorizing the taking and recording of evidence under full guarantees of counsel and cross-examination, title VI would preserve the evidence which a witness had to offer in a form which could be used at trial if and only if the evidence became otherwise unavailable. In addition, by preserving the evidence which an individual could give, title VI would largely eliminate any incentive of a defendant or his organized crime associates to threaten, injure, or kill the witness. Indeed, depositions may be more effective than stone walls and guards in protecting hte lives of informants and other citizens with information concerning organized crime.

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

Mr. President, title VII is designed to regulate motions to suppress evidence.

Title VII recognizes that suppression of evidence litigation is a major cause of undue expense, delay and distraction of emphasis in criminal cases; that present rules for disclosure of information in connection with suppression claims result in the revelation of information which is irrelevant to the claims and seriously harms specified public interests; and that when the suppression motions concern evidence of events occurring years after the acts which are the bases of the motions, the adverse results are aggravated, the motions cannot reliably be resolved, and it is virtually certain that the evidence is not suppressible.

To remedy this disturbing situation, title VII requires the opponent of a suppression motion to admit or deny the occurrence of the unlawful act which the moving party claims renders the challenged evidence inadmissible. It also provides that disclosure of information in connection with a suppression motion may not be required unless the information may be relevant and disclosure is in the interest of justice and forbids consideration of a claim that evidence of an event is inadmissible because indirectly derived from an unlawful act occurring more than 5 years earlier. The combined effect of these provisions should be to mitigate many of the objectionable aspects of suppression litigation.

The most common situation which would be covered by title VII is a criminal trial in which a defendant who at some time, perhaps in the distant past, was the victim of illegal but unrelated police conduct seeks to delay and confuse the trial of whether he is innocent or guilty by filing, extensively litigating, and, if necessary, appealing a claim that the evidence to be used against him by the Government was in some way derived from the police violation.

Under present law, the defendant can pursue such a diversionary tactic with great success, since the Supreme Court this year established a broad and absolute rule for such cases in *Alderman* v. *United States*, 394 U.S. 165 (1969). In the Alderman case, the Court held that, once a defendant claiming evidence against him is the indirect fruit of electronic surveillance has established that his own interests were unconstitutionally invaded, he must be given confidential materials in the Government's files to aid him in establishing that evidence against him was derived from the surveillance. The Court declined to place any limitation upon the rule or to permit a trial court to screen the Government's confidential files for possible relevance, even in cases where the surveillance bears no possible relationship to the defendant's crime.

Because the Alderman decision is unqualified, it encourages defendants who at any time have been unlawfully sur-

veyed to file motions to suppress the evidence in every case against them, however unrelated to the surveillance, knowing that the motion is certain to bring them either disclosure of confidential files or, if disclosure would be too harmful to the Government, dismissal of the charges against them. Thus, the Alderman case has begun to make a significant contribution to delay of criminal cases, which already had begun to reach crisis proportions. The President's Commission on Crime in the District of Columbia, for example, found that great increases in pretrial motions were a major cause of a doubling from 1960 to 1965 of the time required to prosecute a District felony case, and suggested that in view of "excessive" delays in criminal cases—greater priority should attach to efforts aimed at accommodating—judicial and legislative requirements, regulating the conduct of trials and securing the rights of defendants, with the goal of expeditious handling of criminal cases." Report at 256, 266–68—1966. Title VII is just an effort. Unlike the Alderman decision itself, title VII accommodates the interests of a defendant with those of society, and promises justice to both parties to a criminal case.

The urgency for the enactment of title VII has been stressed by the Department of Justice. The Department supports the measure and has informed the subcommittee that the sort of disclosure required by the Alderman decision often leads unnecessarily to flight by suspects who are under investigation, destruction of evidence, harm to the reputations of innocent third parties, danger to undercover agents and citizens informants, and deterrence of witnesses from coming forward with evidence. The Department also revealed that, in their experience, protective court orders to limit disclosure to defendants and their counsel have not been effective.

The existing law is an exercise in futility. It has been applied for example, in *Aiuppa* v. *United States*, 394 U.S. 310 (1969), to require disclosure to an organized crime figure who, after being overheard during an organized crime surveillance, was picked up by a forest ranger for violating migratory bird laws. The notorious cases of Alderman himself, Cassius Clay, and James Hoffa were all remanded to the district courts for hearings under Alderman. After ordering and supervising full disclosure and then sitting through full hearings in which the defendants tried to establish links between their electronic surveillance and the evidence in their cases, each of the three courts concluded that there was absolutely no relationship. Indeed, the judge iln the Clay case, after evaluating what the disclosure and hearing had contributed to his consideration of the motion to suppress, concluded that he could reliably have made his ruling on the motion after a simple in camera inspection.

There is no constitutional obstacle to enactment of title VII, since the Alderman decision was an exercise of the Supreme Court's supervisory jurisdiction over the lower Federal courts and not a constitutional interpretation. Title VII fully protects the right of a defendant to challenge inadmissible evidence and grants to the Government only the two minimal safeguards necessary to prevent abuse of motions to suppress evidence. There is no reason to permit defendants to engage in such dilatory proceedings in extreme cases title VII will deal only with such marginal cases and will advance the public interests by protecting them from organized crime and by promoting efficient functioning of our courts.

TITLE VIII—SYNDICATED GAMBLING

Mr. President, the general consensus of opinion among law enforcement officials is that gambling is the greatest source of revenue for organized crime. The Permanent Subcommittee on Investigations' examination of gambling and organized crime, in the hearings of which I was privileged to be chairman, concluded:

> Although estimates of the revenue obtained through illegal gambling vary—it—was generally agreed—that the flow of money to bookmakers taking bets on horse races and sporting events totals billions of dollars annually. Report at 2.

Organized crime, of course, does not limit its illegal gambling operations to horse racing and sporting events. It also includes gambling in the form of lotteries, dice games, and illegal casinos. More recently, the President's Crime Commission estimated the annual gross revenue to organized crime from gambling in the United States at from $7 to $50 billion. Report at 189. The Commission indicated that an analysis of organized crime betting operations showed the profit to be as high as one-third of gross revenue and concluded that while it was difficult to judge the accuracy of these figures, even the most conservative estimates put a substantial amount of capital in the hands of organized crime leaders.

Mr. President, it is from these huge gambling profits that organized crime is able to finance other illicit operations such as narcotics, loan sharking, prostitution, and bootlegging. This large source of illegally gained revenue also makes it possible for organized crime to infiltrate and pollute legitimate business.

The President in his message on organized crime in April of last year, characterized gambling income as the "lifeline of organized crime," and suggested that if we can cut or constrict it we will be striking close to its heart. Document No. 91–105, House of Representatives, 91st Congress, first session, at 6—1969. I need not emphasize too highly that it is in the field of gambling that the mob leader is most vulnerable to honest law enforcement. If we can remove the syndicate gambler from circulation, we will have at the same time largely eliminated the extortioner, the corrupter, the robber, and the murderer—the gangster himself.

One of the inevitable byproducts of illicit gambling, moreover, is corruption—of the police, the prosecutor, the courts—indeed, the whole system of criminal justice. Gamblers and bookmakers, in order to be free to operate, must pay off someone. The President in his message on organized crime put it this way:

> It is gambling which provides the bulk of the revenues that eventually go into usurious loans, bribes of police and local officials, "campaign contributions" to politicians . . . and to pay for the large stables of lawyers and accountants and assorted professional men who are in the hire of organized crime. (*Ibid.*)

The report of the Permanent Subcommittee on Investigations on Gambling and Organized Crime described the problem as follows:

> It must be conceded that for various reasons, mostly justifiable and understandable, local law enforcement agencies cannot adequately cope with the grave internal threat posed by organized crime. Jurisdictional limitations and lack of sufficient funds to provide adequate manpower or modern equipment are among the most frequently cited obstacles to the attainment of this objective. While most local law enforcement officials and prosecutors are honest and dedicated in their efforts to stamp out organized crime, too often local criminal statutes are not vigorously enforced or prosecuted because a dishonest policeman or prosecutor is motivated solely by financial or political gain. (Report at 1.)

The junior Senator from Washington (Mr. JACKSON), in the course of those hearings, during an exchange with Jacob Grumet, a member of the Commission of Investigation of the State of New York, aptly expressed it this way:

> You and I know what the problem is. They buy off the judge, they buy off the prosecutor, they buy off the sheriff, and they buy off the law enforcement officers locally, directly or indirectly. ([illegible], Part 1, at 31.)

Today's corruption is less visible, more subtle and therefore more difficult to detect and assess than the corruption of the prohibition era. But organized crime flourishes only where it has corrupted local officials. And as the scope and variety of organized crime's activities have expanded, its need to involve public officials at every level of local Government has grown.

Mr. President, something must be done to stop this flow of money to organized crime from gambling enterprises, and we must stop the corruption of local officials and law-enforcement officers by organized crime. To do this we need new weapons. Title VIII would give the Federal Government two new means to aid the States in combatting large-scale gambling. Part A contains special findings on the character of syndicated gambling. Part B of title VIII would make it a felony for large-scale gamblers and law-enforcement officers or public officials to conspire to obstruct enforcement of State and local laws against gambling through bribery of governmental officials. Part C of this title would make it a Federal offense to engage in a large-scale business enterprise of gambling.

At this point, Mr. President, I want to make one thing very clear. No part of this title will, or is intended to, preempt local efforts in this area, but it will add to such local efforts the expertise, the manpower and the full resources of the Federal Bureau of Investigation, and other appropriate agencies of the Federal Government.

There is one other important point that I have not touched upon, and it is a point on which the Congress cannot legislate. I refer to public apathy about

gambling—indeed, about organized crime in general. The public must be informed of the dangers of organized crime and must be made cognizant of the fact that each bet with the local bookie, no matter how small, is not a harmless diversion but is a part of a large-scale process leading to the eventual decay of his community, for the effects of apathy poison our whole well-being. The late Robert F. Kennedy, commenting on the relation between organized crime and street crime, put it well:

> Crime in the streets is directly related . . . to public apathy about organized crime. The young man in the ghetto who decides to steal rather than make that extra effort to find work is unquestionably influenced by the success which the numbers runner down the block has had. The bookmaker or the narcotics pusher is all too often the only conspicuous figure of success in the ghetto, the one who has demonstrated how to beat the system and gain wealth and prominence. Similarly, the worker who belongs to a corrupt union, or the businessman who must pay protection to keep his business or his life, are taught every day—as are their children—that our legal system has nothing to offer them. As long as the public cares too little about the racketeers who control the gambling and the narcotics and the prostitution that feed upon the poor and the weak, there will be youngsters who see the gangster's way as the model, the path to follow. (Address before the Columbia Law School Forum, Jan. 19, 1967, reprinted in 113 Cong. Rec. 1243 (Jan. 23, 1967).)

It is in this context, particularly, that the Senate must assess part D, which would set up, 2 years after the enactment of the bill, a Commission to Review National Policy Toward Gambling. Federal concern over gambling has a long history. Nevertheless, it is time to take stock of where our Nation is and what direction it should take in the future. We know too little about the full scope of the impact of syndicated gambling and attendant police corruption on our society, or about the most realistic way to respond to them. There is a need here for careful study and public enlightenment after the formulation of prudent action plans.

TITLE IX—RACKETEER-INFLUENCED AND CORRUPT ORGANIZATIONS

Mr. President, title IX of S. 30, originally introduced as S. 1861, was supported by the Department of Justice in these terms:

> The Department favors the objectives of S. 1861 and believes that with some possible revisions its combination of criminal penalties and civil remedies, which has been highly effective in removing and preventing harmful behavior in the field of trade and commerce, may be effectively utilized to remove the influence of organized crime from legitimate business. (Hearings at 404, 405.)

The subcommittee and the full committee have now agreed with the Department on their suggested revisions and, along with other improving amendments, have approved title IX.

The infiltration of legitimate business by organized crime has been increasingly documented in the past year. Once it invades a legitimate field of endeavor, the mob quickly brings with it a full range of corrupt practices. It sometimes uses terror tactics to obtain a larger share of the market. Labor unions are infiltrated, and then labor peace is sold to businesses. This does not inure to the benefit of the workingman. To the contrary, for example, as documented in the grand jury report I noted earlier and inserted in the RECORD on December 5, 1969, in New Jersey members of the mob recently required payments from a contractor so that nonunion men could work at lower wages on a project. In business, the mob bleeds a firm of assets, then takes bankruptcy. It steals securities and then uses the stolen securities to fraudulently obtain funds from lending institutions. It evades taxes and thereby gains an unfair advantage. It monopolizes goods and services and thereby raises prices. Through the violence used in its operations and its rigidly enforced code of silence, as well as exploitation of nonmembers in its schemes, the mob seeks to gain immunity from the rules of our society governing business and labor practices. We cannot afford to allow it to succeed in this endeavor.

Mr. President, title IX is aimed at removing organized crime from our legitimate organizations. Experience has shown that it is insufficient to merely remove and imprison individual mob members. Title IX attacks the problem by providing a means of wholesale removal of organized crime from our organizations, prevention of their return and, where possible, forfeiture of their ill-gotten gains.

Title IX uses three primary devices to achieve these ends—criminal forfeiture, civil remedies which have proven successful in the antitrust area, and a number of civil investigative procedures.

The concept of criminal forfeiture is an old one in our common law. It was extensively used in England and had some limited use in the Colonies. Title IX, drawing on this early history, would forfeit the ill-gotten gains of criminals where they enter or operate an organization through a pattern of racketeering activity. To bring this special criminal remedy into play, the offender must be chargeable in the commission of at least two racketeering acts, each of which is a crime apart from title IX.

Since enactment of the Sherman Antitrust Act in 1890, the courts have used several equitable remedies, and developed new ones to implement the language of 15 U.S.C. sections 1 and 2. I believe, and numerous others have expressed a similar belief, that these equitable devices can prove effective in cleaning up organizations corrupted by the forces of organized crime. The first step in cleaning up an organization will be to require the mob to divest itself of its holdings in legitimate endeavors, where its members have abused that right by the condemned practices. In some cases, the organization will no doubt be so corrupt that it will have to be dissolved. Once the mob is removed, an injunction against its members ever again entering that particular type of organization should prove effective to prevent its return to corrupt anew.

As the criminal process has a grand jury for investigations, the civil process will need an investigative arm to determine whether there have been violations. To accomplish this end, the Attorney General is authorized to use either a civil investigative demand or investigative powers now existing in other agencies.

Mr. President, I am sure that there are some who are not aware of the extent of infiltration of our legitimate organizations by the mob. The facts, however, are truly disturbing.

According to Internal Revenue sources, of this country's 113 major organized crime figures, 98 are involved in 159 businesses. In like manner, the President's Crime Commission in 1967 reported that racketeers control nationwide manufacturing and service industries with known and respected brand names. It has also been reported that the mob controls one of the largest hotel chains in the country, dominates a bank with assets of from $70 to $90 million, operates a $20 million yearly gross laundry, and so on. In an eastern State the mob burned several stores and killed employees of a large grocery chain—the venerable A. & P. Nevertheless, violence is not the mob's only technique. Approximately 200 syndicate-inspired bankruptcy schemes are perpetuated annually, each involving upward of $200,000 in merchandise or material. Organized criminals, too, have flooded the market with cheap reproductions of hit records and affixed counterfeit popular labels. They are heavily engaged in the illicit prescription drug industry.

This is just a sampling. I could go on at length in this fashion, but I think the necessary point has been made.

Mr. President, I ask unanimous consent that a partial list of businesses and industries in which organized crime has been active be printed at this point in the RECORD.

There being no objection, the list was ordered to be printed in the REORD, as follows:

PARTIAL LIST OF BUSINESS AND INDUSTRIES IN WHICH ORGANIZED CRIME HAS BEEN ACTIVE

Accounting, Advertising, Air freight, *Automobile agencies, Awnings, *Bakeries, Banking, Barber shops, Beauty shops, Bonding, Bowling alleys, Breweries, Catering, Charities, and Chemicals.

Cigarettes, *Coal, *Construction, Consulting, Copper, Country clubs, Credit cards, Dairy products, Demolition, Drugs, Electrotyping, Excavation, Factoring, and Flowers.

Foundations, *Funeral homes, Furs, Garages, Garbage removal, *Garments, *Grocery stores, Hardware, Hi-fi components, Hotels and motels, Ice cream, *Importing or exporting, Insurance, Jewelry, and Junk.

Laundries & dry-clean., *Linen, Liquor, Lithography, Lumber, *Manufacturing, Metal plating, Newspaper distribution, Night clubs, Oil and gas leases, Oil prospecting, Paper, Paving, and Picnic groves.

Pipelines, Produce and meat, Public Relations, *Race tracks, Radio, Railway express, Ranching, Real estate, Recording, Resorts *Restaurants and bars, Roofing material, Savings & Loan assoc., Shopping centers, and *Show business.

Soft drinks, Sports generally, Steel, Stocks and bonds, Surplus property, Tailoring, Taxicabs, Television, *Trucking Vehicle leasing, *Vending machines, Waterfront services, Window washing, and Wire service.

(S. Rep. No. 307, 82d Cong., 1 Sess. at 170–81 (1951).)

*Business connected with participants in the infamous 1957 Appalachin meeting (S. Rep. No. 1139, 86th Cong., 2d Sess, pt 3 at 487–88 (1960).)

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

Mr. McCLELLAN. Mr. President, title X would authorize extended prison sentences for carefully defined categories of particularly dangerous special offenders.

Title X authorizes a Federal prosecuting attorney to notify an adult felony defendant and the court before hearing any grounds for finding the defendant to be a dangerous special offender. The concept of dangerousness is defined, as are the types of special offender; recidivist, professional offender, and organized crime offender. The court determines the accuracy of the allegations upon a full hearing with substantial presentence report disclosure and rights to notice, counsel, compulsory process, and cross-examination, imposes sentence up to a special maximum of 30 years, and records its findings and reasons for the sentence. The title authorizes appellate review of the sentence at the instance of the defendant or the Government, preserves the right of a Federal court to consider the fullest information possible in determining an appropriate sentence, and establishes within the FBI a central repository for admissible copies of conviction records.

Title X would be a dramatic improvement of our law in the one area, sentencing, which is most important to the great majority of defendants and yet has received the least legal development by the Congress and the courts. The basic difficulties in our sentencing law have been that, for a given crime, every offender has been exposed to the single maximum authorized punishment set by the Congress, and that a trial court's selection of a particular penalty at or under that maximum has not been subject to appellate review. Those two factors have led the Congress, as it has fixed maximum sentences for individual offenses over the years, to set the maximums at compromise levels which curb somewhat the danger of excessive sentences for ordinary offenders, but are of insufficient length to protect society by incapacitating recidivists, professionals, and Mafia members or others engaged in organized crime.

The inadequacy of sentences imposed upon organized crime leaders has been well known to racket prosecutors for years. Our people, too, are aware of the facts. A Gallup poll early last year found that 75 percent of those interviewed thought that our courts did not deal harshly enough with criminals. New York Times, February 16, 1969, page 47, column 1. A recent staff study by the Criminal Laws Subcommittee based on FBI sentencing data, moreover, confirms that experience and the judgment of our people. That study appears in the RECORD of November 17 of last year—115 CONGRESSIONAL RECORD, S14429, daily edition, so it is necessary now to point out only that two-thirds of La Cosa Nostra members included in the study and indicted by the Federal Government since 1960 have faced maximum jail terms of only 5 years or less, and that nevertheless fewer than one-fourth have received the maximum sentences, 12 percent have received no jail terms, and the sentences of the remainder have averaged only 40 to 50 percent of the maximums.

Statistics, however, outline only bare bones. Several examples will flesh out this deplorable situation. One of the worst gangsters uncovered in the labor racketeering investigation of the Select Committee was Anthony "Tony Ducks" Corallo, then a captain in the Lucchese family of La Cosa Nostra. It was Corallo who helped James Hoffa gain control of New York City's 140,000 teamsters. Our hearing record showed how this thug brought in 40 hoodlums with records of 178 arrests and 77 convictions for crimes ranging from theft, robbery, burglary, and stinkbombing to extortion and murder. One New York employer told how he hired Corallo simply to walk into his plant and "glance at the employees to keep them in line." The late Robert F. Kennedy, our committee counsel, commented, "This seemed rather funny at the time. But when Tony Ducks appeared on the witness stand and turned his glare on us, I changed my mind." Kennedy, "The Enemy Within," at 81—1960.

It was just such experiences as this that led Kennedy, when he became Attorney General, to mount the first truly effective concentrated Federal attack in our Nation's history on organized crime, and by 1962 Corallo had been convicted under 18 U.S.C. § 1952, the Federal Anti-Racketeering Act, for conspiracy to pay a $35,000 bribe to a New York judge and an assistant U.S. attorney to fix a cohort's sentence in a $100,000 bankruptcy fraud case. Despite Corallo's shocking public record as a vicious racketeer, he was sentenced to but 2 years out of a possible 5. He was actually released to the street within 18 months, and there is every indication that he and his associates control at least seven of the 56 Teamster locals in the New York area, piratically forcing millions of consumers to pay hidden tribute.

Nevertheless, this is only half of the deplorable story. In June of 1968, Corallo once again stood before the same judge, incredibly once again convicted under the same Federal statute. This time, by loan sharking a financially pressed city water commissioner, he had been able to arrange and share a $40,000 kickback on a city contract. In sentencing Corallo, the same judge who sentenced him a few years before observed:

> What the court noted then about him still remains true. His entire life reflects a pattern of anti-social conduct from early youth. It is doubtful that his money over any substantial period of his adult life came from honest toil. It is fairly clear that his means derived from illict activities—bookmaking, gambling, shylocking and questionable union activities.

Nonetheless, the court this time—incomprehensibly—gave Corallo only 3 years out of a possible 5.

Mr. President, if we do not give gangsters such as Corallo the maximum, for whom then will we reserve it?

Tragically, the Corallo sentence is far from an isolated case. In 1966, Louis Taglianetti, a "soldier" in the Patriarca family which dominates New England, was convicted of income tax evasion, for which he could have received 5 years. Since Taglianetti's Mafia record was exposed in the organized crime hearings held by the Permanent Subcommittee on Investigations in 1963, the judge could not possibly have been unaware that he was dealing with an organized crime figure. Nevertheless, Taglianetti received only a 7-month sentence. Ironically, I add that the average sentence for the ordinary citizen sentenced that same year for tax evasion was 10 months in jail—almost half again as much as this hardened Mafioso.

The sentencing story of Arthur Tortorello fits into the same pattern. His criminal record, which now covers 4½ pages, began in 1929—forty decades ago. A member of the Gambino family of New York City, he has collected arrests ranging from burglary, assault and battery, and forgery to a 1-year sentence for kidnapping. More recently, his forte has been the infiltration of legitimate business to commit the so-called "white collar" offenses, knowing perhaps that there he could lighten his sentencing liability. Our judges have fulfilled what must have been his fondest hopes. In a $750,000 stock swindle in 1960, he received 90 days out of a possible 5 years. In 1964, out of a possible 5 years for mail fraud, he received 1 year, and in 1967, for plotting an illegal sale of oil stock, instead of 5 years, he received 30 days in jail. Now, in July of 1969, Tortorello was picked up for conspiracy to transport more than $1 million in stolen securities in interstate commerce. The maximum is 10 years, but I ask, if the past is truly prologue, can we expect, can society expect, to receive the sort of protection it deserves from this kind of persisent, professional, organized crime offender?

Mr. President, I shall recount now only one more illustration of the inadequacies of present organized crime sentences. In the same vein with Corallo, the labor racketeering investigations of the Senate Select Committee on Improper Activities in the Labor or Management Field established that Joey Glimco, a top Chicago henchman of teamster boss James Hoffa and ruler of Chicago Teamster Local 777, embracing 5,000 taxi drivers and miscellaneous maintenance workmen, was a mobster who could match criminal careers with the worst: his record includes 36 arrests from robbery to murder. The committee's final report required 56 pages to detail his marauding, and concluded:

> Glimco was shown to be a common thug and criminal who gained control of this union by violence and by those strong-arm methods which are a stock-in-trade of the Chicago racketeer. Under Glimco, local 777 became a captive union. He ruthlessly stifled any opposition by the membership, while he ransacked the union treasury. (Report, pt. 3, at 564.)

In February of 1959, Glimco was allowed to plead guilty to having taken gifts—ranging from turkeys to a large sprinkler system, to his new $5,000 Jaguar—as payoffs for a bogus contract that protected a businessman from the organized efforts of legitimate unions.

The investigation and prosecution cost the Government well over $200,000, and it resulted in a four-count indictment, which could have resulted in a 4-year prison term for Glimco. Nevertheless, he received only a $40,000 fine—no jail term whatsoever.

Mr. President, as these convicted organized crime offenders walked out free to resume their criminal careers, they were scoffing examples that for big-time mobsters, crime in America too often does pay—and richly.

Title X will begin to correct that situation by implementing the principle, approved by the Department of Justice, the American Bar Association, the National Council on Crime and Delinquency, the American Law Institute, and the President's Crime Commission, that the Congress should authorize one maximum sentence for ordinary offenders and a greater maximum for more dangerous offenders.

All three of title X's definitions of special offenders will apply in some cases to hard-core members of large criminal syndicates. For example, the staff sentencing study referred to previously indicated that almost 60 percent of La Cosa Nostra members included in the study would, upon conviction of another Federal felony, qualify under title X as recidivists. More importantly, the three definitions have been so drawn as to accurately define the three types of offenders who should be singled out for special sentencing treatment, regardless of their relationship to La Cosa Nostra. Again, recidivists are an obvious example. The National Commission on the Causes and Prevention of Violence recently reported that "by far the greatest proportion of all serious violence is committed by repeaters. While the number of hard-core repeaters is small compared to the number of one-time offenders, the former group has a much higher rate of violence and inflicts considerably more serious injury." (115 CONGRESSIONAL RECORD H11314, H11315 (daily ed. Nov. 24, 1969).) The staff sentencing study revealed that 68 percent of all persons arrested on Federal charges during the period of the study who would have qualified as recidivists under title X accumulated an average of 4.3 charges per offender following those Federal arrests. In view of modern knowledge of the role recidivism plays in our exploding crime problem, we have gone too long without a Federal general recidivist statute, and it would be intolerable if now we should reject this opportunity to enact a law making the distinction between aggravated offenders and ordinary ones for the vital purpose of sentencing.

The provision of appellate review of sentences is of great importance for offenders who are shown under title X to be unusually dangerous to society and are exposed to unusually long sentences. It will implement a recommendation of the President's Crime Commission that:

> There must be some kind of supervision over those trial judges who, because of corruption, political considerations, or lack of knowledge, tend to mete out light sentences in cases involving organized crime management personnel. Consideration should therefore be given to allowing the prosecution the right of appeal regarding sentences of persons in management positions in organized crime activity or groups. Constitutional requirements for such an appellate procedure must first be carefully explored. (Report at 203.)

The appellate review provisions of title X have been drawn with great care so as to avoid infringing individual rights under the due process and double jeopardy clauses. Supreme Court decisions rendered last term, and lengthy and detailed hearings into the legal and constitutional aspects of appellate review of sentences, have indicated that the concept can be implemented as title X does within constitutional bounds. Appellate review under title X will not only permit correction of unjust sentences in particular cases, it will also promote the evolution of sentencing principles and enhance respect for our system of justice. It promises a major improvement in the administration of criminal justice at a stage where that improvement long has been needed.

Mr. President, the President's Crime Commission in 1967 aptly summed up the history of law enforcement's overall efforts to deal with organized crime in these words:

> Investigation and prosecution of organized criminal groups in the 20th century has seldom proceeded on a continuous, institutionalized basis. Public interest and demands for action have reached high levels sporadically; but, until recently, spurts of concentrated law enforcement activity have been followed by decreasing interest and application or resources. (Report at 196.)

It then observed:

> Law enforcement's way of fighting organized crime has been primitive compared to organized crime's way of operating. Law enforcement must use methods at least as efficient as organized crime's. The public and law enforcement must make a full-scale commitment to destroy the power of organized crime groups. (Report at 200.)

Finally, it concluded:

> In many ways organized crime is the most sinister kind of crime in America. The men who control it have become rich and powerful by encouraging the needy to gamble, by luring the troubled to destroy themselves with drugs, by extorting the profits of honest and hardworking businessmen, by collecting usury from those in financial plight, by maiming or murdering those who oppose them, by bribing those who are sworn to destroy them. Organized crime is not merely a few preying upon a few. In a very real sense it is dedicated to subverting not only American institutions, but the very decency and integrity that are the most cherished attributes of a free society. As the leaders of Cosa Nostra and their racketeering allies pursue their conspiracy unmolested, in open and continuous defiance of the law, they preach a sermon that all too many Americans heed: The government is for sale; lawlessness is the road to wealth; honesty is a pitfall and morality a trap for suckers.
>
> The extraordinary thing about organized crime is that America has tolerated it for so long. (Report at 209.)

Mr. President, Americans everywhere have decided to put an end to that toleration. To achieve this goal, we need a new determination, more human resources, and finely honed legal tools.

As black as it all might appear, the picture is brighter today than it was only a year ago. The executive branch has found a new will to attack organized crime, particularly to use the tool that the Congress provided last Congress in the Omnibus Crime Control Act of 1968: court ordered electronic surveillance. Already, a major narcotic ring, involving two members of La Cosa Nostra and a Negro wholesaler, has been broken up here in the District of Columbia, while a nationwide gambling ring, headed by one of the bosses of the 26 Cosa Nostra families, has been broken up in New Jersey, while new indictments and trials are expected. The administration has asked for and received nearly double last year's appropriations in this field, and the personnel in the Department of Justice devoted to this effort has more than doubled.

The Congress should now provide the additional legal tools necessary to get the job done.

Mr. President, the Organized Crime Control Act of 1969 provides many of these additional tools. I most respectfully urge the Senate to pass this bill.

Mr. President, I should like now to insert several items in the RECORD at this point following my remarks:

On January 4, 1970, the New York Times printed a year-end review by Mr. Fred Graham of the activity of the Department of Justice in the crime area. Part of that review dealt with the Department's new initiatives in the organized crime field.

I ask unanimous consent that the text of that article appear in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 4, 1970]

BOTH PARTIES PRESS CRIME AS 1970 CAMPAIGN ISSUE

(By Fred P. Graham)

WASHINGTON, January 3.—The new year is bringing an old problem—crime—to the forefront as a major issue of the 1970 Congressional campaign. But this year there seems to be a reverse twist. The Republican "ins," in contrast to the normal situation, appear most likely to benefit from the continuing crime controversy, and the Democratic "outs" are scrambling to build an anticrime image.

Today, Senator Fred R. Harris of Oklahoma, the Democratic national chairman, called a Democratic Action Conference on Crime, to be held in Washington under his party's sponsorship early this year.

In a statement, Mr. Harris sounded his party's theme for this year by accusing the Nixon Administration of playing on the public's fear of crime but failing to "come up with a comprehensive national effort against crime" while crime statistics continue to rise.

His party's primary antagonist, Attorney General John N. Mitchell, had thrown down the gauntlet last month by accusing the Democratic-controlled Congress of dragging its feet on President Nixon's crime proposals. Not one of the score of anticrime bills introduced or supported by Mr. Nixon was enacted, and Mr. Mitchell served notice that the Republicans would try to pin a "do-nothing" label on the Democratic Congress and blame it for failing to move against crime.

Some Justice Department officials say privately that the Nixon Administration "is not legislation happy" and did not bank heavily anyway on new anticrime laws. Of

the 20 bills backed by the Administration, only about half were actually proposed by Mr. Nixon, and these are concentrated in the areas of gambling, obscenity and criminal justice in the District of Columbia.

Senator John L. McClellan, Democrat of Arkansas, has been a leading figure this year in drafting anticrime legislation, and much of the legislation backed by Mr. Nixon was proposed by him. Mr. McClellan has entered documents in The Congressional Record to show that the Justice Department itself often delayed weeks and months in commenting on the measures that Mr. Mitchell now says have been held up.

Privately, some crime experts within the Government concede that such complex legislation should not be rushed through in less than a year. Much of it is expected to be passed before the November elections, which could take the edge off the Republicans' allegation of delay by Democrats.

But Mr. Harris's complaint that reported crime "has gone up 11 per cent during the first year of President Nixon's term in office" is equally vulnerable. Crime statistics rose by 19 per cent during the comparable period of the prior Democratic administration.

REPUBLICANS CURB TEMPTATION

Sources within the Administration report that the Republicans have been tempted to exploit this slacking off of the rise in the Federal Bureau of Investigation's crime index since Mr. Nixon took office. But their experts have warned the White House that this phenomenon might be the result of extraordinary crime increases in 1967 and 1968, when there were widespread urban riots, and that the unpredictable crime index might spurt upward again despite their best efforts.

What this admits, in effect, is that despite the rhetoric from both sides, the crime problem is such a fundamental product of local conditions that a national administration can do little to affect it, especially in one year.

If the two parties do fail to score with their charges against each other, there is a likelihood that the Republicans will profit most from the general concern about crime. For they have taken pains to maintain a strong anticrime image, and Mr. Mitchell has put together a crime program that has impressed even some of its former critics and is likely to look better as time passes.

Mr. Nixon was elected partly on an anticrime platform that is almost unrecognizable when compared with the present Nixon program.

He promised "immediate" Executive action to establish a Cabinet-level national law enforcement council, to set up a national academy of law enforcement, to promote a series of "Town Hall" conferences on crime prevention and to set up a center to coordinate anticrime efforts by private groups.

The Justice Department now concedes that the plans for the council and the crime conferences have been discarded. Its spokesmen say that someone in the White House has been designated to act as the coordinating center but they do not know who. All academy of law enforcement will eventually be established, they say.

MITCHELL AND BURGER

Mr. Nixon has done considerably better on two other commitments that bore directly on crime. He did not appoint an Attorney General who had previous law enforcement experience, as he once said he would, but no one has criticized Mr. Mitchell for not being sufficiently hard-boiled about crime.

Mr. Nixon's pledge to appoint law-and-order advocates to the Federal bench has been most notably reflected in the selection of Warren E. Burger as Chief Justice. Also, officials in the Justice Department say that the men appointed to the Court of Appeals have been a distinctly conservative lot, and they predict that over the years this will have an immense impact on the administration of justice.

Within the Justice Department, Mr. Mitchell has undertaken an anticrime program that has three major elements, as follows:

1. A beefed-up organized crime effort aimed primarily at the crime syndicate's lucrative but vulnerable gambling operations.

2. Massive financial aid to the state and local police.

3. The use of the District of Columbia as a model to prove that urban crime can be brought within reasonable bounds.

Money and manpower seem to play a far larger role in Mr. Mitchell's plans than new ideas or legislative innovations, and his ability to win Budget Bureau approval of his requests is already producing results in the organized crime area.

The number of F.B.I. agents working on organized crime has been doubled from 400 to 800 agents. The authorized size of the organized crime section of the Criminal Division has risen from 70 to 89 lawyers and is scheduled to go up to 112 next year.

More investigations are also being added by the Customs Bureau, the Narcotics Bureau and the Labor Department to fight organized crime.

URBAN STRIKE FORCES

Mr. Mitchell adopted the Johnson Administration's idea of placing anti-Mafia strike forces in target cities. He has increased the number from seven to 11, and says he will have them operating in 20 cities next year.

The result has been to bring the organized crime section's activities before grand juries and in courts up to the approximate level that it reached in 1963 when Robert F. Kennedy was Attorney General. Mr. Kennedy's lawyers (there were then only 60) spent 1,552 days before grand juries and 1,490 in court compared with 769 days before grand juries and 1,550 in court last year.

The activity under Mr. Kennedy produced many indictments and convictions in succeeding years.

Republican officials say that indictments and convictions are down slightly now because of a lack of Democratic initiative in prior years and because Supreme Court decisions knocked out a number of gambling and narcotics cases.

Will R. Wilson, the present chief of the Criminal Division, is now saying publicly that a spate of indictments will come in the next few months.

Mr. Wilson, a former Attorney General of Texas, conceived the strategy of concentrating on the crime syndicate's gambling operations in an effort to dry up its income. This has been questioned by some police officials, who believe that Mr. Wilson failed to appreciate the complexities of the urban crime syndicate.

However, the indictments in Newark, N.J., last month of 11 reputed Cosa Nostra members, including the head of one of the nation's 26 Mafia "families," have converted some former skeptics. They concede that if the Government can jail high-level racketeers for gambling, that is as good as any other conviction.

Mr. Mitchell has made much of the importance to the anti-Mafia drive of his decision to use court-approved wiretapping and electronic surveillance, which was approved by Congress in 1968 but eschewed by the Johnson Administration as destructive of the public's feeling of privacy.

The Justice Department disclosed yesterday that 21 court-authorized interceptions were conducted last year in organized crime investigations. This is surprisingly low, but Mr. Mitchell indicated in a recent interview that the use of listening devices had risen lately.

His emphasis on money to fight crime has been most pronounced in the program to aid the states. After the Democrats spent $63-million to get the program under way in 1968, Mr. Mitchell obtained an appropriation of $268-million for the current fiscal year, to be funneled to the states and local communities through the Law Enforcement Assistance Administration in the Justice Department.

Mr. Mitchell has talked about doubling the request for the law enforcement unit next year, and he has mentioned the figure of $1-billion for the program in the near future.

PROGRAM IN CAPITAL

One of Mr. Nixon's first acts as President was to issue a message on Jan. 31, 1969, describing a broad program to deal with the "raw, vicious violence" of crime in the District of Columbia.

The situation in the capital has been his most frustrating crime problem and has produced one of the odd incidents of his Administration.

On the day after Mr. Nixon lashed out at the city's lawlessness, which produced 102 bank robberies in the previous year and 19 in January alone, the bank robberies virtually stopped.

In February, two banks were robbed; in March, one; in April, two; and in May, none.

Puzzled officials noted that judges had taken Mr. Nixon's message to heart by keeping a number of accused stickup men in jail on high bail and by issuing stiffer sentences—including a few life terms—to convicted armed robbers. Special police surveillance of vulnerable banks also helped.

But Mr. Mitchell also began to associate this improvement with a psychological phenomenon that Nixon men still stress in discussing the Republican Administration's impact upon crime. The Government became "prosecution-minded," Mr. Mitchell explained, and the criminal element became less bold about violating the law.

It was several months later before statistics brought another facet of the crime picture to light. While bank stickups were declining, armed robberies of shops, liquor stores, service stations and individuals skyrocketed to a level 64 per cent above the previous year's level—suggesting that some of those who had been robbing banks had just moved on to less dangerous pastures.

DOUBLE FRUSTRATION

By the end of the year it was clear to all that aside from bank robberies, crime in the capital was still in a steep climb. This has been doubly frustrating to the Administration because its capital crime proposal contains much of its inventive ideas on crime, and Congress has failed to act on it.

The heart of this is the preventive detention proposal, which would permit the imprisonment of "hard-core" criminals without bail pending trial. It would also attempt to break the case logjam by adding judges, prosecutors and a public defender office. There would also be an increase in the police force and a crackdown on narcotics offenders.

The House and Senate committees for the District of Columbia moved sluggishly with the proposal, but Mr. Nixon has been assured that it will be forthcoming early in the next session of Congress.

With Congressional discussion at least on the heart of Mr. Nixon's crime proposals, the political dialogue can be expected to shift to a point that the Democrats have only hinted at so far, but that may be the core of the issue.

That is whether Mr. Nixon's proposal for preventive detention and his general enforcement approach is the best way to combat crime; or if it smacks of repression in a way that could be counterproductive, or at least ineffective, if not unconstitutional.

Mr. McCLELLAN. Mr. President, the August 22, 1969, issue of Time magazine contained a cover story on organized crime and its impact on our Nation.

I ask unanimous consent that the text

of that story appear in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE CONGLOMERATE OF CRIME

(Nobody will listen. Nobody will believe. You know what I mean? This Cosa Nostra, it's like a second government. It's too big.
—JOE VALACH.)

At the beginning of the decade, even J. Edgar Hoover denied its existence. Its structure was a mystery, and if it had a name, no one on the outside was sure of what it was. Yet, almost unnoticed, it exerted a profound impact on American life. It still does. Small wonder that Valachi, the thug-turned-informer, doubted that anybody would believe or care when he talked about an organization called La Cosa Nostra.

Today people do care. Organized crime is suddenly a high-priority item in Congress. The Nixon Administration and several key states are striving to improve law-enforcement efforts. The Justice Department is sending special anti-Mob "strike forces" into major cities, more money is being spent by police forces, and more men are being thrown into the battle. Hollywood makes movies about it (*The Brotherhood*), and readers have put it on the top of the bestseller list (Mario Puzo's novel *The Godfather* and Peter Maas's *The Valachi Papers*). Organized crime is no longer quite the mystery that it was. It is a vast, sprawling underground domain impossible to trace fully; but there is no longer any doubt that its most important part, its very nucleus, is La Cosa Nostra (LCN), otherwise known as the Mafia.*

Its reality borders on fantasy. Many Americans still find it difficult to fully believe that their nation harbors an evil entity capable of stealing billions while destroying the honor of public officials, the honesty of businessmen and sometimes the lives of ordinary citizens. The evidence that it does these things and more has become all to credible. The image persists of the colorful gambler who speaks quaint Runyonesque, or the romantic loner—Jay Gatsby, say—who has his own somehow justifiable morality, or of the paternalistic despot who challenges society by his own peculiar code.

THE MULTIPLIER EFFECT

There are bits of truth in all the impressions, but all fall short. The biggest and most important truth is that La Cosa Nostra and the many satellite elements that constitute organized crime are big and powerful enough to affect the quality of American life. LCN generates corruption on a frightening scale. It touches small firms as well as large, reaches into city halls and statehouses, taints facets of show business and labor relations, and periodically sheds blood. It has a multiplier effect on crime; narcotics, a mob monopoly, drives the addicted to burglaries and other felonies to finance the habit. Cosa Nosta's ability to flout the law makes preachment of law and order a joke to those who see organized crime in action most often: the urban poor and the black. Says Milton Rector, director of the National Council on Crime and Delinquency: "Almost every bit of crime we study has some link to organized crime."

Yet La Cosa Nostra itself, the Italian core of organized crime, consists of only 3,000 to 5,000 individuals scattered around the nation in 24 "families," or regional gangs, each headed by a boss and organized loosely along military lines. There is no national dictator or omnipotent unit giving precise direction on all operations. Rather, the families constitute a relatively loose confederation under a board of directors called the Commission. From this soft center the mob's web spreads to many thousands of allies and vassals representing most ethnic groups. "We got Jews, we got Polacks, we got Greeks, we got all kinds," Jackie Cerone, a member of the Chicago gang, once observed with both accuracy and pride.

In many respects, says Ralph Salerno, who was the New York City police department's chief Mafia expert until his retirement in 1967, the leadership has always been a "happy marriage of Italians and Jews." Salerno adds: "It's the three M's—moxie, muscle and money. The Jews provide the moxie, the Italians provide the muscle, and they both the money." In the public mind, however, Cosa Nostra is identified with the Italians, and about 22 million Italian-Americans are being hurt in reputation by the depredations of a very few.

In money terms, the organization is the world's largest business. The best estimate of its revenue, a rough projection based on admittedly inexact information of federal agencies, is well over $30 billion a year. Even using a conservative figure, its annual profits are at least in the $7 billion-to-$10 billion range. Though he meant it as a boast, Meyer Lansky, the gang's leading financial wizard, was actually being overly modest when he chrotled in 1966: "We're bigger than U.S. Steel." Measured in terms of profits, Cosa Nostra and affiliates are as big as U.S. Steel, the American Telephone and Telegraph Co., General Motors, Standard Oil of New Jersey, General Electric, Ford Motor Co., IBM, Chrysler and RCA put together.

HOW IT WORKS

Two years ago, the President's Commission on Law Enforcement and Administration of Justice simply threw up its hands at the prospect of estimating the crime conglomerate's full penetration. "The cumulative effect of the infiltration of legitimate business in America cannot be measured," it said. Robert Kennedy, who began the first big push against the Mafia when he became Attorney General, warned that "if we do not on a national-scale attack organized criminals with weapons and techniques as effective as their own, they will destroy us." No one now disputes its potential for destruction.

Despite its continuing evolution, organized crime follows certain basic patterns that vary little. It must buy or force freedom from the law and from accepted rules of commerce. It must milk gambling, the narcotics trade, industrial relations and usury. It must find outlets for its accumulated profits. These are its main forms of activity:

The political fix takes many forms, but the most important, from LCN's view, is obtaining the cooperation of the policeman and the politicians. East of the Mississippi, particularly, it is the rare big-city government that is completely free of the fix. In Newark, corruption is rampant. One gangster recently confided to another that $12,000 a month flows to police superiors for protection—which sometimes goes beyond a shield for illicit activities. When he vacationed on the West Coast last spring, for example, Thomas Pecora, a boss of Teamsters Local 97 as well as a Mafia man, took along a Newark city detective as a bodyguard.

Newark Police Director Dominick Spina was recently indicted for failing to enforce gambling laws. He was acquitted. Mayor Hugh Addonizzio has refused to give his personal financial records to a grand jury that asked for them. So pervasive is the aura of corruption, a governors committee reported, that it contributed heavily to the Newark riot of 1967, in which black resentment of police was a major factor.

In Illinois, La Cosa Nostra exerts major influence in a dozen Chicago wards and dictates the votes of as many as 15 state legislators. Known as the West Side Bloc, a newspaper euphemism to avoid libel suits, the Mob opposes anticrime bills in the state legislature, forces gangsters onto the payroll of Mayor Richard Daley's Chicago machine, and corrupts the city police department. Salvatore ("Momo") Giancana may be hiding in Mexico, but his stand-ins, Tony ("Big Tuna") Accardo and Paul ("The Waiter") DeLucia still pack influence. Example: When a Justice Department report charged 29 Chicago policemen with being grafters, Daley pooh-poohed the allegations, took no action. Some of the 29 were subsequently promoted.

Protection can also mean death for informers. Richard Cain, once chief investigator for the Cook County, Ill., sheriff's office, gave lie-detector tests to a quintet of bank robbery suspects. Cain, now in prison, was not after the guilty man but in search of the FBI informant among the five. The tipster, Guy Mendolia, Jr., was subsequently murdered.

Three federal men arrived in Columbus last year to investigate gambling. They were soon arrested by local police, accused of being drunk in public. The G-men were acquitted and eight Columbus cops were indicted for taking $8,000 a month in bribes.

Ralph Salerno, co-author of an upcoming book on the Mob, *The Crime Confederation*, estimates that the votes of about 25 members of Congress can be delivered by mob pressure. New Jersey Congressman Cornelius Gallagher was an associate of Joe Zicarelli, a Cosa Nostra power in New Jersey. Zicarelli's command over Gallagher was strong enough, in fact, to bring Gallagher, whom Zicarelli calls "my friend the Congressman," off the floor of the House of Representatives to accept Zicarelli's telephone calls. Although Gallagher has denied the allegation with varying degrees of indignation, he has never bothered to sue Life for its disclosures about him. He has since been reelected, and remains a member of the House Government Operations Committee, which watches the federal agencies that watch the Mob.

Even the judiciary is not beyond reach, and the Mob has a special set of instructions for judges on the payroll. An FBI "bug" placed in the First Ward Democratic organization on La Salle Street, a favorite gathering place for Chicago gangsters, overheard the following conversation between Illinois Circuit Court Judge Pasqual Sorrentino and Pat Marcy, a friend of the Chicago LCN family. What should he do, Sorrentino asked, if federal agents questioned him about his associations with gangsters? Marcy's answer: "Stand on your dignity. Don't answer those questions. Tell them they're trying to embarrass you. Stay on the offensive. Remember, you're a judge." The trouble is, of course, that Sorrentino and some of his colleagues, on federal as well as state benches, have forgotten just that fact.

Nowhere has organized crime subverted more than a tiny minority of public officials. But a minority can be enough both to undermine law enforcement and to bend regulations, purchasing procedures and legislation to a shape pleasing to the mob.

Gambling is far and away the Mob's biggest illicit income producer, more than taking the place that bootleg liquor held during Prohibition. No one can more than guess how much money is bet illegally in the U.S. each year, but a conservative estimate is that about $20 billion is put down on horse racing, lotteries and sports events. Perhaps a third is pure profit for LCN and its affiliates.

In the slums, the bets are usually on "the numbers." The gambler picks the number that he thinks will come up in some agreed-

*"Mafia," literally, means swank, or dolled up, but it probably derives from a Sicilian term meaning beauty or pride. In the context of crime, Mafia applies to the older, strictly Sicilian element of the Mob. "La Cosa Nostra," or Our Thing, is a broader term that means the modern American-born organization.

upon tabulation—the total dollars bet at a race track, for example—and puts down as little as 25¢ or as much as $1. In some places $10 bets are allowed. The bet taker himself, called the policy writer, is too small—and too vulnerable—to be a formal member of La Cosa Nostra. He works instead under contract as a "sharecropper."

Bookmaking is next up the ladder from the numbers, and the bookmaker, who usually employs several solicitors, is a man of substance. When FBI agents seized Gil Beckley, the king of layoff men (a banker to smaller bookies), in Miami in January 1966, his records showed that on that day alone he had handled $250,000 in bets, for a profit, by his own reckoning, of $129,000. He is now appealing a ten-year prison sentence in the case.

An operator like Beckley is not necessarily a full member of UCN. Beckley has a kind of associate status, in which favors and profits flow back and forth. As in certain other areas, LCN is content to get a cut while leaving active management to a relative outsider. Another big layoff man, Sam DiPiazzo, once told of an attempt by Giancana's Chicago family to extort 50% of his six-figure take. As DiPiazzo related the story, he was forced to go before a committee in Chicago, where he haggled the bite down to a mere $35 a day. His big bargaining point was that he cooperated with "the Little Man," Louisiana Family Boss Carlos Marcello.

General affluence and increasing public interest in sports such as football and basketball hike the stakes and make the potential for corrupting athletes great. Even if he does not succeed in fixing a game, the Cosa Nostra agent finds information about a team's morale or physical condition priceless in helping him to set odds. On just such an information hunt, a scout for Chicago Handicapper Burton Wolcoff wangled his way into the clubhouse of the Los Angeles Dodgers a few years back. Learning that Sandy Koufax, who was scheduled to pitch that day, was having even more arm trouble than usual, the agent flashed the news to Wolcoff, who put down $30,000 against the Dodgers. Koufax gave up five runs in early innings and the Dodgers lost.

The National Football League has gone to considerable lengths to detect the fix, relying, ironically, on Gil Beckley. Apparently the league operated on the theory that it takes one to know one. "I want the games square," Beckley told league officials when he announced his proposition. "If I know that something's wrong, I'll give you the name of the club. But I won't give you names of the players." Tips from Beckley have touched off a number of secret investigations by the league.

Until the mid-60s, one of Costra Nostra's most profitable gambling operations was at one of the few places in the U.S. where most kinds of gambling are legal: Las Vegas. The Mob's technique there, known as "skimming," was as simple as larceny and as easy as shaking the money tree: a part of the cash profits from six LCN-controlled casinos was simply diverted before the figures were placed in the ledger books. How much cash was spirited away in this manner, eluding both state and federal taxes, no one can say precisely. After the Government became aware of mob influence and forced the gangsters out of most of the casinos in 1966 and 1967—LCN still has interests in two big casinos—revenue reported for tax purposes jumped by more than $50 million a year.

Loan-sharking or usury nets several billions—it is impossible to say how many—in revenue for the Mob. Dollar for dollar, usury is LCN's best investment; though the gross is lower than it is in gambling, profits is higher. Interest rates commonly run at 20% per week, or, in the Mob's words, "six for five"—borrow $5 on Monday and pay back $6 by Saturday noon, the normal deadline. Borrowers are frequently gamblers who have lost heavily or hope to make a big strike, but they also include factory workers, businessmen on the verge of bankruptcy, or anyone else who needs cash but cannot meet a bank's credit check.

Many of the Cosa Nostra's legitimate business fronts were acquired when the owner could not pay his debt. Some public officials were acquired in the same manner. Over his head in various business deals, James Marcus, the former Water Commissioner of New York City, took a loan at 104% annual interest. When he was unable to pay, the gangsters found him a willing victim for other schemes, including graft on city projects. In the case of Marcus, as with many other public officials, the loan was almost certainly a come-on for what the Mob really wanted; a good friend in a high place. Marcus, Mobster Anthony ("Tony Ducks") Corallo, and Contractor Henry Fried were convicted in the kickback scheme.

Narcotics traffic, chiefly in heroin, is less lucrative than gambling, but still profitable enough, bringing in more than $350 million in revenue and $25 million in profits. Because of the risks involved in peddling drugs directly, Cosa Nostra once again contracts the retail trade to its sharecroppers, saving for itself the less dangerous and infinitely more profitable role of importer and wholesaler. The sums involved are substantial. By the time opium from Turkey, the chief supplier for the U.S., is processed into heroin and shipped to New York, it is worth about $225,000 per kilogram. The price to society is beyond measure.

So far, there is no evidence that the Mafia has tried to penetrate the marijuana market. The source of supply in Mexico is too close, and the competition from travelers passing over the border too intense. One unforeseen byproduct of the Federal Government's crackdown on the marijuana trade, however, may be to create an LCN monopoly. If the "independents" are driven out, the mobsters might find pot as profitable as heroin. Just that happened in bookmaking, when police put many free-lance operators out of business.

Labor racketeering has no price tag, but obviously nets the Mob many millions. It takes several forms. One of the simplest is extortion. The gangsters might thus inform a small businessman, who has perhaps only a dozen employees, that from that minute on his enterprise is unionized. Though the employees may never know that they belong to a "union"—and never receive any of the benefits of being in a union—the employer nevertheless pays the "union organizers" the workers' initiation fees and monthly dues. In another variation, the bogus union settles for "sweetheart" contracts that are grossly unfair to the workers it is supposed to represent. The difference between what a legitimate union might win for the workers and what the Mob union actually obtains is split between the mobsters and the company owners. In one such contract, writes Donald Cressey in his definitive work, *Theft of the Nation*, the president of a paper local won his union only one paid holiday a year: Passover. His membership was exclusively Puerto Rican.

In other ways as well, union racketeering can be as profitable to a company as it is to the Mob. Once the gangsters have taken over a union—they find their easiest prey in unskilled and semi-skilled occupations—they can guarantee both labor peace and a competitive edge over other companies in wages and benefits. There is, of course, a fee, but that is often lower for the businessman than the real costs of strikes or higher wages.

Business infiltration is the organization's fastest-growing source of revenue. Its interests extend to an estimated 5,000 business concerns. Indeed, Cosa Nostra's penetration of the above-ground world of finance and commerce is probably the greatest threat that it poses to the nation today. A business can be acquired in any number of ways, from foreclosure on a usurious loan to outright purchase. LCN, after all, has more venture capital than any other nongovernmental organization in the world. New York's Carlo Gambino and his adopted family own large chunks of real estate in the New York area valued at $300 million. Until recently, they also ran a labor consulting service. Marcello of New Orleans, another real estate millionaire, has been buying up land in the path of the Dixie Freeway and hopes to make a bundle in federal highway funds.

Once brought under the Mob's umbrella, a business almost always ceases to operate legitimately. If it is a restaurant—favorite targets—or a nightclub, it buys coal or oil from one LCN affiliate, rents linen from another, ships garbage out through still another. Its entertainers, parking-lot attendants and even its hat check girls must always be approved by the Mob—and sometimes they must kick back part of what they take in. When the gangsters were big in Las Vegas, they sometimes used skimmed cash to supplement the fees paid to featured performers. The under-the-table funds went untaxed and left the complaint performer with an obligation. This was repayed by appearances elsewhere at the Mob's request.

Unfortunately, the gangs' business methods do not stop with such relatively innocuous, if illegal, tactics. The giant Atlantic & Pacific grocery can testify to that. Taking control of a company that manufactured detergent, the powerful New York-New Jersey gangster brothers, Gerardo and the late Gene Catena, tried to put the product on A. & P. shelves. When the A. & P. officials rejected the inferior Brand X, marketed by the Catenas' Best Sales Company, the brothers tried traditional means of persuasion. Four A. & P. employees died violently. Six stores were fire-bombed. Finally, two union locals threatened to strike, rejecting out of hand a contract that seemed more than generous.

Dumfounded by tactics not taught at the Harvard Business School, A. & P. officials seemingly never connected Catena detergent with strikes and terror. The government did, however, and impaneled a grand jury to investigate the Catena brothers' marketing procedures. Brand X was apparently not worth the bother of federal heat. The Catenas got out of detergents, the unions signed their contracts, and the A. & P. was left at peace.

Generally, the Mob favors businesses in the service and retail fields, particularly things like coin-operated machines, liquor stores and laundries. These offer, among other advantages, cash turnovers susceptible to skimming. With these companies the mobsters can rake off funds without anyone, particularly anyone in the Internal Revenue Service, being the wiser. When FBI agents searched the house belonging to the son of Buffalo Boss Stefano Magaddino last December, they found in a suitcase $521,020 in skimmed cash, most of it from Magaddino's 15 companies in the Buffalo area. It may not have been worth all of Magaddino's trouble. Not only has the Government confiscated his money, but the other mobsters are infuriated because Magaddino had told them that he had no funds to help them meet common expenses. This month, in fact, LCN's top hierarchy took the highly unusual step of sending a team to investigate Magaddino's finances. Mrs. Magaddino, who had never looked into the suitcase, was also upset. "Son of a bitch!" she muttered when the FBI carted the money away. "He said we have no money for Florida this year. $500,000!"

Jukeboxes, funeral parlors, small garment firms and other marginal enterprises that have long attracted gangsters have little effect on the general economy. Big-time construction is another matter, and by playing both the union and management side, LCN begins to exercise major impact. The Crime

and Delinquency Council's Milton Rector says air-freight trucking operations have been so deeply penetrated that gangsters could bring New York's Kennedy Airport "to its knees at any time."

As the boodle piles up, repositories bigger than Magaddino's suitcase must be found. Many millions go to foreign banks. Switzerland, with its numbered bank accounts, is the favorite. Funds from these reservoirs often come back in the form of "loans" for investment purposes. Asked to produce collateral for a jukebox import deal, Philadelphia Boss Angelo ("Mr. A.") Bruno quickly came up with a certified check backed by a Swiss account. The amount: $50 million.

WHAT KIND OF MAN?

Cosa Nostra's business sophistication should not be surprising, since some of the bright young men in the Mob are as astute and innovative as their peers in any other field. What kind of man joins La Cosa Nostra today? To be in the organization itself—as distinct from its many affiliates—he must, first of all, be Italian or of Italian descent. Unitl 1952, he had to be a certified killer as well. That requirement has been dropped, and the recruiters look for a young man who has, besides the necessary venality, some protective coloring. The older men are not always happy about the change. "They shouldn't let nobody in this unless he's croaked a couple of people," New Jersey's Angelo ("Gyp") DeCarlo was once heard to mutter. "Today you got a thousand guys in here that never broke an egg."

There have been other, though less important changes induced by both shifting life styles and the desire to escape notice. Years ago, anyone could tell a mobster by his loud dress and, most particularly, his large, wide-brimmed, white hat. Now, the tendency is to dress like a businessman, in conservative Brooks Brothers gray.

One custom that had to be dropped was the kiss of greeting between members. "Charlie Lucky [also known as Salvatore Luciana or Lucky Luciano] put a stop to this and changed it to a handshake," Joe Valachi told Author Peter Maas. " 'After all,' Charlie said, 'we would stick out kissing each other in restaurants and places like that.' "

Ostentatious living has gone out as well, despite the fact that even the lowliest members are often millionaires. The Government provides one good reason. If a man spends much more than he shows on his income tax return, the IRS can nail him for tax fraud. Few of the bosses thus claim to spend much more than would a moderately successful businessman. The ancient, almost puritanical code of the Mafia, which disliks display, provides another reason for simple style. The late New York boss Vito Genovese, for example, used to drive a two-year-old Ford, spent little more than $100 for his suits, and lived in a modest house in Atlantic Highlands, N.J. When his children and grandchildren visited him, Genovese, very much the kindly paterfamilias, would cook them up a huge pot of spaghetti.

Another legacy from the Sicilian Mafia is Cosa Nostra's almost mystical concept of respect. Something like the Oriental notion of "face," respect means more to a Cosa Nostra mobster than money. If he does not have the regard of his fellow members, he is nothing, even in his own eyes. An equally high value is placed on loyalty. It is not always honored, to be sure, but it nevertheless remains a powerful binding force within the organization. Indeed, the very human characteristics of respect and loyalty, together with the organization's dynastic structure, offer some clues to its remarkable durability. Son follows father, underboss follows boss, and the line continues over the decades.

Another element seems to be a sense of unity against a world viewed as hostile. The chaotic history of Sicily remains an unconscious memory. There, amid poverty and foreign intrusion, survival and prosperity depended on one's own immediate group and one's own rules. Does the younger generation have any qualms about what it is doing? It would seem not. In *The Godfather*, the Dartmouth-educated son of a New York boss gives his bride what is probably the typical rationale. Members of Cosa Nostra, he reasons, are no worse than any other Americans. "In my history course at Dartmouth, we did some background on all the Presidents, and they had fathers and grandfathers who were lucky they didn't get hanged."

Perhaps. They were not, however, likely to employ the sadistic methods that Cosa Nostra still finds useful. Despite the more businesslike image of the younger gang leaders, many mobsters are still animals in fedoras. If Sam Giancana moves, as he has, with Frank Sinatra on one level, his henchmen move on another. One of the most chilling conversations that the FBI has overheard involved two of Giancana's hoods telling a third, "Jackie," about the murder of one of their colleagues, a 350-pounder by the name of William Jackson.

James Torello: Jackson was hung up on that meat hook. He was so heavy he bent it. He was on that thing three days before he croaked.

Fiore Buccieri (giggling): Jackie, you shoulda seen the guy. Like an elephant, he was, and when Jimmy hit him with that electric prod . . .

Torello (excitedly): He was floppin' around on that hook, Jackie. We tossed water on him to give the prod a better charge, and he's screamin' . . .

Despite Cosa Nostra's obvious frightening strengths, new problems and challenges are coming at it from several sides. In the slums, for instance, its control of gambling and vice is being contested, sometimes successfully, by the blacks, Puerto Ricans and Mexican-Americans who want a share of the action. In Buffalo, the blacks at first worked a bargain with Magaddino by which they would control the numbers racket, giving him only a 10% tribute. Later, when he ran into trouble with the authorities, they stopped the 10% entirely. That was nothing compared to the trouble that Ruggiero Boiardo had in Newark. There Negroes not only took over the lottery but also shook down Boiardo's numbers men and occasionally took shots at them.

There are, in addition, internal disputes, like the messy slaying of New York Boss Albert Anastasia in 1957. Even though he has never been east of Flatbush, a Cosa Nostra man still looks upon himself as a Sicilian or a Neapolitan, distrusting the other. Nor is the Commission itself what it once was. Two places, vacated by death, have not been filled. Two of the commissioners, Philadelphia's Angelo Bruno and New York's Joe Colombo, command little respect; Detroit's Joe Zerilli rarely attends meetings. A former commissioner, New York's Joe Bonanno, was kicked out in 1964 and his family reassigned when he attempted to kill off some of the other bosses.

THE LAW'S DELAY

Where is the law? Why, despite some troubles, does Cosa Nostra survive and thrive? Beyond its own inherent strength and tradition is its ability to corrupt civil officials. Probably no other group in history has made such a fine art of corruption. Without the fix, Cosa Nostra would not last out the year. Nor are local cops the only ones who yield to temptation. Three days after a report on skimming in Las Vegas was sent to the U.S. Attorney General's office in 1963, a complete copy was in the hands of the criminals cited in the report. The conduit for that leak has never been found.

Even in the absence of official dishonesty, law enforcement has often proved inept. Most city and state police agencies are still not equipped to deal effectively with clever, well-financed conspiracies that extend across city and state lines. The FBI is better trained, of course, but its special agents hardly constitute a national police force, and were never intended to do so. Until the beginning of the decade, federal authorities merely nodded while the mobsters nibbled away at the country. Besides, coordination among law-enforcement agencies at all levels is frequently weak or totally absent. Even when pressure is applied vigorously, resulting in arrests and convictions, LCN can quickly fill personnel gaps.

Not that prosecution is easy under the best of circumstances. The gangsters' well-paid legal corps takes full advantage of the Bill of Rights. The Mob's muscle often takes care of potential witnesses. It takes a brave citizen to call the police. Also, most of the evidence gathered by the FBI, until recently, was not admissible in court.

Much is changing. Though more vigilant observation might have detected it long before, a major revelation occurred in 1957, when New York state police happened upon a meeting of the Commission and its lieutenants at the estate of Joseph Barbara in upstate Apalachin. The authorities were able to find out who the mobsters were and, more important, that they were together. In 1962, Joe Valachi, the Cosa Nostra soldier-turned-informer, confirmed and explained what the FBI had been hearing from its bugs for months. Though he looked at the Mob from the bottom up, Valachi's remarkable memory nonetheless provided invaluable insights into its organization. From January 1961 to December 1968, the Government indicted 290 members of Cosa Nostra and obtained 147 convictions, with many cases still pending. Some of the bosses themselves have been jailed, while many have found their activities severely curtailed because of continuous scrutiny.

STRENGTHENING HAND

Most of the surveillance has come from electronic bugs and telephone taps, which have supplied something like 80% of the information the Government has on the Mob. While bugging is still the subject of considerable controversy—and can be a serious danger to civil liberties if misused—a law passed by Congress last year at least clarifies the Government's powers and gives the Justice Department broader jurisdiction. For the time being, electronic snooping seems to be a necessary, if risky weapon.

Federal funds are now available in increasing amounts to help city and state agencies prepare for the challenge. Two major bills now pending in Congress could have significant results. One would strengthen the hand of prosecutors and grand juries in mounting investigations and make involvement in organized crime generally—regardless of the specific violation—a federal offense. The second measure would invoke civil procedures, such as antitrust action, to attack organized crime behind its screen of bogus legitimacy.

Beyond new statutes and energetic reinforcement, the nation needs another, stronger weapon: public indignation. There is not nearly enough of that in the U.S. No other Western, industrial country in modern times has suffered criminal abuses on such a scale. America's porous, pluralistic and permissive society offers extraordinary opportunities, chances to hide and to advance, for the enterprising and imaginative criminal. But, most fundamentally, U.S. society helps the criminal by toleration (occasionally even admiration) and by providing a ready market for his services. Illicit gambling thrives because of the popular demand for it. Politicians of questionable integrity remain in office because the electorate allows it. Entrepreneurs who half-knowingly accept dirty money with the rationale that business is business are as corrupt as grafting politicians.

TOLERATING THE MOB

In large measure, the modern Mob lacks the traditional justification for crime—the bitter spur of poverty. It also lacks the occasional, near-heroic dimension of defying law and the established order for the sake of rebellion. It is by and large a middle-class sort of Mob, more or less tolerated by the affluent. Among the public there is often a certain psychological hypocrisy. Rage is great over conspicuous criminal acts, but there is less anger over the far more harmful depredations that are the specialty of organized crime. Until there is a popular revolt, La Cosa Nostra will probably endure.

UNITED BY OATH AND BLOOD

Centuries before La Cosa Nostra was heard of in the U.S., the Mafia operated—even as it does today—as a brigand government in much of Sicily. Though many Italian immigrants had come to the U.S. to avoid just such oppression as the Mafia offers, a few among them formed a new Mafia in the new country. In the crowded "Little Italys" of the late 19th and early 20th centuries, the thugs found easy prey among people who had been taught to dread the terrorists' Black Hand.

Prohibition offered the transplanted *Mafiosi* the chance they could not have made for themselves. Only they had the organization that could capitalize on the potential of bootlegging. Only they lived among people who already operated home stills that could quickly be converted into commercial distilleries. With fantastic profits, little crooks became big crooks, and the peculiar society of petty outlaws became the all-powerful Cosa Nostra.

There was enough intraorganizational feuding to fill a graveyard. Often the battle lines were drawn between Sicilians and Neapolitans—a distinction that causes ill feeling even today. But Sicilians from one area also fought Sicilians from another area, going so far as to take Neapolitans as allies. A particularly bloody period in 1930–31 called the Castellammarese War (the town of Castellammare del Golfo was home to one of the factions) killed about 60 gangsters. Thus the factions agreed to unite behind the Mob's modern founding father, Salvatore Maranzano.

A Castellammarese who borrowed his ideas from Julius Caesar's military command, Maranzano laid down the patterns that still, with minor modifications, hold today. To stop the killing, said Maranzano, the gangs that then existed would henceforth be recognized as families, each with its own territorial limits. Heading each family would be a boss, or *Capo*. Under him would be an underboss, or *Sottocapo*, and beneath the underboss would be any number of lieutenants, or *Caporegimes*, leading squads of soldiers, or "button men." One advantage of the scheme was the insulation it provided the men at the top. In the ordinary course of events, they would never put themselves within easy reach of the law.

The organization's code of conduct was partly Maranzano and partly Mafia *omertà*, a combination of such qualities as manliness, honor and willingness to keep secrets. Its requirements have never changed. The penalty for breaching the code: death. Except for the Chicago branch, which has always disdained the ornate, members are bound by an elaborate ceremony of medieval hocus-pocus. Flanked by the boss and his lieutenants, the initiate and his sponsor may stand in front of a table on which are placed a gun and, on occasion, a knife. The boss picks up the gun and intones in the Sicilian dialect: *"Niatri representam La Cosa Nostra. Sta famigghia è La Costa Nostra* [We represent La Cosa Nostra. This family is Our Thing]." The sponsor then pricks his trigger finger and the trigger finger of the new member, holding both together to symbolize the mixing of blood. After swearing to hold the family above his religion, his country, and his wife and children, the inductee finishes the ritual. A picture of a saint or a religious card is placed in his cupped hands and ignited. As the paper burns, the inductee, together with his sponsor, proclaims: "If I ever violate this oath, may I burn as this paper."

Brilliant as Maranzano's plan was, it had one major flaw: Maranzano himself. Like his hero Caesar, Maranzano suffered from overweening ambition. Above the family bosses, there was, under his scheme, to be a Boss of All Bosses, a *Capo di Tutti Capi*, by the name of Salvatore Maranzano. When several of the family bosses found out that he was plotting to kill them, they worked up an assassination scheme. Five months after he took power, *Il Capo di Tutti Capi* was murdered. The same day, Sept. 10, 1931, 40 leaders allied with him were slain across the country.

With Maranzano's death, a kind of peace did settle over Cosa Nostra. There have been skirmishes and murders aplenty since then, but never anything like the Castellammarese War. In place of the *Capo di Tutti Capi*, the mobsters formed a Commission made up of nine to twelve family bosses to guide the organization and settle disputes. While its powers have never been precisely spelled out, the Commission seems to be roughly analogous to the governing body of a loose confederation. It must approve each family's choice of boss, and it can, if it wants to, remove a boss—usually by assassination.

Often, the Commission's chief function seems to be preservation of the balance of power, making sure that no one boss gains too much power. In Cost Nostra's terms, as in nations', that is guns. Theoretically, at least, the 24 families have not been allowed to increase their numbers since the '30s. They vary greatly in size now, as they did then, from Carlo Gambino's army of 1,000 in New York to James Lanza's tiny, ineffectual squad of twelve in San Francisco. Currently, several families are open to recruits, offering new opportunities for growth and power. United by oath and blood, Maranzano's organization may have as long a life as Caesar's.

PORTRAIT OF AN OBSOLETE MOBSTER

Evicted from the Mob's top hierarchy in 1964, Joe Bonanno of New York—one of the bloodiest killers in Cosa Nostra's history—eventually retired to Tucson, Ariz., where, amid his fig and orange trees, he now lives modestly, reflecting on his days of power and plotting his comeback. His life is not entirely normal, however. The FBI tried, unsuccessfully, to recruit his confidant and all-round handyman, David Hill, 21, as an informer. Once a bomb landed in Bonanno's backyard. He thinks that an FBI agent may have prompted two young thugs to throw the bomb and start a fight between Bonanno and another mobster—a sequel to the "Banana War" that followed his downfall.

Bonanno may get support for his bizarre notion. Tucson authorities are preparing to try two men for attempting to dynamite Bonanno's house. A prosecution witness claims that an FBI man put them up to it. Thinking that Bonanno has been badly treated, young Hill last week volunteered to talk about his boss to Time Reporter James Willwerth. The following is Hill's portrait of an obsolete mobster:

Like many other retired executives, Bonanno finds the routine irksome. Most mornings Hill drives him into town, where Bonanno attends to errands until about noon. Returning home—a rather small, three-bedroom house at 1847 East Elm Street—he usually lunches on an Italian sausage sandwich, then puts on a "ghastly-looking" pair of Bermudas for a couple of hours of sun and reading in the yard.

Shortly before dinner, Bonanno changes into slacks and as a never-changing rule, sits down with a snifter of brandy and provolone. After dinner, preferably goat meat or *scampi* and Pouilly-Fuissé (1959 or 1961), he has a cigar, reads the newspapers and watches television newscasts, ending up with a late movie. His favorite stars are Alice Faye and—of course—George Raft.

Except for Hill, whose blond good looks, shaggy hair and modish clothes could easily mark him as a jet-setter, there is almost no one else around. It is a sad contrast to his high-rolling days, when prominent clergymen, judges and politicians felt it an honor to be entertained at the home of the mobster known as Joe Bananas. When the Government tried to deport Bonanno in 1954, for instance, among those who testified as character witnesses were the Most Rev. Francis Green, former Congressman Harold Patten and former Arizona Supreme Court Justice Evo DeConcini (the Most Rev. Francis Green is now the Roman Catholic bishop of Tucson).

Now Bonanno's heart condition keeps him close to Tucson—the fact that a grand jury in New York wants him for questioning may also be persuasive—but he is not really at home. Newspapers ride him. Substantial gifts to the Roman Catholic Church and philanthropies have somehow failed to make people forget about his background.

Bonanno often walks back and forth for hours, deep in thought. Hill says that he has seen him touch the tips of his fingers together, point them at the sky and moan: "I am in the world for 64 years, and only in the last five years have these things happened to me!" Other times he will be more philosophical: "I know it's my fault. It was impossible for me to foresee these things." He has only three ambitions now. One is to move closer to his children in Palo Alto, Calif. The second is to visit once more his birthplace and the graves of his parents in Castellammare del Golfo, Sicily, home of so many American Mafiosi. The third, which he apparently does not tell young Hill about, is to return to power, and, like Napoleon at Elba, he still dreams of the day when he can march home and reclaim his Costa Nostra family.

Mr. McCLELLAN. Mr. President, just yesterday, the Daily News carried a front page editorial calling for action to implement President Nixon's war on crime here in the District of Columbia. I recognize, of course, that the central thrust of S. 30 is directed against organized crime, but no careful student of organized crime can help but see a close relationship between it and street crime. It is, after all, as the recent narcotic bust here in the District showed, the New York Mafia leader who imports and distributes to the ghetto residents here in the District the narcotics that enslave them and lead them to mug and rob and yoke on our streets.

I ask unanimous consent that the text of that editorial appear in the RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Daily News, Jan. 20, 1970]

THE WAR ON CRIME: ONE YEAR LATER—IT IS TIME FOR ACTION

President Nixon was inaugurated one year ago today. He had been elected two months earlier on a platform which featured his declaration of a War on Crime. In a front page editorial we welcomed the new President's return to the city he knew so well, and his selection of it as a principal battlefield in the War on Crime he had led us to expect.

It is time now, one year later, to take an accounting.

It is time for the rhetoric to end.

It is time for partisan fingerpointing to end.

It is time for some action.

During this interval, crime rates in the nation and in the Federal City have soared to unprecedented heights. In 1969, in Washington, one murder was committed every 30 hours, an armed robbery took place 20 times a day, a woman was raped each day.

In 1969, the Nixon Administration submitted to Congress, after some six months' preparation, an inventory of legislative weapons it said it needed to prosecute the War on Crime.

On Oct. 9, in response to mounting public outrage and to his own often-repeated concerns, Mr. Nixon summoned the leaders of Congress and officials of Washington to a White House strategy session. Its purpose was to get bipartisan momentum rolling for the stalled anti-crime bills.

Police Chief Jerry V. Wilson, as we noted daily on Page One in our ensuing "Crime Crisis Countdown," told this prestigious gathering: "The total system of justice must be treated . . . My greatest fear is that Congress may go home without this being done."

His fear was realized on Christmas Eve, 76 days after that emergency meeting. The Senate had acted. But the House of Representatives had not.

The second session of the 91st Congress opened yesterday. There has been speculation (based on the solemn promises of leaders on both sides of the aisle, that Congress will complete action on the War on Crime legislation this year. Our hope that this will come to pass is mixed with skepticism because the same promises, made one year ago today, did not come to pass.

The victimized public can be reassured only by action.

We recognize that parts of the anti-crime package have raised some constitutional doubts . . . the provisions for greater license for wire-tapping and for pre-trial detention, for example. But much of the package is not controversial, or should not be . . . more police, more courts, a variety of attacks against syndicate crime, easing the lot of prosecutors, tougher penalties for the habitual criminal and for crimes of violence (particularly when guns are involved), and tougher measures against hard dope traffic.

There is no reason—no acceptable excuse—why the non-controversial bills should not be passed within the opening days of this session. In the past 365 days, ample attention has been paid to the problems of drafting this legislation by the Republican-controlled Department of Justice, and to its examination by the Democratic-controlled Congress. We'll buy the need to delay for those reasons—up to this point. But we will not buy any further delay. Congressmen reading the polls and weighing the outcome of recent off-year elections must realize that they may engage in further partisan bickering and legislative delay at their peril in the November general elections.

If further study is needed for those few controversial aspects of the proposed legislation . . . well, all right . . . but let's get on with committee study as the first order of business, and clear the way for prompt action on the floor.

It is time, too, to go beyond the cops-and-courts aspects of the War on Crime. We insist, as we did in that Open Letter to Mr. Nixon one year ago today, that the criminal be caught and prosecuted. We also want him, whenever possible, to be rehabilitated so that he will not return to the streets a more embittered and expert criminal.

In the heat of partisanship, the cause of law and order has suffered. Motives of both the "hardliners" and the "do-gooders" have been challenged. Justice, we repeat ourselves, means two things: it means that the innocent shall go free and that the guilty shall pay the price of their guilt.

No issue on the Hill has higher priority. No positive response will gain greater favor with the public.

To get very, very elementary, the physical well-being, the lives, even, of many Americans are at stake. So, of course, is the vitality of Our Town of Washington, and every other core of the great metropolitan areas of our nation. So, too, is the future of our democratic society.

Mr. McCLELLAN. Mr. President, I should like to bring to the attention of the Senate a touching letter that I just received from Mrs. Arthur J. McShane, who lives at 117 3d Street NE., here on Capitol Hill. Crime statistics are too often lifeless. We need to hear and read the personal testimony of how those who live daily in the fear of crime feel. If this bill and the other measures that Congress is now considering can in any way offer some measure of relief to our citizens who, like Mrs. McShane, live in daily fear of crime, we will have in some measure fulfilled our obligation as representatives of the people.

Mr. President, the letter is dated January 19, and is addressed to me:

DEAR SENATOR MCCLELLAN: May we please enlist your assistance in obtaining an effective crime prevention program in the neighborhood of Third Street, Northeast, between East Capitol and Massachusetts Avenue?

On Friday, January 16th, about 11:00 P.M., our good friends and neighbors were robbed at gun point in the 100 block of Third Street, Northeast, then forced to drive their abductor cross town. Last evening shortly after 8:00 P.M. a woman was attacked in front of our house.

These are just two of the recent crimes in our neighborhood. Our corner grocer at Third and Maryland closed because of many holdups, and the cleaners at Third and C is forced to keep their door locked. I would like to do an article entitled "Two Blocks From the Capitol" which would far surpass the title "Ten Blocks From the White House."

In my opinion the former precinct plan was much more effective than the present Districts. Our first need is beat men and officers from the Canine Corps. Scout cars are not the answer. I'm annoyed at being a prisoner in our home, and shall certainly appreciate any measures you can take so that we may all once more live with some feeling of security.

Sincerely yours,

MRS. ARTHUR J. MCSHANE.

Mr. President, I do not know this lady and did not know of her plight until today. I did know of another similar story. One of my employees, a committee employee, was robbed within less than a block of the door where he enters the Senate Office Building in which he works, just before Christmas. It is all over town, and many such crimes are not reported.

Of course, this bill, as I say, is not directed primarily to the District of Columbia. But many of these robberies, many of these muggings, many of these crimes of violence that are taking place in the District of Columbia, Mr. President, are motivated primarily to get money to satisfy the appetite of the drug addict; and it is the Mafia, it is organized crime, that is supplying that poison to them. This bill can have a significant effect in reducing street crime in the District and across the Nation.

Mr. President, I wish to insert in the RECORD one other letter. I think all Senators received this letter, which is dated January 19, 1970, from Hon. Hilton Davis, general manager for legislative action, Chamber of Commerce of the United States. The chamber strongly supports this bill.

I ask unanimous consent to have printed in the RECORD the letter to which I have referred, together with an enclosure.

There being no objection, the letter and enclosure were ordered to be printed in the RECORD, as follows:

CHAMBER OF COMMERCE
OF THE UNITED STATES,
Washington, D.C., January 19, 1970.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: In the next few days, I understand the Senate will consider S. 30, the Omnibus Organized Crime bill reported by the Judiciary Committee in December.

The Board of Directors of the Chamber of Commerce of the United States has approved support of many of the principal provisions of S. 30 as vitally needed legislation to help federal officers combat organized crime. A copy of this statement of approval is enclosed.

Every facet of our society is adversely affected by the extensive moral corruption resulting from the operations of organized crime. Particularly the youth of our Nation are being victimized by the illicit sale of narcotics and by gambling operations, both closely linked to organized crime.

This legislation is also needed to strengthen the legal tools for halting the infiltration of organized crime into legitimate businesses in our Nation. Many of its activities are now permeating legitimate businesses on an alarming scale.

The impact of organized crime on the national economy has reached phenomenal proportions. Latest estimates are that organized crime in America takes in more than $30 billion, and possibly as much as $60 billion annually, from its operations.

We urge you to give S. 30 favorable consideration when it reaches the Senate floor.

Cordially,

HILTON DAVIS,
General Manager, Legislative Action.

RECOMMENDATIONS ON ORGANIZED CRIME LEGISLATION AS APPROVED BY THE BOARD OF DIRECTORS OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, NOVEMBER 13, 1969

COMBATING ORGANIZED CRIME

To strengthen Federal efforts to combat organized crime, the National Chamber supports legislation providing for:

1. Extension of the grand jury system allowing the issuance of a presentment or report on misfeasance, non-feasance or corruption of public officials or their institutions.

2. Increasing investigatory and prosecutorial tools by implementing a Federal immunity provision, allowing the taking of depositions of witnesses, permitting introduction into evidence of declarations of co-conspirators, and codifying existing civil contempt proceedings.

3. Improving the system for protecting witnesses through Federal financial and other assistance.

4. Strengthening the Federal Government's authority to eliminate organized crime's economic power base by combating interstate gambling operations and the infiltration of legitimate business; and by creating a Federal study commission to examine the extent and effects of gambling upon society and the economy.

Support of the foregoing principles is with the understanding that such legislation will provide appropriate protection to the rights of the individual under the Constitution, and that specific provisions of any bill that deals with the Internal Revenue Code will be referred to appropriate Chamber committees.

Mr. McCLELLAN. In conclusion, I say that this measure is open to amendment. Maybe some amendments can be adopted that will strengthen and improve it. But I do not think there is anything in the bill that should be taken out. Perhaps my colleagues will disagree with me.

However, when we finish with this bill, and come to a final vote, I want every Member of the Senate to stand up and vote "yea," to let the world know—to give some comfort to the victims of organized crime in this country, and the potential victims—and that is every one of us—wherever they are—to give some comfort and reassurance to the people that Congress is alert, that the Senate of the United States is becoming aggressive in this field, and that it is resolved and determined to enact any law within the framework of the Constitution that will strengthen law enforcement in this country, and deal with this criminal element effectively, to the end that it may be eradicated from our society.

I yield to the distinguished Senator from North Carolina.

Mr. ERVIN. Mr. President, I compliment the distinguished Senator from Arkansas and his principal cosponsor of this measure, the distinguished Senator from Nebraska (Mr. HRUSKA), and the members of the staff of the Subcommittee on Criminal Laws and Procedures, on the fine work which has brought this bill thus far along the legislative road.

I should like to make this observation: Last May, I became personally acquainted wth crime in the District of Columbia. There was a North Carolina boy, from Mecklenburg County, N.C., whom I had given a position in the Senate Post Office, in the Senate Office Building. He was stabbed, robbed, and killed on the streets of the District last May.

His roommate said he did not have more than $10 or $12 on his person at that time. In other words, here were people who were willing to take the life of a fellow human being, who was giving them no trouble and who was traveling peacefully along the streets of the District of Columbia, in order to get a few paltry dollars.

I reiterate that I think the distinguished Senator from Arkansas and the distinguished Senator from Nebraska, and the counsel of the subcommittee, deserve the thanks of the American people for bringing this bill thus far along the legislative road.

Mr. McCLELLAN. I thank the distinguished Senator. I want to express my appreciation to him as a member of the subcommittee which processed this bill for the valuable assistance he gave us, his wise counsel, and his enthusiastic support of these provisions of the bill, the titles that are now before us; and I certainly join with him in complimenting the staff, which I shall do more elaborately at the conclusion of the handling of this bill. We have been most fortunate in having a highly competent staff, and, with respect to the staff on both sides of the aisle and the Members on both sides of the aisle, as I said at the beginning, this has been a labor in which there has been less politics, I think, for a bill of this magnitude, than any I have participated in since I have been in the Senate.

There has been a concerted, united, dedicated effort on the part of all members of the committee to try to bring out a bill in this area of criminal justice that will be effective and productive in dealing with organized crime.

Mr. President, I yield the floor.

Mr. HRUSKA. Mr. President, those of us who are interested in the discussion and the passage of the pending bill appear in the Chamber today with a deep sense of assurance in the quality of the work product of the Committee on the Judiciary as seen in this bill, S. 30.

I am able to say this for a number of reasons. Perhaps the chief and most meaningful of those reasons is the diligence, the dedication, the persistence, the talent, and the genius of the chairman of the Subcommittee on Criminal Laws and Procedures, the Senator from Arkansas (Mr. McCLELLAN). His attributes as a legislator are well known to all of us. We have learned to admire him and to rely upon his judgment and upon his vast experience in the fields to which he devotes his efforts. In his functioning, he is always of an open mind. He is always constructive. He is always fair to all who come up with new ideas that they wish considered during the study of any measure.

A proof of his great effectiveness, I think, was illustrated this afternoon when Senator McCLELLAN proceeded with and concluded his explanation of this bill. It was an impressive and very fine presentation of a vital and highly necessary piece of legislation. As I sat here listening to his exposition, and later to his plea for early and effective action on this crucial legislation, I could not help but wish that all of the Members of this body as well as the Members of the House of Representatives had had a chance to listen to the eloquence and persuasiveness which he commands. I wish all Members of the Congress could capture the sense of urgency which he was able to impart for the consideration and early approval into law of the measure we are now considering.

Our feeling of assurance in presenting S. 30, however, is also based upon varied sources of its substantive and component parts and the careful processing accorded them before the bill was assembled into its final form. A number of other bills independently introduced in this body were resorted to for material that found its way into S. 30. In some instances they were incorporated into the bill as separate titles, and there are 10 titles in all in this measure. The result is a well-balanced and well-rounded approach to the problem at hand, a problem that finds its basis in a very grave and serious situation which confronts the Nation.

Mr. President, the Nation's crime problem has never been more acute than it is today. Crime of all kinds is on the increase. Crime and the very fear of crime are daily eroding the basic quality of life of millions of Americans. Nowhere is this erosion more critical than in the field of organized crime which, despite earnest efforts to control it, continues to grow at an alarming pace.

Mr. President, the measure before the Senate today is the result of many long hours and weeks of thoughtful analysis and toil. It is designed to correct a very serious malady. The organized crime problem has been of grave concern to me for many years, and all of us have been very distressed over the inability of the Government to make any significant gains in eradicating it. There are several reasons for this failure. The organized crime bill is an attempt to remedy these failures and to better equip the law enforcement community in dealing with the problem.

It has been my privilege to introduce some of the measures which now form separate titles of S. 30 and of cosponsoring the rest with the Senator from Arkansas (Mr. McCLELLAN). The bill was closely scrutinized in the Criminal Laws and Procedures Subcommittee and I am satisfied as to its practicality and constitutionality. I support the entire bill—subject, of course, to the caveat very properly suggested by the Senator from Arkansas, that, as we proceed in the consideration of this bill, together with any amendments that will be proposed, we certainly will hold an open mind and not consider that S. 30 in its introduced form, as now pending, is necessarily a perfect or even a final version.

Investigations conducted by Congress and the law enforcement agencies during the past two decades, and most recently by the President's Commission on Law Enforcement and Administration of Justice, have established beyond any doubt that organized crime is a reality which exists in our midst and pervades every section of the Nation. According to the National Crime Commission, while the core of the organized crime effort in the United States consists of 24 major groups operating as criminal cartels in large cities across the Nation, these groups are allied with other racket enterprises to form a loose confederation operating in both large and small cities. It involves thousands of criminals, and its actions are the result of intricate conspiracies carried on over many years. Its aim is the amassing of huge profits derived from control of such illegal activities as gambling, narcotics, and loansharking. It is also deeply involved in other activities such as robbery, larcency, and arson.

In recent years, organized crime has become increasingly diversified and has become entrenched in legitimate businesses and in labor unions where it employs terrorism, extortion, tax evasion, bankruptcy fraud and manipulation, and other measures to drive out lawful owners and officials. Also, wherever organized crime exists, it corrupts public officials and wields extensive political in-

fluence which insulate its activities from governmental inferferences.

Corrupt officials and bribed law enforcement officers operate as "a silent conspiracy" in support of organized crime. The syndicate could not continue to operate without corrupt judges and prosecutors, or without the assistance of a handful of bribed police.

Testimony before the subcommittee during our hearings on this bill not only disclosed how prevalent corruption of local police is, but it furnished a striking illustration of the fact that it is not at all limited to the so-called crime centers of New York, Miami, Chicago, and Las Vegas.

The National Crime Commission, after analyzing the difficulties experienced by law enforcement agencies in bringing successful prosecutions against members of organized crime, concluded:

> From a legal standpoint, organized crime continues to grow because of defects in the evidence gathering process. Under present procedures, too few witnesses have been produced to prove the link between criminal group members and the illicit activities that they sponsor.

The Organized Crime Control Act of 1969, adopting as it does the best features of the recommendations of the National Crime Commission, seeks to remedy these defects by revising and strengthening the procedural aspects of the evidence gathering process.

Title I, for example, recognizes that the grand jury is without peer as an instrument of discovery against organized crime, and provides for the impaneling of special grand juries, in addition to regular grand juries, in districts containing more than 4 million inhabitants or where the Attorney General certifies that one is necessary because of criminal activity in the district. Such special grand juries would be empowered to select their own foreman, to extend their term up to 36 months, to request, in case of need, that an additional grand jury be empowered, and, most significantly, to have restored their ancient power to issue public reports regarding organized crime conditions in the district. These reforms would make this venerable institution less an arm of the court and more of an independent body with an unfettered duty to seek out and destroy organized crime.

The other procedural reforms contained in titles II through VII, dealing, respectively, with general immunity, recalcitrant witnesses, false declarations, protected housing facilities for housing Government witnesses, depositions, litigations, and title X, dealing with dangerous special offender sentencing, are all necessary complements of the reinforced grand jury powers. These provisions will insure the necessary quantity and quality of evidence sufficient for valid indictments and convictions of organized crime figures. They provide the imposition of appropriate sentences for such convicted professional or organized crime offenders. These long overdue remedies are indispensable legal tools for providing our law enforcement officials with the evidence necessary to bring consistently effective criminal sanctions to bear on the leaders and participants of organized crime.

In addition to these procedural reforms, this act contains two substantive provisions of major significance in the struggle against this fearsome national enemy. Title VIII, recognizes that large scale, illegal gambling operations provide the chief source of revenue for organized crime and are dependent upon the facilities of interstate commerce. Therefore this bill strikes out at such activities by making it unlawful to engage in a scheme to obstruct the enforcement of State law to facilitate an "illegal gambling business." An "illegal gambling business" is defined as, first, violating State law, second, involving five or more persons, and third, operating in excess of 30 days or having a gross revenue of $2,000 in any single day. It also makes it unlawful to engage in the operation of such an "illegal gambling business" itself.

As President Nixon stated in his April 23, 1969, message on organized crime:

> The purpose of this legislation is to bring under Federal jurisdiction all large-scale illegal gambling operations which involve or affect interstate commerce. The effect of the law will be to give the Attorney General broad latitude to assist local and state government in cracking down on illegal gambling, the wellspring of organized crime's reservoir.

(At this point Mr. GOLDWATER took the chair as Presiding Officer.)

Mr. HRUSKA. Mr. President, the second substantive provision of this act is contained in title IX, Racketeer Influenced and Corrupt Organizations. This title contains a rather novel, and in my opinion, a most promising and ingenious proposal for crippling organized crime's relatively recent, but spectacularly successful, emergence into the field of legitimate business and unions.

Some measure of the actual and potential impact of this facet of organized crime's activities on our economic system may be gaged from the report of the National Crime Commission which found that it has to an alarming degree acquired both open and concealed ownership in a broad variety of legitimate enterprises, including production and service industries where it has established strong footholds.

The New York Times in its edition of October 14, 1969, reported that a recent survey of the business interests of 113 of the major underworld figures in the Nation disclosed that 98 of them were found to be engaged in legitimate businesses, including extensive holdings in casinos and nightclubs, land investment and real estate, hotels and motels, vending machine companies, restaurants, trucking concerns, wholesale food distributorships, sports and entertainment, and financial institutions. The Wall Street Journal on January 12, 1970, reported the overwhelming penetration and control of legitimate business in the New Orleans area by organized crime figures.

When organized crime infiltrates a legitimate business, its whole method of operation counters our theories of free competition and acts as an illegal restraint of trade. Whether a business is purchased from funds derived from its many unlawful activities, or whether it is acquired by extortion and violence, its aim is monopoly. It employs physical brutality, fear and corruption to intimidate competitors and customers to achieve increased sales and profits. The vast economic power concentrated in this giant criminal conglomerate constitutes a dire threat to the proper functioning of our economic system.

Title IX of this act is designed to remove the influence of organized crime from legitimate business by attacking its property interests and by removing its members from control of legitimate businesses which have been acquired or operated by unlawful racketeering methods. Stated simply, this legislation makes it unlawful for any person to acquire an interest in or establish an enterprise engaged in interstate commerce by the use of income derived from "a pattern of racketeering activity" which is defined in terms of a number of existing criminal offenses characteristic of organized crime activity. It would also prohibit any person from acquiring or maintaining any interest or control of any such enterprise by a pattern of racketeering activity, and likewise prohibit any person employed by or associated with such an enterprise from conducting the enterprise's affairs by a pattern of racketeering activity.

These unlawful acts which I have just described would subject violators to strict criminal penalties of fines of up to $25,000 and prison terms of up to 20 years. But the principal value of this legislation may well be found to exist in its civil provisions which employ the time-tested antitrust remedies of injunction, divestiture, dissolution, and reorganization which have been highly effective in removing and preventing harmful behavior in the field of trade and commerce. There is abundant precedent for applications of these civil remedies to the conduct sought to be prohibited by this legislation in decisions of the Supreme Court upholding similar civil remedies in antitrust cases.

I believe that the combination of criminal and civil penalties in this title offers an extraordinary potential for striking a mortal blow against the property interests of organized crime. In his April 23, 1969, message on organized crime, President Nixon stated:

> The injunction with its powers of contempt and seizure, monetary fines and treble damage actions, and the powers of a forfeiture proceeding, suggest a new panoply of weapons to attack the property of organized crime—rather than the unimportant persons (the fronts) who technically head up syndicate-controlled businesses. The arrest, conviction and imprisonment of a Mafia lieutenant can curtail operations, but does not put the syndicate out of business. As long as the property of organized crime remains, new leaders will step forward to take the place of those we jail. However, if we can levy fines on their real estate corporations, if we can seek treble damages against their trucking firms and banks, if we can seize the liquor in their warehouses, I think we can strike a critical blow at the organized crime conspiracy.

These are new and innovative techniques. They have not been tried before against the racketeers. But this is just

what is needed if any significant gains are to be made.

We must give no mercy to the soldiers of organized crime. If it takes an antitrust provision, or a concentrated effort to strangle the narcotics traffic, or a raid on the cartels of gambling; all of us, and citizens everywhere must be prepared to go forward with the programs which will make organized crime unprofitable, unacceptable, unattractive, and vulnerable to criminal prosecution on a wider scale.

The tone and the effectiveness of any government is set at the top. Though our Government must depend on the resources of its citizens, the example and the efficiency at the top level of Government can pattern the degree and the morale of our individual commitments to society's goals. I think we have a Chief Executive and an Attorney General who are thoughtful advocates of a persistent effort in the fight against crime. They have demonstrated that they are willing to use, and they have used, some of the tools recently conferred upon law enforcement officials by the Congress in the battle against organized crime. The most notable illustration in that regard is the use of electronic surveillance which was enacted as a part of the Omnibus Crime Control and Safe Streets Act of 1968, but which tool was not used until within the past 12 months.

But Mr. President, even those at the top cannot do the job alone. We here in Congress must do our part. We must equip the administration with the tools it needs. With favorable consideration of S. 30 we all will have taken a significant step in the proper direction.

It is my earnest hope that it will be promptly considered and that it will promptly ripen into a full-fledged and effective statute.

Mr. YARBOROUGH. Mr. President, the bill before us today, S. 30, the Organized Crime Control Act is designed to fulfill the first requisite of organized society: to protect its members from injury, crimes, and violence. The Subcommittee on Criminal Law and Procedure, chaired by the distinguished Senator from Arkansas (Mr. McCLELLAN), has held extensive hearings on this bill and the committee has prepared an excellent weapon for the fight against organized crime in our Nation. The bill, as amended and reported by the Committee on the Judiciary, evidences great diligence and care in its preparation for the war we must wage against this cancerous threat to our society. I would like to commend the distinguished Senator from Mississippi (Mr. EASTLAND) and the Committee on the Judiciary for the thoughtfully considered amended bill, which synthesizes a number of separate bills, all directed toward an attack against organized crime.

Organized crime threatens the very foundations of our society. Its victims are legion, but it preys primarily on the poor and the uneducated and adds further oppression to the social and economic disadvantages already borne by these people.

Organized crime threatens the security of the Nation by terrorizing, through physical and economic threats, the innocent businessman and the individual citizen. One of the most pernicious threats posed by organized crime is to our youth, by making a business out of corrupting the hope of our Nation with deadly narcotics and dangerous drugs. It is time for us to muster our forces and fight to save our society, through a full-scale attack on organized crime. This bill, S. 30, provides modern armament for this struggle.

The bill provides the law enforcement authorities essential tools to prepare their cases against organized criminals by making it possible to obtain witnesses, protect those witnesses, and to compel those witnesses to testify.

This bill realistically strikes at the economic roots of organized crime, and in title VII creates new substantive crimes defining and punishing the promotion of, and participation in an "illegal gambling business."

The approach of the bill is to define an "illegal gambling business" in terms of the number of people involved and in terms of gross receipts and length of operation. The gambling activity must be conducted by five or more people, either operating for 30 days or more or having a gross revenue of $2,000 a day. This is a sound and necessary approach. The bill recognizes that we only diffuse our law enforcement resources if we spread the net too broadly, and it focuses the attack on the large-scale gambling enterprises which are the bread and butter of organized crime.

Another commendable portion of the bill is designed to root out the influence of organized crime in legitimate business, into which billions of dollars of illegally obtained money is channeled and which is often used, along with violence, to drive out legitimate competitors. Title IX of S. 30 establishes new substantive crimes to prohibit racketeer influence and corruption of organizations and enterprises. Along with severe penalties, a unique criminal forfeiture provision will make it possible to divest the racketeer of any interest he may have obtained in the organization or business.

In closing, I would also like to commend that portion of the bill which defines the "dangerous special offender" and provides for increased sentences for those persons who are determined by the court to fall within the categories set out in title X. These categories include the three-time felony offender, the professional criminal who derives a substantial portion of his income from his life of crime, and the organized crime leaders, their "enforcers" and their "corruptors."

With this "dangerous special offender" provision, we will have a better chance to deal a mortal blow to organized crime by being able to incarcerate these people for more extended terms and effectively remove them from their permanent occupation of preying on innocent people.

This bill, S. 30, focuses the attack on organized crime and provides the necessary legal armament for the law enforcement authorities to pursue the enemy.

This is a commendable piece of legislation and I urge my fellow Senators to join me in its support.

ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock meridian tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF ROUTINE MORNING BUSINESS, UNFINISHED BUSINESS, AND RECESS ON TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that upon the completion of the prayer and the disposition of the Journal on tomorrow, there be a brief period for the transaction of routine morning business, not to exceed 15 minutes, that at the conclusion of the morning business the unfinished business be laid before the Senate, and that the Senate then stand in recess subject to the call of the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORGANIZED CRIME CONTROL ACT OF 1969

The Senate resumed the consideration of the bill (S. 30) relating to the control of organized crime in the United States.

Mr. ALLOTT. Mr. President, first of all I congratulate the distinguished Senator from Nebraska (Mr. HRUSKA) for the work he has done over the years in helping to effect new controls and new laws in the areas which are involved in S. 30 and which are involved here, as well as to pay my compliments also to the distinguished Senator from Arkansas (Mr. McCLELLAN) the chairman of the committee.

Mr. President, one of the most pervasive problems facing our Nation today is the deep penetration into all phases of American life by organized crime. Financed primarily by illegal gambling, organized crime reaches out to embrace such varied activities as sale of narcotics, fraudulent bankruptcies, infiltration and corruption of labor unions, and loan sharking. It has recently begun to engage in legitimate business operations to which it brings its primitive code of terror and theft. Organized crime affects the average citizen not only by siphoning hard-earned money from the poor through its illegal gambling operations, but also by encouraging the addict to rob and mug to pay for his drugs, and the burglar to steal by providing an outlet for his stolen goods.

Organized crime has been the subject of much investigation and thought in recent years by those charged with combatting crime. Much effort has gone into determining who the members of this organization are, what activities they engage in, the state of existing legislation and how it has been found wanting and, lastly, in devising new weapons to impede the spread of organized criminal activity and to put its members behind bars.

A culmination of this effort is the proposed Organized Crime Control Act

of 1969. Encompassing some 10 substantive titles, it seeks to eradicate organized crime in this country both by strengthening the legal tools available in the evidence gathering process and by creating new criminal sanctions and penalties to deal with the widespread illegal activities of the present-day organized mobster.

This legislation is truly a nonpartisan product. Input has come from Members of both sides of the aisle. This is proper, because crime victimizes all members of the community.

As the President stated last spring:

> Organized crime's victims range all across the social spectrum—the middle-class businessman enticed into paying usurious loan rates; the small merchant required to pay protection money; the white suburbanite and the black city dweller destroying themselves with drugs; the elderly pensioner and the young married couple forced to pay higher prices for goods. The most tragic victims, of course, are the poor whose lack of financial resources, education and acceptable living standards frequently breed the kind of resentment and hopelessness that make illegal gambling and drugs an attractive escape from the bleakness of ghetto life.

S. 30 is the result of a concerted effort to stop the spread of organized crime. Each of its titles plays a role in reaching that goal. However, one title stands out because its proper enforcement could strike a crippling blow to its major source of revenue—illegal gambling.

I would like to devote the rest of my remarks then to title VIII—syndicated gambling.

Gambling may seem to most Americans to be the least reprehensible activity of organized crime, but in reality it is gambling that provides most of the funds that yearly pour into bribery of local officials, wholesale narcotics, usurious loans and the infiltration of labor unions and legitimate businesses.

Gambling, itself, is largely the creature of organized crime and is its principal source of revenue. It has been estimated that illegal wagering on horseraces, lotteries, and sporting events totals at least $20 billion each year and may reach as high as $50 billion. The scope of this source of revenue can be seen from the fact that the total amount of money bet legally in the United States at racetracks is but $5 billion. Analysis of organized criminal betting operations indicates that the profits on $20 billion worth of illegal gambling total some $6 or $7 billion annually. Almost 20 years ago the Kefauver committee pointed out:

> These profits provide the financial resources whereby ordinary criminals are converted into big-time racketeers, political bosses, pseudo businessmen, and alleged philanthropists.

If this source of revenue can be diminished substantially, organized crime will clearly suffer.

To help dry up this source of huge criminal revenues, title VIII will make it a Federal offense to engage in any large-scale business enterprise of illegal gambling. It does not purport to bring all illegal gambling activity within the control of the Federal Government. It deals only with those who are engaged in an illicit gambling business of major proportions, as distinguished from those whose operations are relatively small.

The statute defines an "illegal gambling business" as one including such forms of betting as bookmaking or numbers and which first, is a violation of State law; second, involves five or more persons who participate in the gambling activity; and third, which has been or remains in operation for a period in excess of 30 days or which has a gross revenue of $2,000 in any single day. As a practical matter cases in which this standard is met will ordinarily involve gambling operations of considerably greater magnitude, because it is usually possible to prove only a relatively small proportion of the total operations of a gambling enterprise. Thus, the proposal does not apply to gambling that is sporadic or of insignificant monetary proportions. It seeks to reach only those who prey systematically upon our citizens and whose operations are so continuous and so substantial as to be a matter of national concern. Even as to those, the Federal Government's enforcement effort will necessarily have to be centered on selected targets of special significance because of manpower limitations.

The size of the gambling enterprises prevalent in this Nation in recent years, and thus the scope of the problem title VIII seeks to cope with, can be seen from the following list made available by the Department of Justice:

In Cleveland and Detroit coordinated sweeps by FBI agents resulted in the arrest of four men allegedly running one of the largest bookmaking operations in the Midwest. The ring was handling approximately $100,000 a week;

In the San Diego area, Internal Revenue Service agents arrested three bookmakers handling an estimated $400,000 per month in bets;

In the Philadelphia area, police conducted five raids and arrested 30 persons in connection with gambling operations handling over $460,000 a month;

Of the FBI's 1966 gambling arrests, 72 occurred in the Chicago area, involving operations with a monthly gross of approximately $550,000;

Twelve in the Los Angeles area, including at least one operation handling an estimated $100,000 a month;

In the Louisville area 22 handling an estimated $56,000 a month;

On July 9, 1963, four men were convicted in the northern district of Indiana in connection with a bookmaking operation which reportedly grossed $750,000 a year;

Raids by various Federal, State, and local law enforcement agencies in late 1967 led to the breaking up of casino, lottery, and bookmaking operations, the largest being in the Buffalo and Chicago areas, handling an estimated $3,750,000 a month at the time;

Evidence seized during raids in the Philadelphia area indicated that the wagering operation there was grossing about $15,000,000 per year;

One individual's records reflected annual wagering receipts of over $1,600,000 with a net profit between $3,000 and $5,000 per week.

Mr. President, these sums are shockingly large. But they are cold and lifeless until we see how they can be brought to bear on individuals.

The examples I have just cited are only examples. They are the tip of the iceberg. Even so, the money involved in these examples amounts to yearly earnings of over $85 million.

Consider the men behind this money. Obviously they live their lives in contempt for the law. Obviously they have a unique concept of normal business operating expenses. Obviously the Internal Revenue Service does not figure importantly in their expenses. What, then, are their expenses?

One operating expense is graft. Corrupting public officials takes money.

America's crime empire is rich in slang as well as in money. One underworld slang word is "ice." This "ice" is bribe money paid to public officials to purchase protection for illegal activities. The word "ice" is very descriptive. Such "ice money" takes the heat off criminal operations and allows them to slide smoothly by any legal barriers.

Just consider the "ice" money available to the men involved in the examples just cited. These men—a small slice of the gambling racket—can spread a lot of "ice" with untaxed annual earnings of $85 million. If they devote only 1 month's earnings to bribery and corruption, this means that just these few members of the gambling empire can spread $7 million among strategic public officials. Seven million dollars can be broken down into 140 bribes of $50,000. But bribes of that size are rarely necessary. What keeps gambling going is often protection at the lowest level. Gambling exists when the local patrolman turns a blind eye to the corner bookie. Or when a city's prosecution staff mysteriously finds it "inexpedient" to follow through on cases. Seven million dollars prudently invested in bribes can work wonders in such matters. Seven million dollars can produce 7,000 bribes of $10,000 each.

Imagine what terrible temptation there can be for a young patrolman struggling to make ends meet on a salary which does not properly compensate him for the dangerous service he renders the community. Mr. President, nothing can make the acceptance of a bribe excusable. But corruption, and its attendent law enforcement problems, become understandable when we see how the underworld's money operates in real life; and it becomes understandable when we understand the vast amounts available to organized syndicates that exercise their ruthless power.

Mr. President, there is no doubt that the vast majority of American law enforcement officials, from the local patrolmen on up, are dedicated and incorruptible. But there can be no escaping the fact that organized crime and public corruption are inseparable.

Large-scale gambling operations, such as the ones involved in the examples just cited, will ordinarily violate State laws, will involve five or more operators, will operate over an extended period of time, and will handle at least $2,000 daily.

This is the sort of gambling that title VIII of S. 30 will combat.

The Federal Government will not preempt the field of gambling regulation under this legislation. Federal authorities will continue in their traditional role of cooperating with local law enforcement officials who will continue to bear the primary responsibility in this area. The purpose of the statute is simply to make the Federal Government a more effective member of the established State-Federal law enforcement partnership which has long been waging a common war on organized crime and illegal gambling. It will, however, be possible for the Federal Government to intervene where local and State governments have been rendered powerless because of the corruption of the responsible officials, such as has recently been revealed in New Jersey.

In addition to being largely the creature of organized crime and its principal source of revenue, illegal gambling both involves and affects interstate commerce. People, information, funds and paraphernalia, without which gambling enterprises could not be conducted, move regularly across State lines. Moreover, by diverting expenditures from ordinary lines of commerce into its own coffer, gambling distorts the production of goods for commerce and the flow of goods in interstate commerce. These interstate aspects of gambling make it an appropriate subject of concern to the Federal Government.

There are numerous cases in the Federal courts that demonstrate the dependency of substantial gambling enterprises on the facilities of interstate commerce.

In one case (*United States* v. *Hawthorne,* 350 F. 2d 740 [Fourth Cir., 1966]), evidence has shown that the facilities of Western Union were used to transfer the proceeds from slot machines, owned by a defendant and operated by his partner in Indiana, from that State to a defendant in West Virginia.

In another case (*United States* v. *Barrow,* 363 F. 2d 64 [Third Cir., 1966]), the evidence indicated that gambling casino employees traveled to a Pennsylvania casino from their New Jersey homes.

In a third case (*United States* v. *Miller,* 379 F. 2d 483 [Seventh Cir., 1968]), the defendants operated wagering pools on the basis of information received through the Western Union sports ticker.

In a fourth case (*United States* v. *Spino,* 345 F. 2d 327 [Seventh Cir., 1965]), the testimony established that the defendant, in charge of certain gambling operations in East Chicago, Ind., was financed by sources in Chicago, Ill.

On November 14, 1957, suspected racketeers from California, Ohio, Texas and many other locations in the United States and even Cuba gathered at Joseph Barbara's home located in Apalachin, N.Y., for the now famous gangland meeting. (See *United States* v. *Bonnano,* 180 F. Supp. 71, 74 [S.D.N.Y. 1960]).

In October 1965, in Palm Springs, gamblers and underworld figures held what is referred to as the "Little Apalachin" meeting. In attendance were Ruby Lazarus, a Miami Beach and New York City bookmaker, Vincent Alo, Anthony Salerno, New York members of the Cosa Nostra "family" then headed by Vito Genovese, as well as Jerome Zarowitz, credit manager of a Las Vegas casino, Caesar's Palace. (See *In re Ruby Lazarus,* 276 F. Supp. (D.C. Calif. 1967)).

In another case (*United States* v. *Zambito,* 315 F. 2d 266 (Fourth Cir., 1963)), the defendant was convicted of causing others to travel and to carry in interstate commerce gambling paraphernalia to be used in, and with intent to promote, an illegal numbers operation.

Moreover, information available to the Government has disclosed that a system of couriers has been used to deliver funds which have been "skimmed" from Las Vegas casinos to points throughout the country. Profits from gambling are not only transported in interstate commerce but are also being funneled out of the country as well. Government agents are attempting to breach the wall of silence thrown up by foreign bankers to cover the millions of dollars of untaxed underworld money which is allegedly flowing to numbered accounts in banks in Switzerland.

Existing Federal statutes dealing with the interstate aspects of gambling—sections 1084, 1952, and 1953 of title 18 of the United States Code—are not broad enough to reach all harmful gambling activity which is milking the sustenance away from hundreds of thousands, and diverting huge sums away from productive use in the economy.

Despite existing statutes and despite the efforts of Federal and State governments, illegal gambling continues to exist on a large scale. A more effective effort is clearly required to eliminate illegal gambling. In that effort the Federal Government must be able not only to deny the use and facilities of interstate commerce to the day-to-day operations of illegal gamblers—as it can do under existing statutes—but also to directly prohibit substantial business enterprises financed by gambling, and the attendant corruption of local law enforcement officials.

Organized crime is intimately involved in substantial gambling enterprises which, of necessity, involve or affect interstate commerce. Thus, it is well within the power of the Congress to legislate simply and directly against such illegal activity, without requiring proof of interstate commerce as an element of the crime. This direct approach is a key feature of title VIII.

By supplementing existing Federal legislation in this manner and eliminating the requirement that an interstate element be proved in each case, investigative manpower requirements will be lessened. More important, investigations that were thwarted and cases that could not be prosecuted in Federal courts because of lack of proof of a specific interstate element will be placed within the Federal jurisdiction.

Under existing legislation, many Federal investigations of gambling operations end with no indictments because of the lack of evidence of an interstate element. For example, officials of the Department of Justice testified that in Brooklyn, N.Y., an extensive investigation ended in the indictment of only three out of 20 suspects because of the absence of evidence of an interstate activity by the other 17. The three who were indicted for violations of 18 U.S.C. section 1952, were involved with 17 others in running a multimillion-dollar gambling operation in Queens, Long Island, and Brooklyn, N.Y. The only interstate travel that could be proved was the travel of the three who were indicted from their homes in New Jersey to work in New York. The gambling operation itself involved no interstate travel and the other 17, who all lived in New York, could not, therefore, be prosecuted federally despite their known participation in this huge gambling operation. Clearly, such a large scale gambling operation affects interstate commerce. Title VIII will provide a much needed weapon to prosecute organized gamblers speedily, effectively, and directly.

Another facet of the existing statutory attack on illegal gambling is the operation of the wagering tax and registration sections of the Internal Revenue Code of 1954 (26 U.S.C. 4401–23). In the enforcement of these Federal laws the Federal Bureau of Investigation, the Internal Revenue Service, the U.S. attorneys, and the Criminal Division of the Department of Justice for years worked in partnership with State and local law enforcement agencies throughout the country to coordinate the war on illegal gambling and organized crime.

In large measure the effectiveness of this partnership was dependent on the work of the Internal Revenue Service in implementing the wagering tax provisions. Much of this effectiveness was destroyed by the Supreme Court's decisions in *Marchetti* v. *United States* (390 U.S. 39 [1968]), and *United States* v. *Grosso* (390 U.S. 62 [1968]), as a result of which certain aspects of the Federal wagering tax and registration requirements were held unconstitutional as applied to the defendants. While pending legislation may make it possible to restore some of the effectiveness of this partnership between Federal agencies, particularly through the work of the Internal Revenue Service, the benefits flowing from this partnership will not be as effective as in the past. This is because it will be necessary to restrict the use of much of the information that the IRS obtains respecting illegal gambling to the enforcement of the tax laws alone. It may no longer be possible for IRS to turn over to the FBI or State or local law enforcement agencies information voluntarily disclosed by gamblers. It thus becomes even more urgent to permit a direct attack on illegal gambling by declaring the gambling business itself to be illegal under Federal law.

Other benefits flow from a direct approach, whereby specific proof of interstate commerce is not required in every case. For instance, a very effective law enforcement weapon against gambling activities is the police raid on a gambling establishment and the resultant seizing of evidence. In order to make such a raid, it is necessary to obtain a search warrant based on probable cause to believe that there is a violation of Federal law. Showing that gambling exists at a par-

ticular location can be done fairly easily through the testimony of agents who have closely watched the location and observed the kind of traffic in and out of it which is characteristic of a gambling operation. On the other hand, to show at this investigatory stage of the proceeding that the gambling activity in question involves the use of interstate commerce or its facilities is often far more difficult. Yet, under the existing statutes demonstration of this connection between the gambling activity and the use of interstate facilities is necessary at the very outset of Federal action before a warrant can issue.

On the other hand, if a Federal warrant can be obtained and a raid conducted, the Federal agents making the raid are entitled to confiscate and use as evidence documents or other things which they find on the premises. Moreover, the information thus obtained will often show a sufficient relationship of the gambling enterprise to interstate commerce to bring indictments under sections 1084, 1952, or 1953 of title 18 of the United States Code.

Because of the clear effect that large-scale gambling operations have on interstate commerce, the use of the gambling raid pursuant to a warrant for violation of title VIII will greatly enhance this law enforcement weapon. Its use in a locality where local officials are corrupted and controlled by the gamblers will make successful prosecutions possible where there may be no other practical means.

A second major feature of the syndicated gambling title of S. 30 will make it illegal for two or more persons to participate in a scheme to obstruct local law enforcement in order to facilitate an illegal gambling operation. This part of title VIII is aimed at corruption of local law enforcement officials by organized gamblers. As the President pointed out in his message on organized crime—

> For most large-scale illegal gambling enterprises to continue operations over any extended period of time, the cooperation of corrupt police or local officials is necessary.

Bribery and corruption destroy local law enforcement as an effective weapon against organized crime. The criminal activity that flourishes under such conditions affects not only the local community in which it occurs but also other parts of the country, thus becoming a matter of Federal concern. A grand jury investigation conducted by Justice Department attorneys uncovered evidence that local numbers operators had almost every member of the vice squad of a major midwestern city on their payroll. Shortly after this testimony, a Federal grand jury indicted eight Columbus, Ohio, policemen and one of the men alleged to have made monthly payoffs to them for protection of a numbers operation. Among those indicted were the chief of the intelligence squad of the Columbus police and the chief of the Columbus vice squad. These indictments charged a conspiracy to prevent the United States from lawfully collecting wagering taxes. Title VIII would permit a more direct attack on the basic corruption itself.

Additional grand jury testimony concerned another major city where extensive police corruption reportedly existed. Shortly after passage of the wagering tax laws in 1951, efforts were made by agents of the Internal Revenue Service to coordinate their activities with the city's vice squad, but after a large percentage of the joint raids were unsuccessful, investigation disclosed that the vice squad members, almost to a man, were being paid off by lottery operators and bookmakers. Federal authorities were unable to develop viable tax evasion cases, and, in the local trials of the police officers involved, many members of the local police force testified that they would not believe either the Federal or State officers who testified for the prosecution. None of the local policemen were convicted.

The effect of such police corruption has a stultifying effect on Federal-State cooperation in the campaign against organized gambling. This inability of Federal agencies to enforce the statutes within their jurisdiction is an important basis for the Congress to take action in this area. Bribery of State and local law enforcement officials is a necessary element to the success of a gambling business. It can even be said that it is an ordinary business expense of gambling. Clearly, no large-scale gambler can operate without the knowledge and consent of some local officials. The fact that gambling flourishes in this type of atmosphere and that large-scale gambling has a clear effect on interstate commerce requires that Congress make it a Federal crime to engage in such corruption and bribery.

Title VIII will strike at such corruption by making it a felony for two or more persons to participate in a scheme to obstruct enforcement of any State or local criminal law with the intent to facilitate an illegal gambling business. For the act to be invoked, it will be necessary, first, for one of the persons to do any act to effect the object of the scheme; second, for one of the persons to be an official responsible for execution or enforcement of criminal laws; and, third, for one of the persons to participate in an illegal gambling business.

Title VIII covers any person who is an official or employee, elected, appointed, or otherwise, who is responsible for the enforcement of criminal laws. It is intended to cover any and all State and local police, law enforcement and prosecution personnel from the police officer on the beat and the assistant district attorney to the highest State officials responsible for law enforcement. Thus bribing a local police officer to prevent enforcement of a State or local law against gambling will violate this statute.

For all these considerations—the vast size of the illegal gambling business in the United States and its unquestioned effect upon interstate commerce, the bribery and corruption of some local law enforcement officials, and the inadequacy of existing laws—it is essential to arm the Federal Government with the added weapons provided by title VIII.

While I have stressed the syndicated gambling title, it should be emphasized that this is but one of the 10 substantive titles of this bill. The entire bill represents a much needed and concerted attack on organized crime. I support S. 30 and call for its speedy enactment into law.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a letter addressed to me by the U.S. Chamber of Commerce, and the recommendations made by a resolution of that organization with respect to organized crime.

There being no objection, the letter and resolution were ordered to be printed in the RECORD, as follows:

U.S. CHAMBER OF COMMERCE,
Washington, D.C., January 19, 1970.

Hon. GORDON ALLOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLOTT: In the next few days, I understand the Senate will consider S. 30, the Omnibus Organized Crime bill reported by the Judiciary Committee in December.

The Board of Directors of the Chamber of Commerce of the United States has approved support of many of the principal provisions of S. 30 as vitally needed legislation to help federal officers combat organized crime. A copy of this statement of approval is enclosed.

Every facet of our society is adversely affected by the extensive moral corruption resulting from the operations of organized crime. Particularly the youth of our Nation are being victimized by the illicit sale of narcotics and by gambling operations, both closely linked to organized crime.

This legislation is also needed to strengthen the legal tools for halting the infiltration of organized crime into legitimate businesses in our Nation. Many of its activities are now permeating legitimate businesses on an alarming scale.

The impact of organized crime on the national economy has reached phenomenal proportions. Latest estimates are that organized crime in America takes in more than $30 billion, and possibly as much as $60 billion annually, from its operations.

We urge you to give S. 30 favorable consideration when it reaches the Senate floor.

Cordially,

HILTON DAVIS,
General Manager, Legislative Action.

RECOMMENDATIONS ON ORGANIZED CRIME LEGISLATION AS APPROVED BY THE BOARD OF DIRECTORS OF THE U.S. CHAMBER OF COMMERCE, NOVEMBER 13, 1969

COMBATING ORGANIZED CRIME

To strengthen Federal efforts to combat organized crime, the National Chamber supports legislation providing for:

1. Extension of the grand jury system allowing the issuance of a presentment or report on misfeasance, non-feasance or corruption of public officials or their institutions.

2. Increasing investigatory and prosecutorial tools by implementing a Federal immunity provision, allowing the taking of depositions of witnesses, permitting introduction into evidence of declarations of co-conspirators, and codifying existing civil contempt proceedings.

3. Improving the system for protecting witnesses through Federal financial and other assistance.

4. Strengthening the Federal Government's authority to eliminate organized crime's economic power base by combating interstate gambling operations and the infiltration of legitimate business; and by creating a Federal study commission to examine the extent and effects of gambling upon society and the economy.

Support of the foregoing principles is with

the understanding that such legislation will provide appropriate protection to the rights of the individual under the Constitution, and that specific provisions of any bill that deals with the Internal Revenue code will be referred to appropriate Chamber committees.

Mr. ALLOTT. Mr. President, I yield the floor.

Mr. SPONG. Mr. President, it was my privilege to be in the Chamber when the distinguished Senator from Arkansas (Mr. McCLELLAN) presented S. 30.

I want to commend him for his speech and also to recognize that he, more than any other Member of this body, has been most diligent in his recognition of the problem of organized crime and his efforts to combat it through effective legislation.

THE MENACE OF ORGANIZED CRIME

Mr. BYRD of West Virginia. Mr. President, if there is an American alive today who does not fear the consequences of organized crime in our society, then either he must be uninformed about the menace or he must be a part of it.

Organized crime is just as great a threat to the well-being of our Nation as are the continued upsurge of street violence and the work of militants who seek to burn down our cities or destroy our educational institutions.

Recent revelations from Government files suggest that a large northeastern city and perhaps a large part of the State in which that city is located have become a privileged sanctuary for crime and corruption of the most alarming sort.

A national magazine has alleged that the mayor of one of our Pacific coast cities has had intimate ties with the leaders of organized crime.

A study for the President's Crime Commission, still secret, reportedly details the infiltration of organized crime into local, State, and Federal Government, including, it is said, the control of several Federal district judges.

These recent revelations are simply a further indication that we are suffering from a bad case of moral rot and that we are allowing our cherished democratic institutions to crumble before our eyes. I hope the revelations will serve to shock some of our more complacent citizens into an awareness of the magnitude of the problem.

Syndicated gambling, loan sharking, prostitution, narcotics trafficking, and similar illicit enterprises each year sap billions of dollars from our economy. It appears that no segment of our society is safe and immune from the tentacles of such a crime octopus.

While precise figures are elusive, it has been estimated that illegal gambling operations gross anywhere from $20 to $50 billion annually. The net proceeds of such enterprises are said to be about $6 or $7 billion a year.

The gambling of which I speak undermines the economic strength of many thousands of low-income Americans who can ill afford the loss of even the pennies they wager in the vain hope that a lucky bet will land them on easy street.

The traffic in narcotics breeds related crimes of stealth and violence while degrading and destroying not only those at the bottom of our social structure but also the youth of all classes and economic backgrounds.

Prostitution feeds our continuing moral decline, and loan sharking paves the way for organized criminals to gain access to and eventually take over the control of thousands of legitimate businesses.

Americans have good cause for concern. They see the leaders of organized crime entertained by so-called "better" people, catered to by celebrities and public officials, and protected by legal technicalities.

Upon opening their newspapers, citizens learn that the Government possesses wiretap and other electronic surveillance information that reveals the most sordid details of murder and corruption involving figures in organized crime. Yet, while an occasional underling "takes the rap" and goes to prison, the leaders of organized crime, by and large, go free.

Part of the problem, of course, is that the Federal Government is powerless to use much of the information which it has. It is clearly the task of Congress, therefore, to close such legal loopholes as prevent an effective battle against organized crime and to provide our Federal investigative agencies and our citizens with the new weapons they need. I believe that the bill before us will go a long way in both directions.

I am especially optimistic about title I of S. 30—the special grand jury provisions. Time and time again in our history, aroused citizens have demonstrated their devotion to law and order in the face of official timidity and inaction. Prosecutors and judges may be scared or bought off, but citizens, properly empowered, can step in and do the job which their officials fail to do. I believe that title I represents the best opportunity for the average citizen to play a significant role in the war against organized crime.

It is encouraging that title I absolutely requires the convening of special grand juries in our major metropolitan areas at least once every 18 months and assures them sufficient longevity to probe deeply into organized crime. Perhaps this provision can overcome some of the official dilly-dallying which, I believe, is partly responsible for some of the public apathy which we have witnessed toward this problem.

These special grand juries would have the power to inquire into the violation of Federal laws and dig deeply into the activities and operations of organized crime, including whether appropriate law enforcement officials have been properly carrying out their jobs.

Significantly, these grand juries would be empowered to issue special reports concerning noncriminal misconduct, malfeasance, or misfeasance, by a public officer or employee as a basis for a recommendation of removal or disciplinary action.

The effect of this, I gather, would be to apply some much-needed heat in the right places and to jolt indolent prosecutors and overly sympathetic judges into action.

Title VIII of the bill calls for a coordinated national attack on organized gambling and, significantly, empowers the Federal Government to break up large-scale, local gambling operations without having to show an interstate connection.

Most people, I am sure, do not realize that their small wagers on the horses, the petty numbers bet, or the punchboard chance, are part of the billions of dollars a year that swell the coffers of organized crime. They do not realize that their dollars are used to corrupt Government at all levels, to move mobsters into legitimate businesses and organizations, and to finance a wide variety of nefarious operations, including loan sharking and narcotics trafficking.

Too often, local officials either ignore the problem or, where they are properly diligent, end up getting only the small fry: the "runners," the corner bookie, the bottom echelon. Syndicated gambling stretches across the Nation and fragmented local authority needs to be supplemented by Federal action in order to combat it. I believe that title VIII can help to break the back of such gambling operations.

Another section of the bill which merits special attention, Mr. President, is title IX.

Recent studies of the phenomenon of organized crime, including that of the National Crime Commission, have identified its alarming expansion into the field of legitimate business as a major threat to our institutions. This penetration of legitimate business by organized crime poses two distinct but related dangers:

First, the economic strength of the underlying illegal operations of organized crime is perpetuated and made more profitable if tainted proceeds can be safely invested in legitimate enterprises, even if those enterprises are operated in a lawful manner.

Second, the free channels of trade are threatened by organized crime's propensity to obtain for itself monopoly control of its areas by whatever means are available, including brutal and strong-arm tactics.

The techniques and methods used in such infiltration of legitimate business enterprises are many and varied. A few case histories will demonstrate how easily a business can fall captive to its awesome power.

The New York Times edition of June 29, 1969, reported how New Jersey La Cosa Nostra leader Gene Catena gained a foothold in a detergent manufacturer's business, North America Chemical Corp. of Paterson, N.J., by serving as a "sales consultant." According to testimony released by the New York Harbor and Waterfront Commission, the owner of the detergent manufacturing company hired Catena's sales agency called Best Sales in 1964 under a 10-year contract which was not subject to cancellation. Catena and Best Sales through the medium of arson and murder attempted to force the A. & P. Tea Co. to buy a detergent that A. & P. tested and rejected.

Another method of acquiring such control is by cornering a market on essential goods or services and then withholding them from the legitimate busi-

nessman, until he surrenders an interest in his business or a related economic concession. This method is illustrated by recent testimony released by the New York State Investigation Commission. In this case an official of a major New York meat concern was compelled to use a Cosa Nostra controlled knife grinder service or face the loss of his pork supply which was controlled by Cosa Nostra leader Paul Gambino. The testimony also described how 2,000 customers of the New York Grinders Association, whose members rent knives to meat dealers, left the Grinders Association in 1959 for a new company whose principals included Paul Gambino, and how 100 of the grinding companies later had to pay $175,000 for the return of their own customers.

While prosecutions and convictions of leaders of organized crime and their confederates are increasing each year as the Federal Government's organized crime program gains momentum, it is becoming increasingly apparent that such convictions alone, which simply remove the leaders from control of syndicate-owned enterprises but do not attack the vested property interests whose control passes on to other Cosa Nostra leaders, are not adequate to demolish the structure of the surviving organizations which they run.

The legislative proposals contained in title IX of this act, entitled "Racketeer influenced and corrupt organizations," constitute a carefully structured program which can drastically curtail—and eventually eradicate—the vast expansion of organized crime's economic power which operates outside the rules of fair competition of the American marketplace. Broadly speaking, this title would create strict criminal penalties for using the proceeds of racketeering activity characteristic of organized crime to acquire an interest in businesses engaged in interstate commerce, or to acquire or operate such businesses by racketeering methods.

In addition, this title, by utilizing remedies heretofore applicable in the antitrust field—the remedies of injunction, dissolution, divestiture, and reorganization—would forge a powerful new weapon for putting the syndicate out of business. By removing its leaders from positions of ownership, by preventing them and their associates from regaining control, and by visiting heavy economic sanctions on their predatory business practices this legislation should prove to be a mighty deterrent to any further expansion of organized crime's economic power.

The civil remedies of this legislation patterned after the time tested antitrust remedies, coupled with its heavy criminal penalties, should enable the Government to take effective action to eliminate the serious threat posed to the safety and well-being of our democratic institutions by the totalitarian dictators of organized crime's closed society.

To other sections of the bill also particularly commend themselves to me. Last year in the unfortunate Alderman decision the Supreme Court again demonstrated its lack of concern for effective law enforcement and resolved to let defendants roam at will into the investigative records of law enforcement officias insofar as electronic surveillance is concerned. Despite the Government's absolute good faith in revealing examples of illegal surveillance and its 100 percent record in accurately determining when such surveillance was relevant to the indictment at hand, the Court ordered transcripts revealed which will endanger Government informers, embarrass or libel innocent third parties and hopelessly prolong criminal trials. Title VII will take care of that decision without in any way endangering the vital rights of defendants.

And title X will permit the Government to put away the worst organized crime offenders in the way they should be put away. It permits extended sentences upon adequate showings once a defendant has been convicted. It permits the Government to appeal inadequate sentences and undercuts those Federal judges unsympathetic to the Government's crime fighting activities.

Mr. President, we have it in our power today to begin to eradicate the menace of organized crime in America. A long, difficult fight is ahead. But I am frank to say that I do not believe the fight can be won unless we here today begin by furnishing the tools that our Government and our citizens need.

BIAFRA

Mr. THURMOND. Mr. President, Friday's edition of the State, the morning newspaper of Columbia, S.C., carried a fine editorial assessing the hypocrisy of the Western nations in dealing with the question of Biafra. The State asks:

> To what degree did Western hypocrisy contribute to the starvation of an estimated two million innocents?

This is indeed a serious question. It is clear that human lives have been sacrificed to abstract notions of political democracy. It is surely an extreme form of ideology when theory is allowed to overshadow reality. As the State commented:

> Western-style democracy, self-determination, minimum standards of ethical behavior, humanitarian considerations—all these things went by the board in the interest of maintaining a political mockery in Lagos.

Unfortunately, that hypocrisy has not ended. I have received word from several reliable sources that the present situation in the former Biafran territories is far more serious than the story presented in the press or in the statements of our own State Department. It is difficult to believe that the present Nigerian Government is capable of feeding the refugees on the scale necessary, or even that U.S. assistance is getting to the people that need it most.

One needs only to look at the geography of the situation. The Nigerian strategy was to drive the Biafrans into the center of a circle, with the Uli airstrip as the centerpoint. There are now 4 to 5 million persons in an area approximately 60 miles across, who have not had food for 10 days or more. At the advanced stage of starvation reported by medical observers, attrition can be figured at 10,000 per day at the present time.

Those who left during the collapse of Biafra have reported that Nigeria could not possibly be prepared to feed their former enemies. Yesterday, newspaper reporters were allowed to go into the territory where the refugees are gathered. The first story appears in today's evening Star, and confirms what the missionaries have predicted.

The truck convoys planned by the Nigerian Government are inadequate to meet the need. They show that the Nigerian Government is somewhat responsive to the situation, but more is needed. The only feasible method is to reopen Uli airstrip, and begin a round-the-clock airlift. The facilities gathered by the Joint Church Aid relief agency are still in existence. There are 3,000 feeding stations in the area which could be operated. The planes are ready. The pilots are ready. The food is stockpiled on the island of Sao Torme and at Libreville.

The difficulty is that Nigeria views the Joint Church Aid group as a group that aided the enemy, and Uli airstrip as a symbol of rebellion.

The United States should make it clear that political symbolism cannot be allowed to cause the deaths of 5 million people. It appears that the U.S. State Department views the Nigerian policy as satisfactory. Spokesmen for the Department reiterate the view that Nigeria is doing all that it can. Only last week, U.S. Secretary of State Rogers termed our attitude toward the conflict as "very successful."

Such self-serving statements will not win the attention of the Nigerian military government. They can only help to prolong the period before something positive is done, and in effect, makes us accomplices in the deaths of millions more. If we are not able to help the people facing starvation, then we should say so plainly, but we should help to draw the world's attention to the problem. However, I think we could help the situation, if we would work to convince Nigeria that the facilities for feeding these people are ready to go into action, if only political symbolism can be set aside. But Nigeria will never be convinced she must do so, as long as she receives public praise from the United States.

Mr. President, I ask unanimous consent that the editorial entitled "Africa's Double Standard," published in the State of January 16, 1970, be printed in the RECORD at the conclusion of my remarks. I also ask unanimous consent that the article "Death, Not Food, Awaits Biafran Refugees," published in the Evening Star of January 21, be printed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Columbia (S.C.) State, Jan. 16, 1970]

AFRICA'S DOUBLE STANDARD

In the general rejoicing over the end of the civil war in Nigeria, the world will not stop to ask itself the question that cries out for attention: to what degree did Western

In making these suggestions, I do not mean to minimize in any way the pioneering efforts of states such as New York, which led the fight against pollution long before the Federal government entered the field.

Where a state, such as my own, has taken the initiative to develop effective pollution control programs, it can perform an invaluable role in supporting the Federal efforts. Its enforcement machinery can be used on a cooperative basis to police Federal standards. Its research and grant-in-aid programs will provide a much-needed supplement to the Federal funding programs.

The costs to industry of meeting rigorous and effective Federal controls will undoubtedly be in the order of many billions of dollars. Given the other demands upon the Federal budget, a portion of these costs will undoubtedly have to be borne by industry itself—and ultimately shared by the entire economy as producers pass costs on to consumers.

However, Federal grant-in-aid and research programs can continue to play an important supplementary role in helping industry to meet some of the extraordinary initial investment expense of developing and installing pollution control equipment to comply with Federal standards.

In addition, special Federal subsidies or tax incentives might in certain instances be needed for industries whose conversion to pollution control procedures are shown to impair their capacity to compete in international commerce.

Federal support is also urgently needed for a major campaign of public education.

A large segment of the public still has not fully understood the proportions and urgency of our environmental crisis and the threat it represents to the quality of human life.

The nature of environmental problems is not easy to grasp in personal, immediate terms. The threat that pollution represents to health, for example, is not broadly and fully understood.

Air and water pollution become progressively worse at imperceptible rates, making it easier to accept living in a polluted environment. In many communities, industrial smokestacks belching waste into the air have traditionally symbolized prosperity and jobs, making it harder for the inhabitants to recognize its offensive and dangerous side effects.

The United States can never hope to succeed against the problems of the environment without broad public understanding and support.

During the last session of Congress, I introduced in the Senate a bill, "The Environmental Reclamation Education Act of 1969" (S. 3237). This proposed legislation authorizes the Secretary of Health, Education, and Welfare to develop a $37 million national environmental-ecological education program ranging from the pre-school to the graduate level. The bill would also establish a National Commission on Technology and the Environment to examine the capacity of the Federal government to manage technological change consistent with our national environmental goals.

Environmental education can be the catalyst to an informed citizenry able and willing to act to meet the threat of our degraded environment.

Unlike so many problems that are confronting America today, the environment is not a black problem or a white problem, a class, regional or sectional problem. It is not "their" problem, but "our" problem. It is a problem which we can unite to solve and from which we can draw strength and renewed confidence in solving.

Given the steadily deteriorating condition of the earth's delicate biota, how many years have we left before the tide of pollution and poison engulfs us all?

At stake is the very balance of life on this planet.

Sealed in our tiny ship of earth in the vastness of space, we must now all be stewards in the preservation of the cargo of life.

CONCLUSION OF MORNING BUSINESS

The VICE PRESIDENT. Is there further morning business? If not, morning business is concluded.

ORGANIZED CRIME CONTROL ACT OF 1968

The VICE PRESIDENT. The Chair, pursuant to the previous order, lays before the Senate the unfinished business which will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 30) relating to the control of organized crime in the United States.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

RECESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair for the purpose of having the Senate proceed in a body to the Hall of the House of Representatives to hear the President of the United States deliver his state of the Union message.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

At 12 o'clock and 12 minutes p.m. the Senate took a recess subject to the call of the Chair.

Thereupon the Senate, preceded by the Sergeant at Arms, Mr. Robert G. Dunphy; the Chief Clerk of the Senate, Mr. Darrell St. Claire; and the Vice President of the United States, proceeded to the Hall of the House of Representatives to hear the address by the President of the United States on the state of the Union.

(The address by the President of the United States, delivered by him at the joint session of the two Houses of Congress, appears in the proceedings of the House of Representatives in today's RECORD.)

At 1:19 p.m., on the expiration of the recess, the Senate, having returned to its Chamber, reassembled, and was called to order by the Presiding Officer (Mr. HUGHES in the Chair).

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I be permitted to speak for 5 minutes notwithstanding rule VIII.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

FLYING FICKLE FINGER OF FATE AWARD PRESENTED TO THE AIR FORCE

Mr. PROXMIRE. Mr. President, a year ago last November, A. E. Fitzgerald testified before the Subcommittee on Economy in Government of the Joint Economic Committee that there was a $2 billion overrun on the C-5A.

Soon things began to happen to him. His newly won career status in the civil service was withdrawn on grounds that it was a "computer error." He was no longer invited to important meetings. Colleagues snubbed him. His major duties over the cost of major weapons systems were withdrawn and he was given the "important" job of examining the cost overruns in bowling alleys and military mess halls in Thailand. He was wrongly and spitefully charged with leaking classified information to Congress—a charge which is utterly untrue for he was absolutely meticulous in going through channels in presenting information to my committee. After publicly denying it, the Air Force in fact conducted a one-sided investigation into his past, hoping they might turn up something derogatory. They did not. All they found was that he was a cost-conscious civil servant who drove a Rambler to prove how parsimonious he really was. Incidentally, that investigation file failed to include some very favorable comments about Fitzgerald from those who were interviewed. I know this because I saw the file.

In addition to testifying truthfully about the overruns, Fitzgerald warned the committee last June about structural defects and poor performance of the C-5A. The Air Force denied this, but last week the few existing planes were grounded when a crack developed in the wing. Fitzgerald was right on this count too.

Finally, the Air Force, in an alleged economy move, abolished his job. The truth was that in turn he was harassed, ostricized, investigated, and fired.

In November when Secretary of the Air Force Seamans testified before my subcommittee, I asked him with whom he had consulted before he fired Fitzgerald. The Secretary demurred.

He said:

> I did not decide to fire Mr. Fitzgerald. I prefer to use the term, the correct term, "to abolish his job."

When the Secretary said that, the audience laughed. In fact, the staff laughed, the press laughed, and the committee laughed. In my almost 13 years in the Senate, I remember no occasion in which a witness was so obviously embarrassed by his own statement.

On January 12, 1970, a few days ago, the Rowan and Martin "Laugh In" show on NBC memorialized that occasion. They gave the Flying Fickle Finger of Fate Award to the Air Force.

Mr. President, I will read the transcript of that portion of the program where Dick and Dan presented Secretary of the Air Force Seamans with the Flying Fickle Finger of Fate Award:

FLYING FICKLE FINGER OF FATE AWARD, AS BROADCAST JANUARY 12, 1970

Boys enter, Dick holds award.

Music: Fanfare.

DAN. Well, as they used to say on "My Little Margie" . . . It's time for the Flying Fickle Finger of Fate.

DICK. Tell me . . . who gets the potent prober this time?

DAN. Just about to tell you . . . The United States Department of the Air Force.

DICK. They go a little wild in the old blue yonder?

DAN. In a way, yes . . . Mr. A. E. Fitzgerald, a top efficiency expert for the Air Force said that the cost of the C5A transport project would go two billion dollars over budget.

DICK. Ah ha . . . so the Air Force commended him for his good work, uh?

DAN. Not quite! You see, Mr. Fitzgerald blamed the extra cost on bad management and inadequate cost control on the part of the Air Force . . . And he said so before the Senate Subcommittee.

DICK. But isn't that his job?

DAN. Not any more.

DICK. He got fired for *that*?

DAN. Not according to an Air Force spokesman.

DICK. Well, it *sounds* like he got fired for *that*.

DAN. What the Air Force *did* was to eliminate his job.

DICK. He got *fired* for that alright.

DAN. Air Force secretary Robert Seamans said Mr. Fitzgerald's job was abolished in an effort to save money.

DICK. Whoops . . . watch it, Mr. Secretary. You know what happened to Mr. Fitzgerald . . . for trying to save money!

DAN. Better be careful . . . So here it is, Air Force Department . . . Take good care of it.

DICK. With proper management and adequate cost control this can really help you take off!

GENOCIDE CONVENTION IN PERSPECTIVE

Mr. PROXMIRE. Mr. President—

For centuries, the advance of civilization has been measured by the progress made in securing human rights.

Writing to the U.S. Commission for the observance of Human Rights, candidate Richard M. Nixon continued:

It is America's role and responsibility . . . so to conduct itself as to provide an example that will truely light the world.

I strongly share these sentiments expressed by Richard Nixon and I urge him now as President of the United States to take the lead in giving his active support to persuade the Senate to ratify the several human rights conventions now before it.

In particular, I am concerned with the Human Rights Conventions on Genocide, Forced Labor, and Women's Rights.

Recently Bruno V. Bitker, a distinguished Wisconsin lawyer, chairman of the Wisconsin advisory committee of the U.S. Commission on Civil Rights, and a member of the U.S. National Commission for UNESCO, discussed the problems of ratification of the genocide convention. In an article appearing in the January 1970 issue of the American Bar Association Journal, Mr. Bitker traces the history of the genocide convention, examines and disposes of arguments used in the past by the bar association to sustain its reservations on the convention, and urges the bar association to now forcefully take the initiative in getting the convention ratified.

I warmly endorse Mr. Bitker's thoughts and ask unanimous consent that Mr. Bitker's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

GENOCIDE REVISITED

(By Bruno V. Bitker)

(NOTE.—More than two decades have passed since the United Nations General Assembly unanimously adopted the Convention on Genocide. At that time the United States signed the convention, but it has yet to ratify it. In 1949, the year the convention was submitted to the Senate, the American Bar Association went on record as opposing approval of the treaty as submitted. It is time the Association reconsidered whether such charges as that the convention would abridge American citizens' freedom of speech and right to a jury trial are valid.)

The time has come for the American Bar Association to take a new look at the United Nations Convention on Genocide. More than twenty years have elapsed since the convention was unanimously adopted by the United Nations General Assembly on December 9, 1948, and signed by the United States. The convention came into force on January 12, 1951, for those nations that ratified it. By the beginning of 1970 no less than seventy-five nations had ratified or acceded.

The convention was transmitted by President Truman to the United States Senate on June 16, 1949, for its advice and consent to ratification. In due course the Senate referred the treaty to its Foreign Relations Committee, which invited interested parties, including the American Bar Association, to testify for or against the treaty.

Two entities within the Association originally presented reports on the treaty to the House of Delegates: the Section of International and Comparative Law [1] and the Committee on Peace and Law Through United Nations.[2] The former recommended ratification with certain understandings or reservations, and the latter opposed ratification. When the House of Delegates had the two conflicting reports before it in September, 1949, it appointed its own special committee. This committee reported back to the House recommending that the proposed convention not be approved as submitted because it "involves important constitutional questions" and "raises important fundamental questions but does not resolve them in a manner consistent with our form of Government".[3] This resolution was adopted by the House. That was the last time the matter has been considered by the Association.

Hearings before a subcommittee of the Senate Foreign Relations Committee were held in 1950.[4] The American Bar Association's position was presented, as were those of the Committee on Peace and Law Through United Nations and of the Section of International and Comparative Law. A brief was presented in favor of ratification by an ad hoc legal advisory committee headed by the Honorable Robert P. Patterson. Testimony in support came from high government officials and a number of private citizens and organizations. Opposition was voiced by individual lawyers.

On May 23, 1950, the Senate subcommittee reported out the convention favorably with one declaration and four understandings.[5] The declaration was to the effect that the Senate was acting pursuant to Article I, Section 8, Clause 10 of the Constitution "and, consequently, the traditional jurisdiction of the several States of the Union with regard to crime is in no way abridged".[6] The understandings, subsequently discussed by the full committee as reservations, were to the effect that a state could not be held liable in damages for injuries inflicted by it on its own nationals; the intent to destroy a group must affect a substantial portion of the group; mental harm means permanent physical injury to mental faculties; and "complicity in genocide" means "participation before and after the fact and aiding and abetting in the commission of the crime".[7]

TABLED 20 YEARS AGO, IS THE CONVENTION BURIED?

The full Senate committee subsequently tabled the matter, and no further action has been taken in the Senate since 1950. The chairman of the Senate Committee on Foreign Relations, Senator Fulbright, in April, 1969, stated that it was his view that the committee could resume consideration at any time the members wish. He noted, too, that "the Committee's disposition may be influenced if the American Bar Association were to recommend ratification".[8]

The convention defines genocide to mean certain acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious groups, as such. The acts include killing, causing serious bodily or mental harm, inflicting conditions of life calculated to bring about physical destruction, imposing birth prevention measures and forcible transfer of children. The parties undertake to punish guilty persons and to enact the necessary implementing legislation. There is a provision for trial by a court of the state where the act was committed or by any international penal tribunal that may have jurisdiction. Extradition is provided for in accordance with laws and treaties, with genocide not to be considered a political crime. Submission of disputes to the International Court of Justice is recognized.

The "important constitutional questions" that are claimed to be involved or what "important fundamental questions" are raised but not resolved "in a manner consistent with our form of Government" are not explicitly spelled out in the 1949 American Bar Association resolution. However, everything that could be said, pro and con, was probably said at the Senate hearings in 1950.[9]

The United States' basic commitment to the subject matter of the convention goes back to 1945. The United States, by an almost unanimous vote of the Senate, ratified the United Nations Charter and thereby assumed the obligation to further its objectives. One of these (Article 1) was to achieve "universal respect for, and observance of, human rights and fundamental freedoms for

Footnotes at end of article.

Mr. MANSFIELD. What action has been taken by the committee since that time?

Mr. SCOTT. The Senate is not in a position to take action, as the majority leader knows, because it being a fiscal matter it must be brought up first in the Ways and Means Committee of the other body. Requests have been made for action over there and we are waiting for the chairman of that committee to schedule hearings. I understand something will move on that matter this year and I hope it will be as soon as possible.

Mr. MANSFIELD. To make the RECORD clear, as far as the Senate is concerned we are powerless to act on this piece of legislation until and unless the the Ways and Means Committee of the House and the House itself act. But as every American knows the Ways and Means Committee of the House and the Finance Committee of the Senate were extraordinarily busy and productive last session producing the most mammoth tax reform—tax relief bill in decades. I am sure that this session those committees will produce an equally impressive record.

Then, I was interested in what the President had to say about inflation. I would hope that something would be forthcoming in the way of specific legislation in addition to the Congress reducing the President's request for appropriations and the President's reducing expenditures, because while both of those elements play a very important part in curbing inflation, they are not the total answer.

I would hazard the assumption that something which I have been talking about for the past 3 years might be worth considering—wage, price, and profit controls, and legislation on restoration of regulation W, which would put a curb on consumer credit buying, which I understand today is far in excess of $130 billion. It has become so easy to get credit that I shudder to think what would happen to the economy as a whole if we had even a minor recession and payments could not be made to banks, merchants, and so forth.

So these are matters which I think ought to be given consideration in addition to the President's sponsorship of a balanced budget, which I am sure we all join in hoping for.

Then he mentions, of course, crime, and especially in the Nation's Capital. Fortuitously, the organized crime bill is now before the Senate. I would hope we would consider unorganized crime as well. There is a great deal to be done in the area of crime. It is with a great sense of accomplishment that the Senate can point with pride to the passage in the Senate of legislation dealing with every area recommended by the President to deal with crime in the Nation's Capital—and that in the first session of this Congress.

I hope the bill which has been introduced in the Senate by the Senator from Arkansas (Mr. MCCLELLAN) and other Senators, on which a good deal of time has been spent, will be tough enough and harsh enough to bring about an end to the escalating crime wave which is engulfing not only the Nation's Capital, but the Nation as well.

And I would like to see something done soon on the question of drug control. That matter is on the calendar and will be taken up before too many days have passed.

Then there is the question of pornography, which I think is the hidden issue in all of this. Coming from a small State as I do, I must assess what I receive from my constituents with respect to the growing menace of pornography in the mails. It must be a more serious problem in the metropolitan areas and the industrial States. I think that this particular problem is getting entirely out of control. It has gone way beyond the bounds of human decency. I hope, either in this bill or shortly, legislation will be considered to cope with the problem of pornography and to see to it that those who are responsible for it—the pushers of pornographic literature and the like—are given punishments which I believe are their due.

I was delighted with the President's emphasis on clean air, clean water, open spaces, and the fact that he intends to ask for $10 billion to face up to these particular situations. It will take at least $10 billion—in my opinion, more, but at least $10 billion will give us a start to do something about the smog, about the pollution caused by jet planes and automobiles, about the use of beer cans and beer bottles, on a throwaway basis, which are today seen along all our highways, along the estuaries, along the gulfs, and along the ocean shores. This is something which should be considered, not on the basis of beautifying the countryside, because legislation designed to solve the pollution problem is not a beautifying measure, but an effort to do something about the cleansing of the air, the cleaning of our water, and the clearing of the countryside as a whole.

I would hope that the partnership which is now evident between Congress and the Executive will proceed posthaste.

I would hope also, on the basis of the remarks made by the President of the United States, which I found impressive and which I found hopeful, that very shortly—and I mean in a matter of days, not weeks or months—messages and specific proposals in the form of legislation will be sent from the executive branch implementing what the President said today. As soon as these specific recommendations are received they will be placed before the appropriate committees so that we can do our share to bring into being our full support of the President of the United States in the most worthwhile objectives which he has outlined.

We would like to join him in making the 1970's a decade of hope, a decade of understanding, a decade of purification, so to speak, and a decade in which we can once again restore some of the ideals which made this Republic great in the beginning, and which we can make great again in the years ahead.

Mr. SCOTT. Mr. President, the distinguished majority leader has been very generous and very fair, as he always is, in his analysis of the President's speech. I shall have more to say, at some other time, about certain features of it. I think it is useful for us to note again that the President has stressed the importance of control of inflation, control of crime and of the criminal element, and control of our environment.

First of all, there is evidence, on the control of inflation, that the President is continually moving in that field and in that area. His expected veto of the HEW-Labor bill will be accompanied, I am sure, by some further exposition of his views on how to put the brakes on inflation.

The crime bills are here, and have been since May, and I am glad to see that we are now considering one of the most important of those bills. They do not lack for reports from the Department.

As regards environmental quality legislation, on which the distinguished Senator from Wisconsin (Mr. PROXMIRE) has been speaking, I think I ought to say I do not think I understand it to be exactly in line with any present proposal before the Senate. I believe there will be some interesting and innovative approaches as to the means of financing this decade-long program, during our anniversary decade, the decade of the 1970's, when we celebrate our bicentennial.

I would expect that the necessary specific recommendations will soon follow. I intend personally to introduce that legislation along with, in all probability, the distinguished assistant Republican leader, the Senator from Michigan (Mr. GRIFFIN), and other Senators. I believe the means of financing being contemplated will prove to be no burden on the economy, but, on the contrary, means by which there will be a return to the economy—State, local, and Federal—of more than is taken from the economy in this approach; and certainly what is returned to the environment in cleanliness and in the improvement of the quality of life will be the kind of dividend on which you cannot perhaps make a fiscal estimate.

I think the distinguished majority leader is quite right. We are entitled to reports. We are entitled to specifics. We are going to get them as soon as that can be done; and I think that needs to be done in the very near future. That is the way to get action.

Then it would go to the appropriate committee, and I would hope the committee would meet promptly and act promptly and come in with its recommendations.

ORGANIZED CRIME CONTROL ACT OF 1969

The Senate resumed the consideration of the bill (S. 30) relating to the control of organized crime in the United States.

Mr. SCOTT. Mr. President, if the distinguished chairman of the subcommittee, the Senator from Arkansas (Mr. MCCLELLAN), will permit, I now should like to say something on organized crime and on the pending bill.

Organized crime, as I have stated, is a national problem. It must be given the highest priority by Congress because the total elimination of organized crime is a problem of utmost importance and con-

cern to every American citizen. The corrosive effects of organized crime are beginning to attack the foundations of our society. The Organized Crime Control Act, S. 30, is designed as a first giant step in meeting this problem head on. Its purpose is to eradicate organized crime in the United States. It strengthens the legal tools available to prosecutors. It establishes new penal sanctions and it provides new remedies to deal with the unlawful activities of those engaged in syndicated crime.

S. 30 is a long-needed systematic counterattack upon the organized society of criminals who have "institutionalized" crime in our society and who have taken billions of dollars from the American public each year through their activities. Only a nationally directed campaign against organized crime—including legislation such as S. 30—can contain this national menace.

Because organized crime presently poses one of the most dangerous threats to the American way of life, S. 30 must be acted upon by this body. President Nixon has committed himself to eliminating the menace of organized crime from America.

Effective enforcement of existing laws by the Justice Department attorneys is helping somewhat to curtail the spread of organized crime, but if organized crime is to be eliminated entirely, significant new legal weapons are needed in the crime fighters' arsenal. S. 30 will provide those essential tools and will be a dramatic step toward preventing crime in America. It will correct several defects in the evidence-gathering process and will close the gaps in existing law which presently prevent successful prosecution of all members of organized crime.

The bill has been carefully and thoroughly studied and has received strong bipartisan support. Its provisions will help all citizens, and will especially help the poor who are the primary victims of organized crime. It will help eliminate illegitimate gambling which saps billions of dollars from ghetto residents each year. It will help get rid of the narcotics pushers who thrive on the misery of ghetto life. And, it will help to prosecute loan sharks who prey on the desperate poor.

Too few Americans appreciate the dimensions of this problem. Syndicated crime operates outside legitimate government. It involves thousands of criminals in structures as complex and large as any corporation with laws rigidly enforced through terror. Its operations are national and international. Its aims are to monopolize whole fields of activity—legal and illegal—in order to amass huge profits, currently estimated at several billion dollars each year.

Investigation discloses that the organized crime fraternity has a national membership of over 5,000. The crime syndicate exerts influence over countless nonsyndicate gangsters throughout the Nation who must secure consent to continue their local criminal activities. Thus, petty criminals in the ghettos fall within the control of organized crime.

The core of organized crime depends on the illegal supply goods and services—gambling, loan sharking, narcotics, prostitution, and other forms of vice—to countless numbers of citizens. But syndicates are also involved in legitimate business, employing illegitimate techniques—bankruptcy frauds, tax evasion, extortion, terrorism, arson, and monopolization.

To maintain its exclusive markets for such illegal goods and services and to insulate its activities from governmental interference, organized crime corrupts public officials and wields extensive political influence. These are problems which are acutely felt in the ghettos.

As I pointed out in the Judiciary Committee report on S. 30, the President's Crime Commission has found corruption common in areas marked by organized crime. It is a means of protecting organized crime's profitable operations and must be recognized as a distinct evil, one which is especially abhorrent to our national values. However, the overwhelming majority of our law enforcement personnel are dedicated and hard working. For this we should all be extremely thankful.

A society in which organized crime and corruption openly flourish cannot foster morality or order among its members. A pattern of successful organized rackets, with the lesson it teaches slum children who see hardworking and honest adults fail economically in the face of racial and educational barriers, is not uncommon in urban areas.

Among the most threatening implications of the failure to rebut that cynicism is the suggestion of the Riot Commission that—

> The high ghetto crime rate . . . not only creates an atmosphere of insecurity and fear throughout Negro neighborhoods but also causes continuing attrition of the relationship between the Negro residents and police. This bears a direct relationship to civil disorder.

We must hear that warning. We must try to relieve the unfair burden on slum residents, and the intolerable strain on the fabric of our society, imposed by organized crime and corruption.

Of course, to agree upon that goal is not the same as to achieve it. In view of our imperfect knowledge of causation and prevention of crime and our complex procedures for identifying and dealing with criminals, it is difficult to formulate laws which will be effective against organized crime.

But S. 30 accomplishes its objectives without unduly infringing on or limiting anyone's constitutional rights. The constitution requires that we consider individual liberties as well as the common good of society. S. 30 strikes the appropriate balance.

S. 30 would help clear America of organized crime. It is an extraordinarily constructive piece of legislation. An example of its constructive nature is title IX dealing with racketeer influenced and corrupt organizations. That title would help the poor through its adaptation of forfeiture and equitable remedies long used for economic ends in the antitrust laws. In urban ghettos where black capitalism offers hope for local self advancement, title IX may be a means to excise syndicate-infiltrated businesses which use force to eliminate local competition and then charge extortion prices for staple commodities and services.

While the other titles of S. 30 approach the organized crime problem in a variety of ways, each of them is the product of a long, painstaking process of bipartisan development by the Subcommittee on Criminal Laws and Procedures and Judiciary Committee, with the help and support of the Justice Department.

Areas for improvement may exist; but the bill as a whole is a careful attempt to accommodate the public interest with individual rights in a specific and complex area of criminal law.

I believe that S. 30 is a thoughtful and sound vehicle for such action and urge that it be given prompt and constructive consideration. The people of our Nation deserve no less.

Perhaps the most insidious feature of organized crime is its ability to victimize many millions of citizens who are largely unaware of its effects. The housewife, for example, has no way of knowing that price increases for meat, bread, vegetables, or dairy may be the result of an organized crime conspiracy. The wage earner may be unaware of misuses of his union pension fund. The investor may be unaware of stock market manipulations resulting from massive purchases and/or sales of securities by organized crime syndicates. The taxpayer is unaware of the revenue losses from organized criminal activity which his taxes must make up. The ghetto resident who looks upon the numbers game as an opportunity to escape poverty fails to realize that organized crime drains millions of dollars each year from the poor through this operation.

Organized crime cannot be tolerated. Effective action can curtail its activities and minimize its impact. Ultimately, we must eradicate organized crime. I believe the responsibility for sustained efforts against organized crime rests on all government—local, State, and Federal. All levels of government must coordinate their efforts to deal with this problem.

As President Nixon said in his message on organized crime last April—I stated earlier that the message came up in May, but actually it was last April:

> Organized crime's victims range all across the social spectrum—the middle-class businessman enticed into paying usurious loan rates; the small merchant required to pay protection money; the white suburbanite and the black city dweller destroying themselves with drugs, the elderly pensioner and the young married couple forced to pay higher prices for goods.

The President continued, and I want to especially emphasize this sentence for I think it illustrates one of the most pressing reasons for supporting S. 30:

> The most tragic victims of course, are the poor whose lack of financial resources, education, and acceptable living standards frequently breed the kind of resentment and hopelessness that make illegal gambling and drugs an attractive escape from the bleakness of ghetto life.

Because of the drastic effects of syndicated crime, let us give this legislation the attention it deserves.

Mr. President, I suggest, with some reason, the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative cerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT TO 11 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR MANSFIELD TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I be recognized tomorrow morning, at the conclusion of the prayer, for not to exceed 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR HANSEN ORDERED FOR TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the conclusion of my remarks tomorrow morning, the distinguished Senator from Wyoming (Mr. HANSEN) be recognized for not to exceed one-half hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of the remarks of the distinguished Senator from Wyoming (Mr. HANSEN) tomorrow, there be a period for the transaction of routine morning business, with a limitation of 3 minutes on statements made therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TYDINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORGANIZED CRIME CONTROL ACT OF 1969

The Senate resumed the consideration of the bill (S. 30) relating to the control of organized crime in the United States.

AMENDMENT NO. 443

Mr. TYDINGS. Mr. President, I call up my amendment No. 443 to S. 30 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 99, strike all printed matter on lines 15 through 20, insert in lieu thereof the following:

"TITLE XI—ASSISTANT ATTORNEY GENERAL FOR ORGANIZED CRIME"

SEC. 1101. Section 506 of title 28, United States Code, is amended by—

(a) striking the word "nine" and inserting in lieu thereof the word "ten" and

(b) adding at the end thereof the following new paragraph:

"One of the Assistant Attorneys General shall be designated Assistant Attorney General for Organized Crime Control and shall be appointed from among persons who are especially qualified to assist the Attorney General in the supervision and conduct of investigations, prosecutions, and other activities relating to organized crime activities."

SEC. 1102. Section 5315(19) of title 5, United States Code, is amended to read as follows:

"(19) Assistant Attorneys General (10)."

"TITLE XII—GENERAL PROVISIONS

"SEC. 1201. If the provisions of any part of this Act or the application thereof to any persons or circumstances be held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby."

ADDITIONAL COSPONSORS

Mr. TYDINGS. Mr. President, I ask unanimous consent that the names of the Senator from North Dakota (Mr. BURDICK), the Senator from Missouri (Mr. EAGLETON), the Senator from Oklahoma (Mr. HARRIS), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Texas (Mr. YARBOROUGH), be added as cosponsors of amendment No. 443.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TYDINGS. Mr. President, at this time I wish to register my support for the general thrust of S. 30, because I believe it represents a significant advancement in our law enforcement efforts against organized crime.

However, I want to reiterate my firm belief that an additional measure is necessary in order to give effective leadership and proper organization to the war against organized crime and to make the effort a visible, ongoing commitment. My amendment is designed to do just this. It creates an Assistant Attorney General to head the Organized Crime Division in the Justice Department.

If the Federal Government is to mount a serious full-scale effort against organized crime with the aid of the anticrime weapons made available by S. 30, it is essential that this effort be institutionalized and placed under the direction of one prestigious law enforcement officer who may command the manpower and resources which are equal to the complexity and importance of the task and which will not be diluted by other responsibilities.

It is important to remember that the President's Crime Commission has suggested that the Justice Department's antiorganized crime efforts be made a division level operation directed by an Assistant Attorney General. That recommendation was made close to 3 years ago, but no heed has been paid to it. As Congress launches a new effort against organized crime with S. 30, it is time to implement the crime commission's recommendation. As a matter of fact, it should have been implemented several years ago.

An Assistant Attorney General heading an orgainzed crime division is essential to our Federal effort for a number of reasons.

First, an Assistant Attorney General in charge of an organized crime division will have the clear responsibility of directing an intensive and comprehensive effort, undiluted by other responsibilities, to control organized crime. Presently, the Justice Department's organized crime activities are charted in the Organized Crime Section of the Criminal Division. Administratively, the section stands on the same level as a number of other sections in the Criminal Division, such as Administrative Regulations, Fraud, Appellate, General Crime, Legislation and Special Projects and Administrative. As a result, the Assistant Attorney General for the Criminal Division is placed in a situation where he is forced either to concentrate his efforts on orgainzed crime or the general crime fighting activities or to dilute his efforts by trying to concentrate on both.

Second, the creation of a new Assistant Attorney General and an Organized Crime Section can assure an ongoing, institutionalized commitment to a war on organized crime. History has shown that the interest and intensity of effort in combating organized crime has not remained constant through the changes in top echelon personnel. Indeed, at times the effort has waned. Since 1966 and the Presidential directive of that year, the Organized Crime Section has again been spurred into action. However, the recent momentum does not detract from the history of ebb and flow of the section's activities.

Mr. President, another decline in interest and activity should not be risked. The legislative creation of a permanent Assistant Attorney General whose paramount responsibility will be to fight organized crime would obviate this risk.

Third, the present size and anticipated growth of the Organized Crime Section calls for its elevation to division status. The section, at the present time, is larger in manpower than the Internal Security Division of the Department of Justice, and comparable to the Civil Rights Division and the Lands Division.

Mr. President, I ask unanimous consent to have printed in the RECORD, a table outlining the divisions of the Department of Justice and the sections of the Criminal Division.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Organized crime section attorneys as compared with other divisions and sections in criminal division

DIVISIONS	
Antitrust	319
Tax	240
Civil	200

Organized crime section attorneys as compared with other divisions and sections in criminal division—Continued

DIVISIONS—continued

Criminal (100 minus organized crime section)	189
Civil rights	119
Land and natural resources	109
Organized crime section	89
Internal security	54
Consumer (projected)	25

SECTIONS

(Authorized fiscal year 1970)

Organized crime	112
General Crime	22
Apellate	20
Fraud	15
Legislative and special projects	15
Government operations	12
Administrative regulations	13
Narcotic drugs	10

Mr. TYDINGS. Mr. President, presently, the authorized strength of the Organized Crime Section is 89 attorneys. For fiscal year 1970, this is scheduled to increase to 112 attorneys. In contrast, the Internal Security Division has 54 attorneys. The Land Division has 109 attorneys. The Civil Rights Division has 119 attorneys. Moreover, the administration is now seeking to establish a Consumer Protection Division, which, according to Assistant Attorney General Richard McLaren in his testimony before the Senate Subcommittee on the Consumer, will have a staff of only from 25 to 30 lawyers and economists.

It is also significant to note the contrast in the number of attorneys expected for fiscal 1970 in the Organized Crime Section, 112; with the number expected to be in the Criminal Division's next largest section, 22. That is in the general crime section.

Good management alone suggests that law enforcement activities which necessitate 112 lawyers demand at least the same administrative stature, level of leadership and concentrated effort as activities employing 25 or 50 lawyers, and clearly should not be on the same administrative level as activities which require 22 and less attorneys.

Finally, and perhaps most important, an Assistant Attorney General in charge of an Organized Crime Division will appreciably enhance the accountability and visibility of the organized crime effort. The Assistant Attorney General for Organized Crime would be a Presidential appointee subject to Senate confirmation. In addition, the Organized Crime Division would have a separate, definable budget.

I am aware that some months ago the Attorney General asked that congressional action be deferred until the completion of a study by the President's Council on Executive Reorganization. On the other hand, however, the Attorney General is currently calling for legislation to create a Consumer Division in the Justice Department headed by an Assistant Attorney General. In this light, I take it that he no longer considers the pending study to be a major obstacle to the creation of an Organized Crime Division if Congress determines it is so warranted. If such an opposition is still voiced and I understand it will be—it is clearly inconsistent with the Attorney General's request for the creation of an Assistant Attorney General for consumer matters.

The Attorney General has also stated that the creation of an Organized Crime Division would produce "complex problems of determining which division, either the Criminal Division or the Organized Crime Division should have jurisdiction". This is, indeed, a poor reason to deny the Federal struggle against organized crime with leadership, stature and continuity. Granted such problems may occur, but they occur in the Criminal Division itself as the sections vie for control of a particular prosecution. Yet, those problems are worked out regularly and without undue difficulty. They occur within the Department of Justice itself on a daily basis.

The real opposition, I believe, to creating an Organized Crime Division led by an Assistant Attorney General is bureaucratic inertia and an attempt within the Department to preserve parochial interests.

Let me add that this problem is not peculiar to the present administration. This problem was also present within the last administration. They, too, refused to heed the mandate of the Crime Commission report to set up a separate division within the Department of Justice for organized crime.

I am aware that the Attorney General presently has the authority to redesignate a vacant post of Assistant Attorney General. If he were to designate such a vacancy as the Assistant Attorney General for Organized Crime, congressional action would obviously not be necessary. In the absence of such initiative on his part, it is incumbent upon Congress to provide the leadership and organization so necessary to win the struggle against organized crime.

Mr. President, organized crime in this Nation is pervasive. It has an annual income of untold billions of tax-free dollars; it has an impact at every level of our society.

An effective effort against organized crime requires clear Federal leadership. Yet, the fight against organized crime has waxed and waned over the years. This is because it has depended upon the individual interest of the particular Attorney General who headed the Department of Justice.

The present Organized Crime Section in the Criminal Division of the Department of Justice has outgrown "section" status long since. With the addition of new anti-organized crime weapons made available by S. 30, the need for strong direction of leadership is magnified.

An Assistant Attorney General and a Division for Organized Crime Control in the Department of Justice can provide the necessary Federal focus.

An Assistant Attorney General and a Division for Organized Crime Control has been supported by the President's Crime Commission, the ABA, and many individuals thoroughly familiar with both the needs for an effective effort against organized crime and the internal organization of the Department of Justice.

I might say that I am one of those individuals.

During my tenure as U.S. attorney for the district of Maryland, I was involved in the prosecution of organized crime. On the basis of this experience, I concluded that an Organized Crime Division under an Assistant Attorney General would appreciately enhance the Government's chances of controlling organized crime. I repeatedly asked why the administration resisted the creation of an Assistant Attorney General for organized crime in the Department of Justice when the Crime Commission requested it, and when the top law enforcement officials knew it was needed.

I discovered that the real impediment to the needed action was the bureaucracy within the Criminal Division itself. Much needed administrative changes were being blocked by administrative inertia and jealousy. That was true under a Democratic administration, and it is still true today under a Republican administration.

The Department of Justice, although recognizing persuasive arguments in favor of the creation of an Organized Crime Division under an Assistant Attorney General, wishes to defer action pending further studies.

Mr. President, I think we have had enough studies and hearings.

What we need today is action.

Mr. President, in 1954, the Department of Justice first created the organized crime and racketeering section in the Criminal Division. However, by 1960, that organized crime section still had only 17 attorneys on its staff, for the fair and obvious reason that there was no real pressure, no force of leadership, to direct the activities of that section during those years.

However, in 1961, under a new Attorney General, Robert Kennedy, the Federal effort in the field of organized crime took a new direction. The Department of Justice, under the direct and personal leadership of the Attorney General of the United States, began to develop a staff and the resources which were needed then, and which must be marshaled now, if we are to cope with the syndicates of organized crime.

By 1963, there were 60 attorneys in the organized crime section, and the investigative prosecutorial activities of the section reached unprecedented heights.

However, when Attorney General Kennedy left the Department of Justice, there was a marked decrease in the active indictments and convictions involving organized criminal activities. We still had the section on organized crime within the criminal division trying its best, but without the leadership of an Attorney General interested in organized crime or an Assistant Attorney General leading an organized crime division the Federal effort suffered.

Fortunately, the Organized Crime Section was spurred into action in 1966 as a result of a Presidential directive.

Mr. William George Hundley, a former chief of the organized crime section, has voiced his support for my proposal.

Mr. President, I ask unanimous consent that a dialog between the Senator from Arkansas (Mr. McCLELLAN) and Mr. Hundley at the Senator's hearings

on S. 30, be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF WILLIAM G. HUNDLEY, FORMERLY CHIEF OF THE ORGANIZED CRIME AND RACKETEERING SECTION, DEPARTMENT OF JUSTICE

Mr. HUNDLEY. My name is William George Hundley, and I am in private practice now. I was the chief of the Organized Crime Section from 1958 until 1966, wtih a 1-year break in 1960.

After I left the Organized Crime Section, I worked for the National Football League, and one of my jobs as an assistant to Mr. Rozelle was to set up a protective system up there that would protect professional football from the influence of gambling.

Senator MCCLELLAN. How long were you in the Department?

Mr. HUNDLEY. I was in the Department of Justice for 17 years, from 1951 to 1966.

Senator MCCLELLAN. How long were you the head of the Organized Crime Section?

Mr. HUNDLEY. Seven years.

Senator MCCLELLAN. Very well.

We welcome you and appreciate your cooperation with this committee in our efforts to determine what legislation if any, is needed to aid in the war on crime at this critical period in society.

Mr. HUNDLEY. Thank you, Senator.

Senator, I would like to comment briefly on two bills that are before the committee for consideration. One is S. 1624 and the other is S. 2022.

Senator MCCLELLAN. S. 1624?

Mr. HUNDLEY. Yes, sir.

Senator MCCLELLAN. And the other?

Mr. HUNDLEY. S. 2022.

With reference to the first bill, S. 1624, I have strong feelings, as most of the other people in law enforcement, that this is a very effective bill and that it has, in my judgment, remedied the Supreme Court decision in *Marchetti-Grosso* by adding these very tight nondisclosure provisions. It even has sanctions for anybody who would violate the disclosure provisions for the new bill.

As the Senator knows, this wagering tax was very effective for years, and since it was struck down by the Supreme Court I think it is really incumbent upon the Congress to enact this bill, with the tight disclosure provisions, because then the very effective agents of the Intelligence Division of IRS can pick up where they left off and make very good use of this bill.

I would have one comment. I notice on page 11 of this bill that although you repeal the posting requirement of the tax stamps, you still have a requirement in the proposed bill, that the person engaged in the business of gambling, still has to keep conspicuously in his establishment or place of business, the stamps.

Now, I would think that the requirement that he keep those stamps conspicously in his place of business—I would think that the court, in line with their reasoning in *Marchetti*[1] and *Grosso*,[2] could hold that that could still possibly incriminate the taxpayer here under those opinions. This is just a suggestion. I think you are buying a problem with that. I don't think it is really essential. I think it will be better if you just indicated, that the taxpayer would be required to keep the stamps in a safe place, something like that.

The idea that he would have to keep them conspicuously, is also subject to the argument, that a local law enforcement officer would come in, he could see the stamps; that would give him the lead the fellow was a gambler and he could go out and make his case.

I think there is a very good possibility if that isn't changed, that the court, in line with the *Marchetti-Grosso*, could hold that provision still was incriminating.

The only other thought I have on that bill is that I notice that the proposed bill grants exemption to parimutuel betting, and I was reading in the Washington Post that we now have 29 States that have parimutuel betting. It gives an exemption to State lotteries such as New York and New Hampshire. It gives an exemption to casino wagering in Las Vegas. It gives an exemption to charitable drawings. It gives an exemption to social gambling.

Now, I think what the proposed bill is trying to do, which I agree with, is that whenever a State or political subdivision decides that their people want some type of regulated and taxed gambling that the Congress should defer to the wishes of that State or political subdivision and grant an exception.

Now, the only already taxed gambling I can think of that you haven't given an exception to—and it might be an oversight—are the legalized bookmaking parlours out in Las Vegas—I don't know why they have been left out.

But I think that the Congress, in a bill like this, would recognize the wishes of the people who were closest to State government. If the State governments decide they want some type of legal gambling, then there should be an exception.

I think that rather than delineating the different types of legalized gambling that you want to exempt, that you just ought to put in an overall provisions, that would exempt from the overall statute, any type of gambling that has been authorized or sanctioned or legalized, by the State or political subdivision and subjected to a tax, and then that will take care of any future situation, let's say 2 or 3 years from now, if some other State says they want to legalize and tax a different type of gambling, and you wouldn't have to come in and get a different type of amendment.

They were the only points on that bill. I think it is a very valuable and salutary bill.

Senator MCCLELLAN. Before you go to the other bill, let me say that I think you made at least one very constructive suggestion. I think the committee will certainly consider it.

Senator Bible has suggested in a statement he filed with the committee yesterday, that this bill should be amended, to give relief to approximately 11 licensed bookmakers in the State of Nevada. That is what you were trying to——

Mr. HUNDLEY. Yes.

Senator MCCLELLAN. You suggest that any bookmaker licensed in the State and there subjected to a State tax, should be exempt from the special wagering occupation tax, or that the tax should not be increased for licensed operators. You have already commented, and that is the same position he has taken. I assume you endorse his position?

Mr. HUNDLEY. Yes. I agree with him. If you are going to exempt all other types of State legalized gambling, you know—I have to use this word—"discriminate" against the legal bookmaking, what happens out there is you don't really get at the operator of the place anyway. If you go into one of those legal bookmaking parlors in Las Vegas and you want to bet $5 on a horse, you pay the 10-percent tax, you see. In other words, you pay $5.50. To me it just doesn't make much sense.

I think the policy of the Congress in the field of gambling has been wise. I think it is a recognition of the fact that some people like some type of legalized gambling and are willing on the State level to tax it, and that this type of legislation should not reach it. If the State of Nevada favors this, then I think the Congress should, in fairness go along with them.

Senator MCCLELLAN. Thank you very much.

Now, if you wish to pass on to the next one, 2022 is it?

Mr. HUNDLEY. It is S. 2022, Illegal Gambling Business Control Act of 1969. I find at least title I somewhat troublesome. Title I, of course, is the part of the bill that would strike at police corruption.

Now, I think that if this bill is enacted, even with the jurisdictional limitations in the bill in title I, that we have got to recognize that this puts the Federal Government rather squarely into the business of policing local corruption, which is quite a task. I would hope, and I am confident from my experience in the Department of Justice, that this statute, if enacted by the Congress, would be used on a highly selective basis by the Justice Department. I am sure that the gentlemen from the Justice Department can cite chapter and verse of situations where their legitimate operations were hampered by police corruption. Now, if it is used in that fashion it is useful and helpful. But I think there has to be a recognition on the part of Congress that if you pass title I, which is very broad and literally gives the Federal Government jurisdiction to move into situation where you might have a policeman and five other gamblers in a 30-day business—if we were ever unfortunate enough to have an unwise Attorney General or an unwise Assistant Attorney General who decided he wanted to apply this thing across the board, he could almost throw darts at the map of the United States and start checking on this police department and that police department and the other.

It is very broad. It is an area that the Federal Government has not had direct jurisdiction on before, I think it is necessary, but I think that it has got to be very selectively used.

We had no success in the Department of Justice when I was down there trying to reach corrupt local officials by income tax investigation. We just couldn't make the case. I am sure that is why they want this. They want a direct approach. You have got a lot of ancillary problems here. You are going to have the Federal Bureau of Investigation moving into areas where you have got local police departments. I would think that you would want to very carefully solicit the views of the FBI on this and see how they feel about it. I would think you would want to see how prominent police chiefs and perhaps prominent local prosecutors feel about it. I think that would be useful.

I tend, of course, to look at this from the angle of when I was Chief of the Organized Crime Section, and I would have liked to have had a bill like this to reach certain situations. But there are some problems here.

Senator MCCLELLAN. How could you write into the statute a provision that would compel this sort of selective use?

Mr. HUNDLEY. That is the problem, Senator. I have talked with your able counsel up here, and they said why don't you try to write something in. I said I just don't know how to do it. I don't think there is any way. I think you are going to have to rely on the Justice Department.

Senator MCCLELLAN. The Justice Department.

Mr. HUNDLEY. And I think they are reliable. I don't want to create the inference at all that they will use it in other than selective situations where you have an overriding situation.

Mr. BLAKEY. Mr. Hundley, do you think it would be feasible to write into this bill some sort of disclosure provisions comparable to those appearing in the Omnibus Crime Act which deal with wiretapping that would require periodic public accounting to the

[1] *Marchetti* v. *United States*, 390 U.S. 39 (1968).

[2] *Grosso* v. *United States*, 390 U.S. 62 (1968).

Congress of how this particular statute is administered? It wouldn't prevent an abuse directly, but it might give us the information on which we could judge whether or not an Attorney General is using this in an improper fashion?

Senator McCLELLAN. It might serve as a deterrent.

Mr. HUNDLEY. I think so. I think that is a good idea. I think that the Justice Department would realize that they are going to have to account for their actions in this regard, and that is a good way to insure it. I am satisfied that, you know, just about any State in the United States where you have illegal gambling, that there probably are violations of this proposed statute.

There is no doubt in my mind. I know that there is no intention on the part of the Justice Department to enforce this provision, if it is enacted, across the board. They just wouldn't have the manpower to do it.

I think there is always the possibility that this could be used unwisely, and that is the thing you have to guard against. I suppose you have that problem whenever you trust prosecutors with added responsibilities.

As far as title II of S. 2202 is concerned, I would think that probably the only area where that would be helpful would be in getting at big numbers rackets, because in my experience in the Justice Department any gambling operation that was worth Federal concern had an interstate aspect, and that you could proceed under 1953 and the other bills. But some of the really big numbers operations, particularly in a place like New York, can be, by the nature of the operation, self-contained, and you wouldn't have the interstate aspect and you could use this new title II against those. I don't see that it would be really of much use otherwise in the gambling area.

I would think, again to repeat myself, in most gambling situations where the Federal Government ought to get involved, there is an interstate aspect, and with the new wiretapping bills and things like that, if you can't prove the interstate aspect you ought not get involved in it. Numbers is the one exception.

The immunity provision, of course, is fine, although I understand you have before this committee now an across-the-board immunity bill.

Those are the only initial comments I have. I would be glad to answer any questions, Senator.

Senator McCLELLAN. Do you have any questions, counsel?

Mr. BLAKEY. I have one or two.

Mr. Hundley, Senator Tydings introduced a bill, S. 974, which would raise the organized crime and racketeering section in the Department of Justice to a division. Do you feel that there are inherent organization difficulties in separating organized crime investigations from the other activities of the Criminal Division?

Mr. HUNDLEY. I, of course, favor elevating the section to a division status. I favored it when I was down there. When I left as Chief of the section we had about 60 attorneys in the section and it was becoming unmanageable as a section then. I understand they have over 70 now, and that, if they receive supplemental appropriation they will have 89 and if they receive the requested appropriation for next year, they will have 140 attorneys.

Now, it just doesn't make any sense to me to ask for $65 million for an organized crime drive, which I agree with, by the way—ask for 140 attorneys, and then seem to quibble on whether or not it ought to be a division. It just seems to me that it just flows naturally that it ought to be a division. I agree with Senator Tydings' bill on that.

Senator McCLELLAN. The question is, How can you separate organized crime activities from ordinary criminal law activities?

Mr. HUNDLEY. Right.

Senator McCLELLAN. Will there be overlapping? It is an administrative problem?

Mr. HUNDLEY. Senator, when I was down there—with the question as big as it is today or as it is going to be—there were difficulties, but I would say it worked in practice that any case in the Criminal Division that had racketeer overtones was transferred to the organized crime section, and thereafter the organized crime section, whether it be a fraud case or what, had jurisdiction over the case.

I would think it would be pretty much the same proposition if you make them both divisions.

Now, I know the argument that you really don't have anything left in the Criminal Division. That was the argument that was always put forth. I don't subscribe to that. I think there would be abundant work for the Criminal Division.

Senator McCLELLAN. If you create a criminal division and a division on organized crime, who would you have over them?

Mr. HUNDLEY. Excuse me?

Senator McCLELLAN. Who would you have over each division, the Deputy Attorney General?

Mr. HUNDLEY. Yes, sir.

Senator McCLELLAN. What would be the next link in command.

Mr. HUNDLEY. Well, I would think the next link in command would be the Attorney General.

Now, I did read something——

Senator McCLELLAN. You would have each of these Assistant Attorneys General reporting to the Deputy and on up to the Attorney General. That seems to me the only way it could be done.

Mr. HUNDLEY. Yes. I read somewhere where somebody had proposed a separate Deputy Attorney General for the administration of justice.

Senator McCLELLAN. You cannot completely divorce them. I think they have got to be kept under one source of authority.

Mr. HUNDLEY. You see, there are a lot of things—I don't think I have to explain to the Senator—sometimes you get involved in bureaucratic infighting in agencies. Now, I remember one of the first things I did when I became Chief. I wrote a memo saying I thought it would be a good idea if all tax cases involving racketeers would be transferred from the Tax Division to the Organized Crime Section. Well, nobody in the Tax Division would talk to me for about the next 6 months. You know, they just didn't want to give it up.

Senator McCLELLAN. I thought you folks who were appointed in office never had any political problems.

Mr. HUNDLEY. It seems to me that there has always been some reluctance down there to take this step, but it seems to me that now the step just has to be taken, because what you have in the section now—bear in mind you are going to have over 100 attorneys in a short period of time, you have got one section chief and he has two deputies——

Senator McCLELLAN. I am inclined to favor it. Nevertheless, if you give the Department something it doesn't want then you have a problem, too.

Mr. HUNDLEY. Yes.

Senator McCLELLAN. I would not want to elevate the Organized Crime Section to a Division that would, in any sense, outrank the regular Crime Division. Certainly it has to be kept, in my judgment, on a level.

Mr. HUNDLEY. I agree with that. I will take it one step further. I would think that the Attorney General, if he agreed that it was a wise thing to do to set it up as a division—it is a highly specialized field of work, anyway—I would think the Attorney General would take one of those top career fellows down there who really knows something about this and put him in charge of the division. There is precedent for that in the Department.

When they created the Internal Security Division they had a man, Walter Yeagley, as head of that division, and he served under three administrations. Why not take this out of the political arena? It takes a couple of years before the attorneys down there really know how to run an organized crime program, anyway.

Take a good career guy, make him the Assistant Attorney General.

Senator McCLELLAN. I think that is an excellent idea, because law enforcement is a very serious and difficult task, and I can't see where there should be any partisanship. I think partisanship will detract from the success of any program designed to strengthen law enforcement.

Mr. HUNDLEY. I would feel more comfortable if title I of S. 2022—if you had a nonpartisan career Assistant Attorney General deciding which police departments were liable to be investigated.

Mr. BLAKEY. Mr. Hundley, that covers my questions.

Senator McCLELLAN. I thank you. I appreciate your being with us and coming up here. You have had the experience and the knowledge and you have made a contribution in our work.

Again, this is an effort to meet our responsibility here as Members of the Senate to deal with a very grave problem in our country today.

Mr. HUNDLEY. Thank you very much, Senator. It was a pleasure to be here again.

Senator McCLELLAN. Thank you. I have always had great respect for you in your work down there, and I am glad to find that you have remained interested in government and law enforcement even after you left office.

Thank you.

Mr. HUNDLEY. Thank you very much, Senator.

Mr. TYDINGS. Mr. President, I would like to emphasize part of his remarks:

Mr. HUNDLEY. I, of course, favor elevating the section to division status. I favored it when I was down there. When I left as Chief of the section we had about 60 attorneys in the section and it was becoming unmanageable as a section then. I understand they have over 70 now, and that, if they receive supplemental appropriation they will have 89 and if they receive the requested appropriation for next year, they will have 140 attorneys.

At the present time, today, there are 89 attorneys in the organized crime section. It is my understanding that under the new budgetary proposal, the number will reach 112 attorneys for fiscal year 1970.

I continue with Mr. Hundley's testimony before the committee:

Now, it just doesn't make any sense to me to ask for $65 million for an organized crime drive, which I agree with, by the way—ask for 140 attorneys, and then seem to quibble on whether or not it ought to be a division. It just seems to me that it just flows naturally that it ought to be a division. I agree with Senator Tydings' bill on that.

By the provisions of S. 30, a number of new weapons will be given to the Department of Justice to fight organized crime. These new weapons will need high level impetus, direction, and control from the Department, if they are to be properly utilized against organized crime. Some of these weapons include: First, title I—convening special grand juries in a judicial district with fewer than 4 million inhabitants; second, title II—grant authority for a testimonial immunity order; title V—protective housing facilities; fourth, title IX—civil investi-

gative demands almost identical to those used in antitrust matters under the supervision of the Assistant Attorney General for Antitrust; filth, title IX—forfeiture proceedings against one convicted of a designated racketeering offense.

In other words, we are providing in title IX almost the same investigative powers, as those used in antitrust matters. It is noteworthy that effective utilization of these powers has required the supervision of an Assistant Attorney General in the Antitrust Division.

Title IX is one of the more ingenious provisions of Senator McCLELLAN's committee. It is a very important provision. It will be most effective if it has to direct its use an Assistant Attorney General rather than section chief.

Mr. President, an Assistant Attorney General and an Organized Crime Division can assure a commitment to a "war on organized crime." The ebb and flow of effort need not be continued. If, however, the organized crime fight is left within the Division charged with general criminal problems, the present subservient status of the section will be perpetuated and there would be no administrative manifestation of a drive against organized crime.

An Assistant Attorney General for Organized Crime would make the Federal commitment firm and visible. He would be required to go before the Committee on the Judiciary of the Senate. He would be required to receive Senate confirmation. The Division would have a separate and definable budget.

Mr. President, I am not the only person speaking in this regard. My voice is not an isolated voice requesting permanent status, direction, and authority in the drive against organized crime.

I would like to refer the President's attention to page 206 of the President's Crime Commission report in 1967, "The Challenge of Crime in a Free Society."

I would like the President to consider the words of Rufus King that the creation of a division for organized crime would be a good change within the Department of Justice. I might add that Mr. King was the chairman of the Criminal Law Section of the American Bar Association for many years. He is the author of many books on this subject. He is a distinguished criminologist in his own right, as well as an able lawyer.

Mr. President, during the hearings held by the Senator from Arkansas (Mr. McCLELLAN) he left no stone unturned in his effort to get able witnesses to testify on the organized crime proposals. He had among his witnesses Prof. Henry S. Ruth of the University of Pennsylvania School of Law.

Take note of the question of the distinguished Senator from Arkansas (Mr. McCLELLAN) and Professor Ruth's response:

Senator McCLELLAN. Senator Tydings has proposed in S. 974, which is now before this committee, that there be created in the Department of Justice a position known as Assistant Attorney General for Organized Crime. Based on your personal experience and the studies of the Crime Commission, do you think this suggestion is a good one?

Mr. RUTH. Yes, sir; I do. I think, as the Organized Crime Section expands, it is going to swallow the Criminal Division, so I think there should be two separate entities, and I think the head of the organized crime endeavor should have direct access to the Deputy Attorney General and the Attorney General and have his own budget.

I have already quoted from the testimony of William G. Hundley. I shall now read from the testimony of John P. Diuguid, General Counsel of the Association of Federal Investigators. His testimony is found at page 277 of the hearings:

Other bills which, we believe, deserve the careful consideration of this subcommittee are S. 974, S. 975, and S. 976 introduced on February 1, 1969, by the honorable Senator Joseph Tydings. The first of these measures, S. 974, would elevate the organized crime and racketeering section of the Department of Justice to division level by creating the position of Assistant Attorney General for Organized Crime, S. 975, which would compel testimony in certain cases, and S. 976, which would provide increased sentences in certain cases where a felony is committed as part of a continuing criminal activity in concert with one or more other persons are also, in the association's view, deserving of this subcommittee's careful consideration.

Others testified at the hearings in support of an Assistant Attorney General and a division for organized crime and control. On page 531 of the hearings will be found a letter from Edwyn Silberling. He was one of those persons entrusted with the authority for directing the organized crime drive within the Department. His letter states:

NEW YORK, N.Y.,
June 17, 1969.

Hon. JOHN L. McCLELLAN,
Committee on the Judiciary,
U.S. Senate
Washington, D.C.

DEAR SENATOR McCLELLAN: Thank you so much for requesting my views on the legislation introduced by Senator Tydings to improve the combat against organized crime. I have read Senator Tydings' bill with great interest and I am strongly in favor of it. Based upon my experience in the Department of Justice, I would say that it is essential for the man charged with the responsibility of directing the prosecutorial attack against organized crime to have the flexibility and power which is provided for in Senate 974.

Because of the peculiar nature of racketeering activities normal categories which can be neatly pigeonholed in particular divisions such as the Criminal Division do not apply. Experience has shown the need for utilizing the vast range of powers vested in Federal government in what are ordinarily non-criminal fields, such as the Federal Housing Regulations or Small Business Administration Regulations. By creating an Assistant Attorney General for Organized Crime it would be much easier for the man in that position to deal with other branches of the executive department. Further, he would command greater respect from other executive branches of the government all to the benefit of an effective antiracketeering program. It would also enhance the opportunities for closer relationships with the United States Attorneys. In addition, since there will be an increasing partnership between the Federal and State governments in this field, it would be of value to clothe Department of Justice representatives with enhanced status. For example it would be much more meaningful if the man in charge of the Justice Department's program in the field of Organized Crime to correspond directly in his own name to the local District Attorney rather than go through another Justice Department official. I believe, too, that having the status of Assistant Attorney General, would subject the Department of Justice official to the approval of the Senate prior to his appointment. This would tend to increase Senate interest in the activities of his Division and also lead to closer ties between the Legislature and the Department of Justice in this field.

Sections 4 and 5 of subdivision (a) are meaningful, necessary, and carry the promise of bearing fruit on a longterm basis.

Very truly yours,
EDWYN SILBERLING.

Ed Silberling was one of those men on the firing line in the fight on organized crime.

I would like to read the letter of Milton R. Wessel, special assistant to the Attorney General. The letter appears on page 533 of the hearings of the McClelland committee:

DEAR SENATOR McCLELLAN: This is in reply to your June 6, 1969 letter, asking for my comments with regard to S. 974.

Enclosed is a copy of the Report submitted by the Attorney General's Special Group on Organized Crime on February 10, 1959. The Report was based upon a special eleven-month nation-wide study of problems related to syndicated crime enforcement. It concluded that significant benefits could be achieved by creating a separate Office on Syndicated Crime within the Department of Justice. S. 974 would have similar effect.

Although I have not served actively as a prosecutor since early 1960, the problems of syndicated crime enforcement seem no less serious today than they were in 1959; the causes of ineffective law enforcement also seem much the same. I would accordingly favor the passage of S. 974 for all the reasons set forth in our 1959 Report.

One of the reasons why the Department of Justice refuses to give the Organized Crime Section division status is that they say they would have to have another study. That is bureaucratic nonsense. In 1959, under Attorney General Rogers, now Secretary of State of the United States, they had such an investigation. They had such a bureaucratic effort. Their own man, in 1959, made the recommendation that they needed to give organized crime full division status. That is over a decade ago. His letter, which is in the hearing record of the McClellan committee, says he supports my proposal for the same reason he recommended it in the Department of Justice.

At the same time, the Department of Justice says, "We cannot give organized crime division status now because we are having a total reorganization plan." However, at the same time they have asked for legislation creating an Assistant Attorney General to head a consumer division, with 25 attorneys. Yet, they turn their back on an organized crime division with 112 attorneys and say they have to have a study.

There is the same bureaucratic inertia in the Department of Justice that there was in prior administrations. They just do not want it because they want to keep the power within the Criminal Division in the Department of Justice. I ran into it when I was U.S. attorney for 3 years. U.S. attorneys today run into it.

I say it is time for the Congress, if it really means what it says about having an organized attack on organized crime, to give it an institutionalized effective

focus. If we do not, and the issue of organized crime drops from the headlines and we do not have an Attorney General who is concerned with it, we will see happen what happened when Attorney General Kennedy left the Department of Justice. We will have a new Attorney General, with new ideas, new imperatives, new directions, new focuses, new concerns, and we will see the emphasis within the organized crime section fall back to where it had stood before. We cannot tolerate that.

I stood with the Senator from Arkansas (Mr. McCLELLAN) last year and supported him and helped put through legislation providing in certain instances for court-ordered electronic wire taps because the problem of organized crime had gotten so far out of hand in this Nation that we had to give our law enforcement officials the necessary prosecutorial tools to combat it.

I support S. 30 on the Senate floor today, and will tomorrow, for the same reasons—because we need those tools. At the same time we must not turn our back on the recommendation of the President's Crime Commission, on the American Bar Association section on criminal law, on the recommendation of every director and former assistant director on organized crime, and listen instead to the bureaucrats in the Department of Justice.

Mr. MURPHY. Mr. President, will the Senator yield for a question?

Mr. TYDINGS. I yield.

Mr. MURPHY. Has the Senator found that there has been any objection to his suggested amendment? Has any objection been voiced? Is there any objection that some of us may not have heard of? The amendment seems to make good sense to me. I wondered what the opposition was.

Mr. TYDINGS. I may say to the Senator from California that there is objection from the Department of Justice, and its objection will be outlined—to my dismay—by my friend and colleague the Senator from Nebraska (Mr. HRUSKA). There will be opposiiton and it will be expressed by my distinguised colleague from Nebraska.

I think perhaps at this time I will yield the floor and permit the Senator from Nebraska to give the Department's position in opposition.

Mr. HRUSKA. Mr. President, we have under consideraiton in the Senate today an excellent piece of proposed legislation. It has been carefully thought out, and it has been very deliberately composed and drawn. I join the chairman of the subcommittee in the hope that we will have an end product which will receive the unanimous approval of the Members of the Senate.

This is not saying we should not consider amendments that are proposed from time to time. The amendment the Senator from Maryland proposes today is one we are gong to debate and decide upon.

The proponents and the opponents of the amendment have one thing in common, and that is a desire and a goal of vigorous and effective implementation of an antiorganized crime program. The question is, "How can we best achieve it?"

I shall begin by stating that the Subcommittee on Criminal Laws and Procedures considered a bill proposed and introduced by the Senator from Maryland, the essence of which is contained in the amendment now before us. It was rejected. It has some good arguments in its favor. Those were recited in a letter sent to the committee on August 5 of this year from the Attorney General.

It was pointed out in testimony by the Attorney General that to create an organized crime division with an assistant attorney general in charge would have some advantages. It would lend emphasis to the program against organized crime. It would result in an institutionalization of that particular activity with its own structure, and it would add stature to the effort against organized crime.

It is contended—and I think it can be reasonably assumed—that with an independent budget for use against organized crime, there would also be some increase in stature.

It might also give some protection against a possible future deemphasis in Federal efforts in this area.

From a management point of view, it is asserted that the anticipated size and present growth of the Organized Crime Section would warrant establishing a division.

I think a reasonable argument can be made for creating a Division on Organized Crime.

The Senator from Maryland has related some of the arguments in favor of it.

Notwithstanding these arguments, the subcommittee and later the full committee turned this proposal down. Here are four reasons, in capsule form, why it did so; and there are many details that support each of these reasons.

First. The Department of Justice is opposed to it. The Department of Justice, under the administration of Mr. Mitchell's predecessor, was also opposed to it. Mr. Ramsey Clark's predecessor, Mr. Katzenbach, was opposed to it.

Second. There is currently under consideration the matter of creating a separate Organized Crime Division. That study is being conducted by the President's Advisory Council on Executive Organization, and is also a matter under constant review by the Attorney General and his staff.

Third. There is inherent in this amendment an unwarranted intrusion into the area of the internal policies of the Department of Justice.

Fourth. The amendment would introduce an element of inflexibility and difficulties in administration of the affairs of the Department of Justice. There would be an unnecessary and even harmful limitation of administrative flexibility.

Fifth. Finally, it is contrary to current policy and thinking in the field of public administration, in view particularly of the 1966 amendments that are contained in chapter 5 of title 28 of the United States Code, concerning the Department of Justice.

Now I should like to return to and discuss the Department of Justice's opposition to this kid of proposal.

First of all, it is pointed out that a decisive factor in the organizational problems of the Department of Justice would result. It is pointed out that a Federal crime is a Federal crime, regardless of whether it is committed in the field of organized crime or in the field of any of the other criminal statutes, if a separate division were created, there would be a furthering of the complex problems of determining which division, the Criminal Division or the Organized Crime Division or the Tax Division should have jurisdiction.

It should also be noted that the creation of divisions such as those that I have just mentioned would result in losing the existing advantages of having a single Assistant Attorney General supervising the criminal work of the U.S. attorney. If there is to be a competition between the Organized Crime Division and the Criminal Division for the efforts, the staffs, and the talent of these 93 district attorneys in the 50 States, we will readily find ourselves in a state of confusion and chaos. It would certainly impair the effectiveness of an organized crime drive, rather than help it.

As to the matter of flexibility, all of us are aware that in a department, particularly one of the nature which we find in the Department of Justice, there must be flexibility. There has to be flexibility, and there are times when one phase of crime or one phase of law enforcement will supersede, and be accorded much greater emphasis than at other times. There has to be an ability of the department to shift its forces and its strength one way or the other.

These arguments are set forth, Mr. President, in a letter of August 5, 1969, written to the chairman of the subcommittee by Attorney General Mitchell. That letter was reconfirmed, and the position of the Department of Justice was reaffirmed in a letter dated January 20, just the day before yesterday, over the signature of the Attorney General, Mr. Mitchell. Again he points out the arguments that he made last summer. These arguments were reiterated by Mr. Will Wilson, the head of the criminal division, in the testimony that he gave on June 3, 1969.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks the letters of the Attorney General dated August 5, 1969, and January 20, 1970, and excerpts from the testimony of Will Wilson regarding S. 974, which is the bill introduced by the Senator from Maryland, the essence of which is now contained in the amendment under consideration, being an excerpt of the testimony given on June 3, 1969, on that particular bill by the head of the criminal division.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits 1, 2, and 3.)

Mr. HRUSKA. In that statement, Mr. Wilson says:

> While it is good to emphasize the organized crime work by dignifying this work in the Organizational scheme of the Department of Justice, it is thought that the danger of competing offices having jurisdiction of the same subject matter will more than offset the advantages. This is particularly true with increases in the Strike Forces or field offices devoted to organized crime work, and great care must be taken that these do not become

competing prosecutorial offices to those of the United States Attorneys.

He goes on to point out that there should be a close connection and a close working together of all these component parts, that can be achieved best under the leadership and the supervision of only one man, rather than to have it divided among others.

In June of this year, pursuant to request by the chairman of the subcommittee, Mr. Ramsey Clark, formerly the Attorney General of the United States, gave his opinion that such a division should not be created.

He says, in a letter of June 25:

The proposal has been discussed within the Department for many years. In my opinion, it is unwise. Criminal conduct does not fall into tidy compartments. To separate organized crime prosecution from the rich experience and resourceful manpower of the Criminal Division would injure both.

He goes on to say:

Creation of new divisions limits flexibility in enforcement priorities and manpower allocation. It often demoralizes the staff, which is removed from the more exciting activity of the moment, and results in stagnation in special areas of high interest when that interest passes.

I ask unanimous consent that that letter also be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 4.)

Mr. HRUSKA. Then there was a request sent to the former Attorney General of the United States, Nicholas Katzenbach, and on July 10 of last year he also addressed a letter to the chairman of our subcommittee. I ask unanimous consent that that letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 5.)

Mr. HRUSKA. He said, among other things, after saying that there are both virtues and vices to the bill (S. 974) that:

On the other side of the scales is the fact that responsibility for Federal prosecution of crime would, with a new division, be split four ways: The Criminal Division, the Organized Crime Division, the Internal Security Division, and the Tax Division. I think this would make the Attorney General's job of supervision somewhat more difficult than it is now. In addition, I think with organized crime removed, it would be much more difficult to get the high quality person to head the Criminal Division which it is important to have. During the Kennedy and Johnson Administrations, the Attorney General himself spent much of his time dealing with organized crime, and the Assistant Attorney General in charge of the Criminal Division probably spent in the neighborhood of 80 percent of his time dealing wtih it.

Mr. President, that makes sense. It is the tone at the top that is going to determine the effectiveness of any program, whether it is an antitrust program, a tax prosecution program, a civil rights program, or any other program.

To the extent that the demands of the day will require, we can reasonably expect that the Attorney General sitting in that office, will be receptive to demands for prosecution on a vigorous basis of organized crime as of the moment. It may be something else 2 years from now or 4 years from now. There may be hills and valleys even in the organized crime business. He should have the opportunity to deal with it in a flexible fashion, without being tied up by the particulars that are going to be foisted upon him in the event of the adoption of this amendment.

Herbert J. Miller is the former Assistant Attorney General in charge of the Criminal Division. He wrote a letter to the chairman of our subcommittee, under the date of June 19, which appears on page 530 of the hearings. He said, among other things:

I have long felt criminal law enforcement activities in the Department of Justice should be centralized rather than decentralized.

He goes on to say, in a later paragraph:

Experience dictates that one of the reasons for the strength of the organized criminal element has been the "splintered" law enforcement jurisdiction of the federal government.

Mr. President, the formation and the functioning of the strike forces which we have working today is an attempt to get away from that splintering. We gather under the hearing of one attorney, all the legal and investigative activities of the Federal Government concerning organized crime. We put them under the special ad hoc control of a special counsel and they go to work with all the law enforcement resources. They round all investigative functions in one package and really lower the boom. That is what will be necessary in order to get away from the splintering to which Herbert J. Miller, Jr., referred in his letter of June 19.

I ask unanimous consent that the text of that letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 6.)

Mr. TYDINGS. Mr. President, will the Senator yield.

Mr. HRUSKA. I am happy to yield.

Mr. TYDINGS. I like the "splintering" argument. Indeed, that is one of my arguments. To whom does the Senator feel the Federal Bureau of Investigation, the postal inspectors, the agents of the Fish and Wildlife Service, or the Treasury agents of the IRS would be most responsive in an effort to stop the splintering of, say, multiple investigations in the district of Nebraska or the district of Maryland, if a directive were passed out ordering them to combine and meet regularly each week and coordinate their investigative efforts? Does the Senator think they would be more responsive to a letter from a section chief in the Criminal Division who could not even sign the letter in his own right. Does not the Senator recognize that they would be more responsive to a letter which came from the Assistant Attorney General of the United States, who was nominated by the President and whose nomination was confirmed by the Senate?

Mr. HRUSKA. No, they would not be less responsive. They would respond just as readily to a section chief as they would to a division chief or anyone else so long as he has the support of the Attorney General.

But that misses the point. It is what is done with the results of their responses. Under the Organized Crime Division amendment, that division would be deprived of the manpower experience, the allocation of manpower, and all the other things pointed to by former Attorney General Katzenbach, former Attorney General Ramsey Clark, and former Assistant Attorney General Miller.

The point is, what do you do with this information, with all this evidence, after the responses are made by these various law enforcement agencies out in the field? And how do you use it most effectively? These people, who have headed the department, not out in the field, not on a bureaucratic level, say that is not the way to do it, that we ought to have it under one man, who would be in charge of the Criminal Division.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. TYDINGS. The Senator responded to my question with regard to splintering, that a letter from the section chief would be just as effective as a letter from the assistant Attorney General or the Director. How does the Senator account, therefore, for the historic refusal or failure of the Federal investigative agencies to coordinate efforts in the organized crime section before the Attorney General of the United States himself got involved in 1961.

The period of time about which the Senator is talking was when we had as head of the section on organized crime Milton R. Wessel, appointed by Attorney General Rogers, a distinguished attorney in his own right, a great prosecutor, who developed the charge in the Appalachia case. What did he tell the Senate committee? He told them that they ought to adopt our amendment and give it division status. He was on the firing line. He was the one trying to get cooperation back in early 1969.

What about Bill Hundley? Bill Hundley worked there under Milton Wessel, under Attorney General Rogers. As a matter of fact, he worked under Attorney General Brownell when the whole section began. He later worked under Attorneys General Kennedy and Clark. What was his testimony? His testimony was, that you needed division status if you really wanted to have muscle, direction, and continuity to fight organized crime within the Department of Justice.

The Attorney General, Mr. Mitchell, with all respect to him, is merely giving the testimony which the bureaucracy within the Department of Justice has prepared for him. Mr. Mitchell has never tried an organized crime case. He has never directed an organized crime investigation. Does the Senator think he is as knowledgeable as Milton Wessel, who put together the Appalachia trials? Does the Senator think he is as knowledgeable as Ed Silberling, the chief of the Organized Crime Division under Attorney

General Kennedy? Does the Senator think he is as knowledgeable as Prof. Henry Ruth, of the University of Pennsylvania Law School, Deputy Director of the President's Crime Commission and a member of the Organized Crime Section under Attorney General Rogers?

Does the Senator think the President's Crime Commission was just groping in the air when they recommended division status? No, they were not. Henry Ruth knew of the bureaucratic opposition when he was in the organized crime section. The Senator from Nebraska put his finger on it when he said it might be difficult to get a good Assistant Attorney General for the Criminal Division.

Mr. President, if the Assistant Attorney General in charge of the Criminal Division did not want the job for himself, he would not be opposing it now. It is the same bureaucratic jealousy which has bogged down the anti-organized crime effort in the Department of Justice under three preceding Presidents. It has caused the opposition message to be sent up today to the floor of the Senate.

I think it is time for Congress to follow the recommendations of the men on the firing line, the men who directed the organized crime section in the field under Republican and Democratic Attorneys General alike. I think it is time for the Senate to follow the recommendation of the President's Crime Commission report, of the criminologists who testified before Senator McCLELLAN, and not listen to the bureaucracy within the Department of Justice, who have their own petty, selfish jealousies which are concerning them and which are motivating their opposition today.

Mr. HRUSKA. Mr. President, the Senator from Maryland is a very able debater, and he has lived the cause of this amendment a long, long time. He knows all the arguments. But they do not ring true when he asks for a comparison between men in the field—Hundley and all these other people. Great credit should be given to them, and they did an excellent job. But they were not in charge of the Department. Ramsey Clark was. Katzenbach was. John Mitchell is.

There is no magic in saying there will be a man in charge of this department by statute and that from there on we are going to have happy and forceful and most effective prosecution. There is no magic in that. That man could be just as indifferent to it as anyone else who might be in charge of the work, and could well be so. There is no magic in that at all.

Mr. President, nine Assistant Attorneys General are now authorized by statute. Section 28 U.S.C. 506 says there shall be nine.

It does not say one will be in charge of land, another of tax, another of legal counsel, another on civil rights, an another on antitrust. It is left to the Attorney General to do. The Attorney General will separate the work of the Department into such categories as the occasion of the time requires, in his best judgment. Congress should not invade that area of internal policy and say, "You must put a man in here."

As a matter of fact, it would not be necessary for the Attorney General to fill that post even if we passed this amendment.

There is a vacancy there now. There is a place there. There is a slot for an Assistant Attorney General which is not being used for anything. It was formerly occupied by an Assistant Attorney General, Custodian of the Alien Property Division. That spot has not been filled for a long time. There is no way to force the Attorney General to go one way or the other in that respect if, in his best judgment, the administration of his department will be more to the public interest by doing it the way he is doing it now. That is the way it should be.

Reference was made to the last paragraph of Mr. Katzenbach's letter and I will read an excerpt from it for the record:

> Frankly, I think on organizational matters of this kind the views and preference of the incumbent Attorney General should be given great weight. I believe that if I were now Attorney General I would not request this authorization from Congress. But if the present Attorney General desires it, I would, were I a member of Congress, support him.

Mr. President, that carries in it the implication from Congress that if the Attorney General does not want him, then I, as a Member of Congress, would oppose that kind of post. I think that is a very good point for those who oppose the amendment.

I should like to suggest that there was a reference made to the 1959 commission report, appointed by Attorney General Rogers, now Secretary of State, which was considered, and which was considered by Congress, and which was considered together with many other things in 1966 when the Reorganization Act was passed, on chapter 5 of title 28 of the Code. An Assistant Attorney General for Organized Crime was disregarded. They did not buy it.

I believe that the amendment is unwise. The Department of Justice is opposed to it. Study and consideration are in progress. We should await determination of that. If the Attorney General wants it, let us give it to him, and if he does not want it, let us not give it to him. It is an unwarranted interference in the area of the internal policy of the Department of Justice. It introduces an element of inflexibility in Congress and in the administration of the Department of Justice. It would actually be harmful and finally, contrary to the current policy thinking in the field of administration of Department of Justice affairs, particularly in view of the 1966 amendment.

Mr. TYDINGS. Mr. President, the President in his state of the Union message today stated that he looked to the Congress to help fight the war against crime. Organized crime is one particular version of crime. The Senator from Arkansas (Mr. McCLELLAN) set forth properly and put the entire recources of his committee to work last year in perfecting Senate 30, a bill which works out the prosecutorial techniques, the investigative techniques, and the resources to fight organized crime. I know that the reason the Senator from Arkansas did that was the same reason he and I fought shoulder to shoulder on the floor of the Senate for the titles in the Omnibus Crime and Safe Streets Act which related to the war against organized crime.

Congress today has a mandate from the people to do what is necessary to protect them against the perils of organized crime. We must not fail in this important responsibility.

Mr. President, I should like to yield at this time to the Senator from Arkansas, then I would like to ask for the yeas and nays, and would be prepared to vote at any time conventient to the Senator from Nebraska (Mr. HRUSKA).

Mr. HRUSKA. Mr. President, if the Senator will permit me to make a brief observation about the suggestion that our President just an hour or so ago advanced; namely, the proposition that the people should fight crime. I fully agree we should help fight crime; but I submit that is not the same as the proposition which is advanced whether the people should interfere in the internal affairs of the Department of Justice. That is for the Attorney General to decide. The fight of the people against organized crime is in another arena and in another respect altogether.

Mr. McCLELLAN. Mr. President, I shall be rather brief. I regret to announce my opposition to the amendment because, in the first place, I do not regard it as a debilitating amendment. I do not regard it as a destructive amendment. I do not regard it as an amendment that will cripple the bill as such. I am going to oppose the amendment, however, for reasons which I shall now state.

Mr. President, first, I wish to compliment and congratulate the Senator from Maryland (Mr. TYDINGS). He has made reference to the fact that on this floor, 2 years ago, in the Congress of 1968, we battled together, shoulder to shoulder, to give to the Department of Justice and to the law enforcement arm of our Government a weapon, a vital tool, badly needed in the war against organized crime.

That was title III of the Omnibus Crime Control Act, which was enacted into law and which the new administration has used—although, I regret to say, the preceding Attorney General did not, during the remainder of his term of office.

I have already made reference in my speech yesterday to the effectiveness of that title here in the District of Columbia, where its use has broken up and exposed and caused the arrest of persons involved in an apparently well organized and functioning dope ring, which included two Mafia leaders out of New York.

Now, that is a tool we gave the Department of Justice which is being used effectively.

A number of us voted for that here, and helped to develop legislation and fought for its enactment, not because the Attorney General wanted it—he did not want it, and indicated that he would not use it, and he did not—but because it was made manifest that organized crime organiza-

tions within this country—the Cosa Nostra and others—have acquired such tremendous power and such tremendous influence. Their tentacles reach out into so many communities around the country, that their power and force had to be dealt with, so that we had to resort to this method. It was advisable to do so, and we did it. It is effective. It is getting results.

Mr. President, we find now that we need some more tools with which to combat this devastating force in our society. The committee has worked hard to bring out a bill. It has a number of provisions in it giving vitality and force to the will of the people that want to stamp out crime, and particularly organized crime, the parasitic crime by which people live off profits as professional criminals, organized crime which milks the life substance and force of humanity.

Mr. President, the pending amendment has an appeal. It has a legislative appeal. To me, it has a rather strong appeal, because of the importance that the menace of organized crime represents today.

Nevertheless, if we set up another division on organized crime, and then we have ordinary crime—if that is the proper title—does that include organized crime?

Now, where are we going to draw the line? How are we going to differentiate?

Surely, we know that we have this organized effort, and we are going to try to deal with it more effectively. And that is one of the prime purposes of the pending bill.

But, in organizing the administration of the law, in setting up the administration of the law and effectively to enforce it and make use of it, I do not know whether there should be a separate division for organized crime and another division for ordinary crime. And, if so, I do not know which should have priority over the other or which should have the highest status.

If they have equal status, who is going to determine when conflict arises, as it certainly will, whether this particular crime to be investigated comes under the heading of organized crime or ordinary crime?

I do not know. However, I can see that confusion might arise and conflict could arise.

The present Attorney General says as of now that he does not want it.

What are we going to do?

I have a policy with respect to some appointments in my State, not at the present time under this administration, but under past administrations. I have had a little influence in making recommendations as to who would be the U.S. Attorney. And I can say that when I was instrumental in getting someone appointed as U.S. Attorney, I did not later send him a bunch of sorry lawyers and tell him that he had to take them as assistants to do his job.

Anyone who applied to me for an asasistant U.S. Attorney's job was told by me to go and convince the U.S. Attorney that he needs him and then I would give him my endorsement.

I did not believe it was fair to give him the responsibility and then say, "Do it with the tools I have furnished you."

That same rule applies here.

I am reluctant to say to the Attorney General that he has to set up his organization, that he has to divide his responsibility, and do such and such in this way, and then hold him accountable if he cannot do the job as it is now or does not want to do it. After a fair opportunity and trial, and it is pointed out—it may well be, but I do not know—that this is what we should do, whether he wants it or not. Until that has been determined to our satisfaction I am not certain what we should do.

There is a conflict of evidence in the hearing. One can take a position for the amendment. We have strong testimony for it. But we have strong testimony against it, and the difference is in the weight that comes from the man who has the responsibility to do this job now.

We can pass a law, but we cannot execute the law. We can pass a law, but we cannot administer it. We can pass a law, but we cannot by law insure that we will get better results by imposing on an Attorney General a certain kind of organization than if we let the Attorney General say how he will organize his own effort, how he will administer it, and how he will direct it, and what assistants he needs to the job.

At the moment, I would leave it with the Attorney General. But I commend the author of the amendment for the great contribution he has already made in this fight against organized crime.

The bill before us today is going to make a further contribution to the expediting of that necessary effort in this country.

I shall not be unhappy personally if the amendment is agreed to. I personally do not care except that I do feel that there can be complications, and I can see that there might be complications. When the man in charge says, "Do not impose it on me, because I will have those complications," I think we should let them do it this way a while longer while we study the matter further.

I feel constrained under the circumstances to go along with that. The general idea has an appeal to me. Organized crime is of such magnitude and is such a danger and a menace of great proportions in this country today, there ought to be an Assistant Attorney General at the head of the division.

Whether we can separate the Department's crime efforts into two divisions is the issue. There is some doubt about it, and in view of the Attorney General's present position, I shall not vote to make that separation.

Mr. HRUSKA. Mr. President, I commend the Senator from Arkansas for his splendid analysis of this. I agree with him fully.

This is not a debilitating or harmful amendment in and of itself.

I want to join the Senator from Arkansas in his praise of the work and the effort and the great assistance rendered by the distinguished Senator from Maryland in this field.

He has been of tremendous help. Certainly, his experience as a U.S. attorney in the district of Maryland has been called on for guidance as we have gone along. However, the ultimate position reached by the Senator from Arkansas is that the Attorney General is the head of the criminal division.

The Attorney General in his letter of August 5, said:

> Upon completion of that study appropriate recommendations will be made to the President on how to accomplish lasting improvements in executive operations, including the fight against organized criminal activity.

He also said:

> Let the action on this proposal be deferred until the Attorney General has completed his plans for reorganization of all work of the Department of Justice, including that now performed by the tax and antitrust division.

I am happy to hear the suggestion of the Senator from Arkansas that it should be turned down at this time to await the further guidance and recommendation of the Attorney General.

I yield the floor.

EXHIBIT 1

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Your Subcommittee on Criminal Laws and Procedures is presently considering S. 974, a bill which would create a position of Assistant Attorney General for Organized Crime. As you will recall, I discussed the proposal briefly during my testimony before your subcommittee on March 18 of this year. Assistant Attorney General Wilson, during his appearance before the Subcommittee on June 3, 1969, presented additional department views on the measure.

There are some very persuasive arguments in favor of the creation of an Organized Crime Division under an Assistant Attorney General. Such action would give emphasis, institutionalization, and added stature to the effort against organized crime. It would provide for an independent budget for the organized crime program of the Department. It would give some protection against a possible future de-emphasis of Federal effort in this area of unique Federal concern. From a management view, the present size and anticipated growth of the Organized Crime Section would warrant elevating it to division status.

There are, however, also presuasive practical reasons for not creating a separate Organized Crime Division at this time. A decisive factor is the organizational problem which would result. A Federal crime is, in short, a Federal crime, regardless of whether or not it is committed as a part of organized criminal activity.

If a separate division were created, there would be complex problems of determining which division, either the Criminal Division or the Organized Crime Division, should have jurisdiction. To resolve such problems it has been suggested that there also be created a new Deputy Attorney General for Criminal Justice. While this seems like a possible answer, the creation of such a position raises additional problems of the role of this new Deputy vis-a-vis the existing operation of the Deputy's office.

It must also be noted that the creation of two divisions with similar and related jurisdiction would result in losing the existing advantages of having a single Assistant Attorney General supervising the criminal work of the United States Attorneys. This unity in supervision permits the Assistant Attorney General to achieve a priority for the organized crime work which might be more difficult if two assist-

ant attorneys general were, in effect, competing to have the United States Attorneys expedite their criminal prosecutions. Finally, I must question the wisdom of creating a division through detailed legislation which would unnecessarily limit the administrative flexibility of such a unit in meeting contingencies that cannot be anticipated at this time. Legislation, in fact, is unnecessary to create an Organized Crime Division. The Attorney General presently has the authority to re-designate a vacant post of Assistant Attorney General (which formerly was designated for the Alien Property Division) as head of such a new division.

It is because of these competing advantages and disadvantages that I hope that the Committee on the Judiciary will defer action on S. 974. The questions raised by S. 974 and the entire question of improving the effectiveness of the Executive Branch in combating crime are presently under active review by the President's Advisory Council on Effective Organization. The Deputy Attorney General and myself are personally working with this Advisory Council on these matters. Upon completion of that study appropriate recommendations will be made to the President on how to accomplish lasting improvements in executive operations, including the fight against organized criminal activity.

With warmest regards, I am,

Sincerely,

JOHN MITCHELL,
Attorney General.

EXHIBIT 2

JANUARY 20, 1970.

Hon. ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I understand that during consideration by the Senate of S. 30, the Organized Crime Control Act of 1969, the question of whether to create in the Department of Justice a division headed by an Assistant Attorney General for Organized Crime may be brought up. As you know, I have set forth the issues both favorable and unfavorable in this regard in a letter dated August 5, 1969, which appears at page 391 of the printed hearings before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, United States Senate. At that time I asked that action be deferred on the question pending review by the President's Advisory Council on Executive Organization, and stated that upon completion of that study appropriate recommendations would be made to the President on "how to accomplish lasting impovements in executive operations, including the fight against organized criminal activity".

I would like to reiterate the principal difficulties which would result from the creation of an Organized Crime Division. As I stated in the aforementioned letter, an organizational problem would result. A Federal crime is, in short, a Federal crime, regardless of whether or not it is committed as a part of organized criminal activity. If a separate division were created, there would be complex problems of determining which division, either the Criminal Division or the Organized Crime Divison, should have jurisdiction. To resolve such problems it has been suggested that there also be created a new Deputy Attorney General for Criminal Justice. While this seems like a possible answer, the creation of such a position raises additional problems of the role of this new Deputy vis-a-vis the existing operation of the Deputy's office.

A further objection is that creation of two divisions with similar and related jurisdiction would result in the loss of the existing advantages of having a single Assistant Attorney General supervising the over-all criminal work of the Department of Justice, including that of the 93 United States Attorneys and their more than 800 assistants. This unity in supervision permits the Assistant Attorney General to achieve a pricrity for the organized crime work which might be more difficult if two Assistant Attorneys General were, in effect, competing to have the United States Attorneys expedite their criminal prosecutions.

Let me assure you, however, that we have been and are continuing to inquire into methods to improve the efficiency of the operations of the Federal effort to combat organized crime. I, therefore, urge that the Senate not adopt any amendment to S. 30 which will create an Organized Crime Division in the Department of Justice.

Sincerely,

JOHN MITCHELL,
Attorney General.

EXHIBIT 3

EXCERPT FROM TESTIMONY OF ASSISTANT ATTORNEY GENERAL WILSON ON S. 30 AND OTHER RELATED BILLS (INCLUDING S. 974) CONCERNING THE CONTROL OF ORGANIZED CRIME, JUNE 3, 1969

S. 974

I would next like to discuss S. 974, a bill to create a position of Assistant Attorney General for Organized Crime, which was introduced on February 7, 1969, by Senator Tydings. In his testimony before this Subcommittee on March 18, Attorney General Mitchell stated that we have been studying the merits of various proposals involving an effectively structured organization dealing with organized crime, including the creation of a separate organized crime division, or the consolidation of all of the criminal activities of the Department of Justice, including the Tax and Antitrust Divisions, in one new division whatever it might be called. This same general subject is also being considered by the newly appointed Advisory Council on Executive Organization which the President in his special message to the Congress on organized crime of April 23, 1969, directed to examine the effectiveness of the Executive Branch in combatting crime—in particular, organized crime. Pending the results of this study, therefore, we request that consideration of S. 974 be delayed.

It should be pointed out that there are inherent organizational difficulties in any plan of organization which takes the organized crime intelligence, cases, defendants and materials out of the functional sections to which they would normally be assigned and sets up a special organizational unit to handle the particular defendants, irrespective of the particular crime under investigation. The immediate effect of this is to create two separate units having purisdiction of the same subject matter; for instance, most mail fraud cases go to the Fraud Section but those involving organized crime go to the Organized Crime Section. Someone has to make a decision, and in order to keep the Fraud Section and the Organized Crime Section working in smooth harmony, this work has to be closely correlated. It is the present feeling of the Department that this correlation and coordination can best be done by leaving the organized criminal work in the present Criminal Division. The effect of creating a special division will be to transfer the coordination of all criminal work to the level of the Deputy's office and will make necessary the creation of an additional staff section in the Deputy's office.

While it is good to emphasize the organized crime work by dignifying this work in the Organizational scheme of the Department of Justice, it is thought that the danger of competing offices having jurisdiction of the same subject matter will more than offset the advantages. This is particularly true with increases in the Strike Forces or field offices devoted to organized crime work, and great care must be taken that these do not become competing prosecutorial offices to those of the United States Attorneys.

It is the determined purpose of this Administration to have the Organized Crime Section of the Criminal Division work in closer harmony with the Criminal Division than it has in the past and to have the Strike Forces or field offices of the Organized Crime Section work in close connection and close harmony with the United States Attorneys. For these and other reasons, it is respectfully requested that consideration of S. 974 be deferred until the Attorney General has completed his plans for the reorganization of all of the criminal work of the Justice Department, including that now performed by the Tax and Antitrust Divisions.

EXHIBIT 4

FALLS CHURCH, VA.,
June 25, 1969.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: By letter of June 10, 1969, you have asked my views on S. 974, a bill which would create the position of Assistant Attorney General for Organized Crime, in effect, raising the Organized Crime and Racketeering Section of the Criminal Division to divisional level.

The proposal has been discussed within the Department of Justice for many years. In my opinion, it is unwise. Criminal conduct does not fall into tidy compartments. To separate organized crime prosecution from the rich experience and resourceful manpower of the Criminal Division would injure both.

Inter-divisional coordination has always been difficult. Inter-divisional jealousies and rivalries must be anticipated where different divisions are enforcing the same statutes. The Criminal Division will retain narcotics, fraud and general crime responsibilities. Organized Crime figures are frequently prosecuted under such statutes.

Common issues of law, both substantive and procedural, would necessarily arise in two divisions. Uniformity in interpretation at both the trial and appellate levels would be difficult to insure.

Liaison with investigative agencies, critically important to any prosecutorial effort, is more easily effected when one Assistant Attorney General is responsible for all prosecutions.

Creation of new divisions limits flexibility in enforcement priorities and manpower allocations. It often demoralizes the staff which is removed from the more exciting activity of the moment and results in stagnation in special areas of high interest when that interest passes.

The need is more manpower for the Criminal Division and the United States Attorneys' offices to enable them to fulfill all of their important duties.

Sincerely,

RAMSEY CLARK.

EXHIBIT 5

ARMONK, N.Y.
July 10, 1969.

Hon. JOHN L. MCCLELLAN,
Committee on the Judiciary, Subcommittee on Criminal Laws and Procedures, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: You have asked me to comment on S. 974, a bill introduced by Senator Joseph Tydings which would raise the Organized Crime and Racketeering Section of the Criminal Division to divisional level. You have asked for my views as a former Attorney General.

In my judgment there are both virtues and vices to the bill. There is a great deal of merit to taking any step which would concentrate attention upon, and make more efficient, the drive of the Federal Government against organized crime. Raising the Section to divisional level would have this effect. It would underline the importance which is

attached to the drive against organized crime; it would also make it easier, in terms of prestige, titles, and salary, to attract and keep able personnel. All of this would be helpful.

On the other side of the scales is the fact that responsibility for federal prosecution of crime would, with a new division, be split four ways; the Criminal Division, the Organized Crime Division, the Internal Security Division, and the Tax Division. I think this would make the Attorney General's job of supervision somewhat more difficult than it now is. In addition, I think with organized crime removed it would be much more difficult to get the high quality person to head the Criminal Division which it is important to have. During the Kennedy and Johnson Administrations the Attorney General himself spent much of his time dealing with organized crime, and the Assistant Attorney General in charge of the Criminal Division probably spent in the neighborhood of 80 per cent of his time dealing with it.

Frankly, I think on organizational matters of this kind the views and preference of the incumbent Attorney General should be given great weight. I believe that if I were now Attorney General I would not request this authorization from Congress. But if the present Attorney General desires it, I would, were I a member of Congress, support him.

With personal best wishes, I am

Sincerely,

NICHOLAS DEB. KATZENBACH.

EXHIBIT 6

WASHINGTON, D.C.,
June 19, 1969.

Hon. JOHN A. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: In response to your inquiry with respect to S. 974, which would raise the Organized Crime and Racketeering Section of the Criminal Division to a divisional level, this concept has been considered for some time. I can recall such suggestions as early as 1963.

I was then, and still am, opposed to making the Organized Crime Section a separate division. To the contrary, I have long felt criminal law enforcement activities in the Department of Justice should be centralized rather than decentralized. Specifically, I am referring to the criminal enforcement jurisdiction which is currently lodged in the Tax, Civil Rights, Internal Security, and Antitrust Divisions.

I know of no field in which close coordination is more important than the organized crime field. Experience dictates that one of the reasons for the strength of the organized criminal element has been the "splintered" law enforcement jurisdiction of the federal government. This includes the fact that there are over 26 federal investigative agencies with as many jurisdictions and the fact that on one division in the Department of Justice has authority to prosecute for all types of federal crimes. Organized crime—while it may deal to a large extent with specific types of unlawful activity—nevertheless involves individuals and syndicates engaging in conduct which runs the gamut of activities prohibited by the Criminal Code of the United States. Obvious examples are the SEC frauds and so-called SCAM situations where organized crime figures participate in planned bankruptcies.

It has been my experience that in order to establish overall policies permitting all types of prosecutorial activities to have the benefit of experience gleaned from one type of crime and to ensure a close working relationship among those various sections assigned the responsibility of dealing with particular crimes, it is absolutely necessary to have all of the criminal functions coordinated under one official at the working level.

In the past, unfortunately, as the various crime problems have achieved an increased significance, the tendency has been to break out that type of prosecution from the Criminal Division and to place it in a separate division, thus moving coordination of the attorneys working on the prosecutions from a sectional level to the office of the Deputy Attorney General or the office of the Attorney General. Two recent examples are, of course, the Civil Rights Division and the Internal Security Division.

Consequently, it would be my strong recommendation that this practice be discontinued and that the Organized Crime Section remain a part of the law enforcement functions of the Criminal Division. As stated before, I would further recommend that the criminal functions of the other divisions be incorporated into the Criminal Division.

I trust that the foregoing is of some help in the deliberations of your subcommittee. If further expansion on the above is desired, I stand ready to give whatever aid I can.

Sincerely yours,

HERBERT J. MILLER, Jr.

Mr. HARRIS. Mr. President, I support the amendment of the distinguished Senator from Maryland to the Organized Crime Control Act of 1969 which calls for the creation of a new Assistant Attorney General to head an Organized Crime Division in the Justice Department. I think the adoption of this amendment is essential if we are to fight in the most effective manner organized crime.

In the past, the Civil Rights Section in the Justice Department was made into a divisional level activity headed by an Assistant Attorney General. The administration is currently asking Congress to create a Division of Consumer Affairs in the Justice Department handled by an Assistant Attorney General. I think the facts justify giving the anti-organized crime program divisional status in the Justice Department.

The distinguished senior Senator from Maryland (Mr. TYDINGS) has in his remarks most ably set forth the need to provide top-level leadership and proper organizational structure for the program to control organized crime. The fact that organized crime is working, as Senator TYDINGS stated, "within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legislative government," demands that our efforts to fight these activities be highly organized and led by top-echelon personnel.

The seriousness of organized crime can perhaps best be highlighted by the profits made by the society comprising organized crime. It has been estimated that from gambling activities alone organized crime makes profits in excess of $50 billion and that from loan-sharking activities the profits may even be higher. Profits from the importation and wholesale distribution of drugs produce over $21 million a year in profits and it is estimated that imported opium costing $350 is valued at $225,000 on the streets in the United States. From illegal betting in the United States, it is estimated that untaxed profits of $600,000 an hour are being made by organized crime.

The impact of organized crime on this country is indeed serious. Our commitment to control organized crime must include a commitment to fight it in the most effective manner. Senator TYDINGS' amendment would provide the best administrative structure for the war against organized crime; I therefore urge its adoption.

Mr. TYDINGS. Mr. President, it is my intention to ask for the yeas and nays on my amendment as soon as a sufficient number of Senators are present in the Chamber.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BOGGS in the chair). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TYDINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TYDINGS. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland (Mr. TYDINGS). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the affirmative). Mr. President, I have aready voted in the affirmative, but on this vote I have a pair with the distinguished Senator from Tennessee (Mr. GORE), who, if he were present and voting, woud vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Utah (Mr. MOSS) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from Kentucky (Mr. COOK).

If present and voting the Senator from Alaska would vote "yea" and the Senator from Kentucky would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is necessarily absent to attend the funeral of a friend.

The Senator from Florida (Mr. GURNEY), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS) and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Kentucky (Mr. COOK), the Senator from New York (Mr. GOODELL), the Senator from Kansas (Mr. PEARSON), the Senator from Ohio (Mr. SAXBE), the Senator from Illinois (Mr. SMITH), and

the Senator from Texas (Mr. TOWER), are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kentucky (Mr. COOPER), is detained on official business, and, if present and voting, would vote "nay."

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from Kentucky (Mr. COOK). If present and voting, the Senator from Alaska would vote "yea" and the Senator from Kentucky would vote "nay."

On this vote, the Senator from New York (Mr. GOODELL) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from New York would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from Florida (Mr. GURNEY) is paired with the Senator from Illinois (Mr. PERCY). If present and voting, the Senator from Florida would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from Ohio (Mr. SAXBE) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from Ohio would vote "yea" and the Senator from Texas would vote "nay."

Also the Senator from Oregon (Mr. HATFIELD) is necessarily absent, and if present and voting would note "nay."

The result was announced—yeas 29, nays 45, as follows:

[No. 5 Leg.]

YEAS—29

Bayh	Kennedy	Pell
Burdick	Magnuson	Proxmire
Byrd, W. Va.	McGee	Randolph
Case	McIntyre	Ribicoff
Cranston	Mondale	Spong
Eagleton	Montoya	Symington
Harris	Muskie	Tydings
Hughes	Nelson	Williams, N.J.
Inouye	Packwood	Yarborough
Jackson	Pastore	

NAYS—45

Allen	Eastland	Metcalf
Allott	Ellender	Miller
Anderson	Ervin	Murphy
Baker	Fannin	Russell
Bellmon	Fong	Schweiker
Bible	Fulbright	Scott
Boggs	Griffin	Smith, Maine
Brooke	Hansen	Sparkman
Byrd, Va.	Hart	Stennis
Cannon	Holland	Stevens
Cotton	Hruska	Talmadge
Curtis	Jordan, N.C.	Thurmond
Dodd	Jordan, Idaho	Williams, Del.
Dole	Long	Young, N. Dak.
Dominick	McClellan	Young, Ohio

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against.

NOT VOTING—25

Aiken	Gurney	Mundt
Bennett	Hartke	Pearson
Church	Hatfield	Percy
Cook	Hollings	Prouty
Cooper	Javits	Saxbe
Goldwater	Mathias	Smith, Ill.
Goodell	McCarthy	Tower
Gore	McGovern	
Gravel	Moss	

So Mr. TYDINGS' amendment was rejected.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 439

Mr. CASE. Mr. President, I call up my amendment No. 439, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from New Jersey (Mr. CASE) proposes amendment No. 439, as follows:

On page 52, line 13, following the word "avoid", insert "service of, or".

On page 52, line 14, after the word "of", insert a comma and strike the word "any".

On page 52, line 22, after the word "which" insert "and avoidance of service of process or".

Mr. CASE. Mr. President, I modify the last line of my amendment, line 6, by changing the word "and" to "an". That merely corrects a typographical error.

The PRESIDING OFFICER. The amendment will be so modified.

Mr. CASE. Mr. President, I ask unanimous consent that these three amendments, if they are technically three, be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CASE. Mr. President, the language in the bill as it now stands would make it a criminal offense to flee across a State line to avoid presenting testimony, or if one has been subpenaed by a duly authorized State crime investigating agency.

My amendment would strengthen that language by also making it a crime to flee across State lines to avoid the service, or contempt proceedings brought by such an agency.

Mr. President, in this connection, I ask unanimous consent to have printed in the RECORD the following items:

A letter from the U.S. attorney for the district of New Jersey dated December 18, 1969.

A letter from the chairman of the New Jersey State Commission of Investigation, dated October 13, 1969, addressed to me, enclosing a copy of a letter of the same date to the Attorney General of the United States.

An article entitled "Two in Jersey Flee Inquiry on Mafia," written by Walter H. Waggoner and published in the New York Times of July 30, 1969.

An article entitled "Mafia Fugitive Due To Surrender Here," published in the New York Times of August 9, 1969.

All of these items show the need for this amendment.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE, U.S. ATTORNEY FOR THE DISTRICT OF NEW JERSEY,
Newark, N.J., December 18, 1969.

Hon. CLIFFORD P. CASE,
U.S. Senator,
U.S. Senate, Washington, D.C.

DEAR SENATOR CASE: My apologies for the delay in answering your letter of November 7, 1969.

I have reviewed your proposed amendment to Section 1073 of Title 18 of the United States Code. I have also reviewed the legal decisions respecting this Section. I wholeheartedly endorse your proposal to include a subsection (3) in this law. As you know, this criminal act was originally enacted "to assist the enforcement) of state laws particularly in imposing penalties upon roving criminals who would be subject to extradition." *United States v. Brandenburg*, 144 F.2d 656 (3rd Cir. 1944). Your proposal obviously is in the spirit in which the Congress initially enacted this legislation.

The experience that the State Investigation Commission had this past July and August proves that your proposal will assist such a duly constituted body in enforcing their subpoena power and in allowing them to conduct legitimate and proper investigations into statewide criminal activities.

Since I consider the problems faced by the State Investigation Commission similar to those which the Special Statewide Grand Jury has faced and will face in the future, I believe that we should similarly assist them in enforcing their subpoena power. Recent disclosures of the far-flung interest of numerous individuals currently under investigation, establish conclusively their facile ability to establish themselves in other states with easy access to their assets, while mocking the subpoena power of properly constituted state investigative agencies.

Certainly any witness called before either the State Investigation Commission or a state grand jury need only to realize that all he has to do to avoid testifying or to be immune from a contempt citation is to flee the state's jurisdiction. Then at best, the state authorities would face a stiff legal fight in order to extradite him.

I believe your proposed legislation to be invaluable in light of the problems faced by state investigatory panels and I strongly endorse it.

Sincerely,

FREDERICK B. LACEY,
U.S. Attorney.

STATE OF NEW JERSEY,
STATE COMMISSION OF INVESTIGATIONS,
Cherry Hill, N.J., October 13, 1969.

Hon. CLIFFORD P. CASE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: Enclosed you will find a copy of a letter to Attorney General Mitchell in which we propose that statutes be amended to make it a federal violation to flee across state lines to avoid questioning by agencies such as ours.

Sincerely,

WILLIAM F. HYLAND,
Chairman.

Enclosure.

STATE OF NEW JERSEY,
STATE COMMISSION OF INVESTIGATION,
Cherry Hill, N.J., October 13, 1970.

Hon. JOHN N. MITCHELL,
The Attoreny General,
Department of Justice,
Washington, D.C.

MY DEAR MR. ATTORNEY GENERAL: The New Jersey State Commission of Investigation is hereby urging consideration of amendatory legislation relating to the provisions of Title 18, United States Code, Section 1073. It is submitted that this section, which has proven so instrumental in the apprehension of felons and witnesses fleeing single state jurisdiction to avoid prosecution or the giving of testimony in that state, would be of invaluable aid to a body such as ours, which is charged with, *inter alia*, the investigation of organized crime and its relationship to any unit of government within a particular state.

The New Jersey Commission was the first body to be formed in direct response to the recommendations of the President's Commission on Law Enforcement and Administration of Justice. Pursuant to the authority granted in New Jersey Statutes Annotated 52: 9M-1, et. seq., the Commission commenced an investigation in April, 1969.

Subsequently numerous individuals were subpoenaed to testify before that Commission in July, 1969. Included among those subpoenaed to testify were one Frank Cocchiaro (also known as Frank Condi) and one Robert Occhipinti (also known as Bobby Basile), who have both been identified by various law enforcement officials as both being closely associated with organized crime. In due course both Cocchiaro and Occhipinti appeared and asserted their Fifth Amendment privileges, were offered immunity under the appropriate provisions of the New Jersey Act, refused again to testify and, prior to being brought before the New Jersey Superior Court and charged with contempt, fled the jurisdiction of New Jersey.

New Jersey's remedies relating to contumacious acts before a governmental authority are statutorily limited to the misdemeanor category (as opposed to New Jersey's high misdemeanor or "felony" provision) with a maximum punishment of three (3) years imprisonment and/or a $1,000.00 fine. This limitation, of course, prevents any application by the appropriate authorities for "unlawful flight" assistance under the aforementioned provisions of the United States Code.

Therefore, in light of circumstances which permit witnesses to avoid appearing or testifying before an investigation commission by simply stepping over state lines into a different jurisdiction, it would appear that the requested legislation is absolutely essential if the purposes of such a commission are to be effected.

We have taken the liberty of submitting language which we believe would be in accord with the objectives herein sought. (See attached enclosure) It should be noted that the suggested phraseology makes no reference to the usual felony-misdemeanor dichotomy, inasmuch as the suggested statute should provide for interstate flight to avoid testifying before a state-wide commission regardless of the label afforded that act by each of the several states.

Very truly yours,

WILLIAM F. HYLAND,
Chairman.

[From the New York Times, July 30, 1969]

TWO IN JERSEY FLEE INQUIRY ON MAFIA—ALLEGED UNDERWORLD FIGURES FACED CONTEMPT CHARGES

(By Walter H. Waggoner)

TRENTON, July 29.—Two reputed Mafia leaders walked out of a state building today and disappeared after they were threatened with contempt charges for refusing to answer questions in an inquiry into organized crime in New Jersey.

In defiance of commission orders to remain at the scene, Robert (Bobby Basile) Ochipinti left a waiting room with his lawyer, Marvin Preminger of New York, and drove across a nearby bridge spanning the Delaware River into Pennsylvania. He was followed by a New Jersey state policeman.

Frank Cocchiaro, also known as Frank Condi, disappeared from the State House Annex, where the State Commission of Investigation was questioning alleged Mafia members and associates. Cocchiaro had received permission to take a brief coffee break.

Andrew Phelan, executive director of the commission, said that "it would not seem unlikely" that Cocchiaro also had left the state.

Both men were under subpoena for questioning by the commission for the duration of the investigation, and it was the second appearance so far for both of them.

Superior Court Judge George Barlow ordered the immediate issuance of arrest warrants, charging the two men with contempt, after a brief but rapid-fire summary of events by Mr. Phelan in the fourth-floor courtroom of the Mercer County Court House Annex.

Mr. Phelan related how the two men, in separate sessions this morning with William F. Hyland, commission chairman, and Glen B. Miller Jr., a member, had refused to answer "certain questions." They refused again after the commission, in accordance with state law, had granted them immunity from prosecution on the basis of information they might divulge in their testimony.

At that point the commission said it would seek an immediate court order requiring the two to show why they should not be cited for contempt. It was while this motion was being conveyed to Judge Barlow several blocks away that the two witnesses were ordered to remain on the premises. Presumably the motion would then be argued before the judge by the lawyers for the two. Instead, they disappeared.

It was the first time that the commission, which began its questioning of Mafia figures on July 8, had restored to a showcause order charging contempt, although in its several sessions it has heard from both cooperative and uncooperative witnesses.

Andrew M. Andaloro, a state police detective assigned to the investigation, testified before Judge Barlow that he had seen Ochipinti, Mr. Preminger and an unidentified lawyer from New Jersey leave the building and head for the visitors' parking lot.

The unidentified lawyer then left, and the two others drove away in a blue 1969 Chevrolet, with New Jersey license number PLG 412, according to Mr. Andaloro. With the trooper trailing it, the car crossed the bridge into Morrisville, Pa.

[From the New York Times, Aug. 9, 1969]

MAFIA FUGITIVE DUE TO SURRENDER HERE

TRENTON, August 7.—Robert Occhipinti, the reputed Mafia figure who fled New Jersey while under subpoena to testify before a state crime investigation, agreed today to surrender to New York authorities tomorrow.

His lawyer, Marvin Preminger of Brooklyn, said he would fight attempts to extradict Occhipinti to New Jersey, where he faces trial for criminal contempt for leaving a State Investigation Commission hearing in Trenton.

Gov. Richard J. Hughes is scheduled to sign the request for Occhipinti's extradition at 2 P.M., four hours after the time set by Mr. Preminger for surrender of his client in the Brooklyn District Attorney's office.

However, Jersey officials were taking a wait-and-see attitude toward Mr. Preminger's promise to surrender Occhipinti. A commission spokesman pointed out that the lawyer had made a number of statements and had failed to follow through.

Meanwhile a second fugitive wanted for alleged contempt of the commission is believed to be in Florida. A commission source said there were indications that Frank Cocchiaro, a reputed lieutenant in the Simone Rizzo (Sam the Plumber) DeCavalcante Mafia family, had gone to the Miami area after fleeing the commission hearings on July 29.

Mr. CASE. Mr. President, I have discussed this matter with the chairman of the subcommittee. I believe he finds it appropriate to the general purpose of the bill, and in line with it, and is pleasantly disposed toward it. Am I correct in that understanding?

Mr. McCLELLAN. Yes.

Mr. CASE. Then, Mr. President, there being as far as I know no objection to the amendment, I am happy to grant the floor to the chairman of the subcommittee.

Mr. McCLELLAN. Had the Senator finished?

Mr. CASE. Yes, I have finished

Mr. McCLELLAN. Mr. President, I have no objection to this amendment. My interpretation of it is that it is a strengthing amendment. It reaches further than the bill now reaches in dealing with these people who undertake to avoid meeting their responsibilities to their country by trying to evade the process of the law and to try to keep from testifying.

This amendment carries the provisions a little further than we have them in the bill. I have no objection to it. I said earlier in the course of our discussion of this measure that I would support any suggestions which improve and strengthen this bill. I regard this amendment as a strengthening amendment.

I am particularly pleased that it is the Senator from New Jersey who is offering the amendment, especially in view of some problems that he has had in his State, with which we are all familiar. I feel that this particular amendment will enable law enforcement officials in his State to meet the challenge that confronts them in dealing with some problems that they now have.

But it will not only help meet the problem there, Mr. President, it will help in other places to deal with this practice—and they often get away with it—of avoiding process or evading subpena, and getting away so their testimony cannot be produced to support law enforcement or to bring out the facts. Often those who take flight are the only ones who know the facts and can testify, and they try to escape and evade that responsibility. I favor strengthening our statutes in any way we can to get citizens to meet their duties and responsibilities as citizens and to give that cooperation to law enforcement agencies that is required and necessary for us to have effective law enforcement in this country.

Mr. President, I have a number of newspaper clippings describing some of the conditions that have prevailed in New Jersey, and I ask unanimous consent that they be printed in the RECORD at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 15, 1969]

SINATRA'S ARREST SOUGHT IN JERSEY—WARRANT ISSUED AS HE FAILS TO APPEAR AT INQUIRY

(By Ronald Sullivan)

TRENTON, October 14.—A warrant for the arrest of Frank Sinatra was issued here today, after he failed to appear before the State Commission of Investigation to answer questions about organized crime.

The warrant, thought to have no legal power outside New Jersey, directed that the singer be brought here "to answer the charge of contempt," which carries a maximum penalty of six months in jail.

Mr. Sinatra could not be reached for comment on the charge, and a secretary in his lawyer's office in Los Angeles said, "We have no information to give out."

Andrew Phelan, executive director of the state commission, declined to disclose what his staff wanted to question Mr. Sinatra about.

GIVEN SUBPOENA IN JUNE

According to a petition filed by the commission in Superior Court, Mr. Sinatra was handed a subpoena on the night of June 25 aboard the 80-foot power yacht Roma, berthed at Bahr's Landing Restaurant in Atlantic Highlands.

The singer was offered a $2 subpoena fee and $2 as a travel allowance for the trip here, both of which he refused.

Originally, Mr. Sinatra was ordered to appear here Aug. 19. But Milton A. Rudin, his lawyer in Los Angeles and the owner of record of the Roma, successfully got a one-month postponement because "of certain business commitments."

However, Mr. Phelan told Superior Court Judge Frank J. Kingfield that neither Mr. Rudin nor Mr. Sinatra had ever called back. Mr. Phelan produced a letter to Mr. Rudin that he said had been mailed Sept. 8.

It said: "Should your client fail to meet the agreed-upon conditions, then this commission would have no alternative but to go forward and petition for a warrant of arrest for contempt."

Judge Kingfield granted the petition this morning and signed an order for Mr. Sinatra's arrest.

Mr. Phelan conceded this evening that the warrant probably had no legal power outside of New Jersey, but he said his petition was "no grandstand play."

The petition said the state investigation was seeking to determine "whether the laws of New Jersey are being faithfully executed and effectively enforced with particular reference to organized crime and racketeering; whether public officers and public employes have been properly discharging their duties with particular references to law enforcement and relations with criminal elements; and whether and to what extent criminal elements have infiltrated the political, economic and business life of New Jersey."

The commission was created by the Governor and the Legislature in the wake of charges that New Jersey was the most corrupt state in the nation. It opened its investigation with an inquiry on alleged racketeering in the Monmouth County community of Long Branch, which is south of Atlantic Highlands.

Mr. Sinatra is a native of Hoboken and has frequently visited the state. He was in Jersey City last January for the funeral of his father, a former Hoboken fire captain, who had died of a heart attack. His mother is living in Fort Lee.

[From the New York Times, Dec. 18, 1969]

SINATRA'S SUBPOENA IS ARGUED IN JERSEY

(By Richard J. H. Johnson)

NEWARK, December 17.—Lawyers for Frank Sinatra and the State Investigation Commission argued for nearly two hours this morning about whether the singer should be forced to appear before the commission to tell what, if anything, he knows about organized crime in his home state.

The lawyers appeared here before Federal District Judge James A. Coolahan.

Last June 24 the commission subpoenaed Mr. Sinatra—the son of a Hoboken fire captain—to appear before it, serving the paper on him while he was a guest aboard a yacht moored at Atlantic Highlands. The singer and actor not only ignored the subpoena but denounced the commission's action as an effort to stage a "circus," featuring him in the center ring.

Subsequently Superior Court Judge Frank J. Kingfield issued an order for Mr. Sinatra's arrest for contempt of the commission should he set foot in New Jersey again.

Last Dec. 1, at the request of Mr. Sinatra's lawyers, the United States Third Circuit Court of Appeals in Philadelphia reversed an order that had been issued by Judge Coolahan; the order refused to restrain the commission from taking action against the performer.

Bruce W. Kauffman, a lawyer from Philadelphia who is representing Mr. Sinatra in this action, asked today that a three-judge panel of Federal judges be convened to rule on whether the State Investigation Commission is a constitutionally valid body.

Mr. Kauffman said the commission was merely an "accusatory" body without "legislative purpose," before which Mr. Sinatra would be bereft of the advice of counsel and of the right to cross-examine accusers or accusatory material.

Andrew Phelan, executive director of the commission, argued that constitutionality of the commission was in fact unchallengeable.

Mr. Phelan told the court that Mr. Sinatra was "thumbing his nose" at the laws of his native state.

Mr. Kauffman retorted that Mr. Sinatra was merely seeking equal protection and justice under the law.

"If anybody," declared Mr. Phelan, "can come before the court with more filthy hands and less clean hands than this individual it is beyond me. It is beyond belief. No court beyond should sanction such conduct."

He said he referred to the "procedural tactics," Mr. Sinatra appeared to be using to avoid an appearance before the commission.

"Frank Sinatra is saying, 'I am above the law,'" Mr. Phelan told Judge Coolahan.

Mr. Kauffman argued that Mr. Sinatra "has yet to be told" why he was subpoenaed in the first place. He charged that Mr. Sinatra was merely the subject of the commission's fishing expedition."

The lawyers and Judge Coolahan reached agreement that no action will be taken by the commission concerning Mr. Sinatra until Judge Coolahan had arrived at a decision on the motion to set up the three-man court.

Judge Coolahan did not indicate how long he would take to reach a decision.

Mr. Phelan said outside the courtroom that the warrant for Mr. Sinatra's arrest on the contempt charges remained in force as did the original subpoena.

Mr. Sinatra was reported tonight to be staying in New York at the Waldorf Towers and planning to attend the Broadway premiere tomorrow night of "Coco" at the Mark Hellinger Theater.

[From the New York Times, Jan. 13, 1970]

JERSEY INQUIRY CONSIDERS MOVE TO INDICT SINATRA FOR CONTEMPT

(By Lesley Oelsner)

NEWARK, January 12—The State Commission of Investigation, which for seven months has tried in vain to question Frank Sinatra about organized crime, is debating whether to seek the singer's indictment for criminal contempt.

Bolstered by a Federal judge's decision last Friday that rejected Mr. Sinatra's legal objections to the inquiry, commission members are planning to meet Wednesday in Trenton.

They are waiting to see if Mr. Sinatra changes his position because of the court ruling. But even if he decides to testify before them voluntarily, they say, they still may ask a grand jury to indict him.

"What we're primarily interested in is getting his testimony," the commission's chairman, William F. Hyland, said in an interview today. "But aside from that, the commission will have to decide whether to seek indictment so that he will be appropriately punished for having defied us in the past."

COULD FACE EXTRADITION

If indicted, Mr. Sinatra would face extradition to New Jersey. Once here, said the commission's lawyer, Kenneth Zauber, he could be brought before the commission "in handcuffs, if need be." He could also be arrested under a state warrant issued for contempt under a statute different from the one under which the grand jury could now indict him.

And if convicted under the indictment that the commission is contemplating, he could be sentenced to three years in prison.

The entertainer's troubles with the four-member investigating group began on a sunny day last June when a process server boarded a yacht docked at Highlands on which Mr. Sinatra was a guest. The server presented the singer with a subpoena to appear before the commission on Aug. 19; Mr. Sinatra ignored it.

"I am not willing to be part of any three-ring circus," he asserted later. "Notwithstanding the fact that I am of Italian descent, I do not have any knowledge of the extent or manner in which organized crime functions in New Jersey or whether there is such a thing as organized crime."

In October a warrant was issued for his arrest under a state statute that says failure to answer a subpoena is a "petit offense" subject to a six-month jail term. But Mr. Sinatra was out of the state at the time, and his offense was not sufficient ground for extradition.

Then, when it seemed that the commission might seek his indictment under a separate statute under which contempt is a crime—and thus sufficient grounds for extradition under the extradition agreement between New Jersey and other states—Mr. Sinatra brought suit in Federal Court here to have the commission's inquiry ruled unconstitutional.

He also sought to restrain the commission's investigation until its constitutionality could be adjudicated.

The lower court judge, James A. Coolahan of the Newark District Court, denied the request, but the Court of Appeals for the Third Circuit reversed this decison.

The appellate court ordered the commission to halt its inquiry until Mr. Sinatra had gone back to Judge Coolahan and asked him to convene a three-judge panel to consider the question of the commission's constitutionality.

It was this request that Judge Coolahan decided last Friday. In a six-page opinion, the judge said that no substantial constitutional questions had been raised and that, thus, a three-judge panel need not be summoned. The practical effect of the decision was to nullify the restraining order previously issued against the commission.

Mr. Sinatra's lawyers declined today to comment on the decision. The commission's lawyer, Mr. Zauber, remarked, "Any block to our going forward has been removed."

[From the Newark (N.J.) Evening News, July 30, 1969]

MAFIA CLIENT DIDN'T FLEE, SAYS LAWYER

(By Peter Carter)

TRENTON.—The attorney for reputed Mafia leader Robert "Bobby Basile" Occhipinti denied today that his client "fled" from a State Investigation Commission hearing yesterday.

Expressing anger at reports that arrest warrants have been issued for his client, attorney Marvin Preminger of Brooklyn said that both he and his client had every right to leave yesterday's hearing.

Preminger, a 41-year-old former Brooklyn assistant district attorney, said that Occhipinti had appeared voluntarily. "He wasn't subpoenaed."

The attorney said that although he could not state what happened at the hearing preceding Occhipinti's departure because it was not a public hearing, it was common knowledge that his client had pleaded the Fifth Amendment in refusing to answer questions.

The SIC yesterday obtained arrest warrants for Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch, after they left a commission hearing although allegedly ordered to remain by Andrew Phelan, SIC executive director.

LEAVES IN AUTO

Occhipinti left in an auto with his attorney while Cocchiaro went into the State House Annex cafeteria for coffee and did not return. The warrants signed by Superior Court Judge George H. Barlow charged the two men with contempt of court for failing to obey commission orders while under subpoena.

Preminger insisted that at no time did he or Occhipinti flee the hearings. He pointed out that after Occhipinti made his appearance, Phelan asked Occhipinti to remain. He contended Phelan gave no reason for insisting Occhipinti remain.

The attorney, who was reached at his Brooklyn office, said he then advised his client to leave and both departed from the State House Annex accompanied by a state trooper.

Preminger said the trooper told him he had orders to follow them, but made no attempt to stop them as they drove across the Delaware River bridge into Pennsylvania.

The attorney said he drove to Philadelphia to meet another client involved in a federal court case heard this morning in New York.

Preminger said that the SIC is "so anxious to make a name for itself that it is oblivious of the nature of laws and oblivious of the fact that all men have equal rights. If Mr. Occhipinti has done so many bad things, why is it he was never arrested or charged with any crime?"

"This trial by investigation is as dangerous as we saw with the late Sen. (Joseph) McCarthy hearings," Preminger said.

He argued his client appeared several weeks ago before the commission under subpoena, was given a routine fee for showing up and later was instructed to return yesterday. Occhipinti did so voluntarily and without subpoena, the attorney insisted.

"However, even if he had been subpoenaed, we would not have remained because Phelan refused to indicate why he wanted us to wait," Preminger said.

PLANS MOTION

Preminger said he will move in association with New Jersey counsel for Occhipinti to vacate any bench warrant or contempt orders that were signed as a result of the "lawful departure of my client."

Preminger declined to state where Occhipinti is, but said he can reach him at any time.

He said if papers are served on him to produce his client, he will appear with Occhipinti "any place we are legally required to appear."

Preminger said: "My client has done nothing wrong and has committed no crime. It would be stupid for him to become a criminal because of an investigation."

Occhipinti and Cocchiaro yesterday left the State House Annex, scene of the commission's hearings, after the panel let it be known it was going to court to attempt to get an order compelling each of them to answer questions or face the prospect of being jailed for contempt of court.

After their departure, Phelan immediately obtained bench warrants for the arrest from Superior Court Judge George H. Barlow. The warrants charge contempt of court for failing, while under subpoena, to obey the commission's order to remain in the annex pending further proceedings.

Cocchiaro, after his appearance before the commission, asked through his lawyer, Anthony C. Blasi, who has offices in Newark, for permission to take a coffee break in the cafeteria on the first floor of the annex.

Blasi about a half-hour later went back into the hearing room to tell the commission that while he was in a men's room, Cocchiaro had disappeared.

Blasi told Phelan that he did not advise Cocchiaro's unauthorized departure and did not approve of it. His apology was well taken, Phelan said later.

This morning, Blasi said he still had not heard from his client.

Occhipinti, a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, is said to be a Mafia enforcer. He lives in the same Long Branch apartment house as Anthony "Little Pussy" Russo, said to have formerly run Mafia-controlled rackets in the Long Branch area.

Cocchiaro is said to have taken over as rackets boss for the Mafia in the Long Branch area after Russo decided to spend most of his time in Florida.

Both De Cavalcante and Russo have appeared before the commission. De Cavalcante is head of a Mafia family operating in New Jersey.

Occhipinti and Cocchiaro were told in the closed-door hearing yesterday that the commission was granting them immunity from prosecution for any responsive answers made to the panel's questions and any evidence flowing from those questions.

The conferring of immunity denies witnesses the right to remain silent on grounds of possible self-incrimination. When the two men refused to answer after they were granted immunity, William F. Hyland, commission chairman, told newsmen the panel would go to court to get an order directing them to answer.

The motion for that order was filed with Judge Barlow yesterday, along with the request for arrest warrants. If Judge Barlow had ordered them to answer questions and they continued to balk, the commission was prepared to ask that they be held in contempt of court and sent to jail.

The two men, therefore, were faced by what was, for them, the nasty dilemma of talking about the mob or going to jail. Their unauthorized exits from the annex appeared to be at least their temporary answer to that dilemma.

But now Phelan is asking police to return the two men, if and when they are found, to Judge Barlow's court to face possible prosecution for contempt of the commission's subpoena powers by their unauthorized departure from the annex.

STUDYING EXTRADITION

Phelan said the commission's staff is doing research on whether the two men can be extradited if they are apprehended in another state and refuse to return voluntarily to New Jersey.

He said the commission itself has no authority to prosecute, but noted that the bench warrants represent the authority of a New Jersey State court before which the commission can ask for prosecution.

Yesterday was the first time the commission has used its power to grant witness immunity to the 14 Mafia leaders and their associates, who are being subpoenaed to appear and re-appear in closed sessions before the panel. The probe into organized crime's influence in Long Branch and of Monmouth was begun last May.

Federal Judge James Coolahan yesterday in Newark upheld the basic constitutionality of the commission and also its power to grant witness immunity. He said the grant of immunity offers a total shield from prosecution for answers given.

Hyland said the commission, despite the threat of appeals of Judge Coolahan's opinion all the way to the U.S. Supreme Court, intended to continue to use its full power until such time as it is enjoined by a court from so doing.

Phelan said the alleged flight yesterday by Occhipinti and Cocchiaro would in no way slow the pace of the commission's probe.

The commission is going to ask a doctor of its own choosing to examine the medical records of Thomas "Tommy Ryan" Eboli of Fort Lee, who entered New York University Hospital in New York after suffering another in a series of heart attacks. Eboli was said to be in line to inherit the Mafia empire headed by the late Vito Genovese before he suffered so much coronary trouble.

Eboli was scheduled to appear before the commission yesterday, but was granted a continuance because the hospital listed him in serious condition.

[From the Newark (N.J.) Evening News, July 30, 1969]

TO APPEAL RULE ON CRIME UNIT

(By Michael J. Hayes)

The attorney for two reputed Mafia leaders said yesterday he will appeal a decision by a U.S. district judge in Newark which upheld the constitutionality of the State Investigation Commission.

As the commission was continuing its investigation yesterday into organized crime in New Jersey, Federal Judge James A. Coolahan denied a challenge against the statute creating the SIC. Judge Coolahan said it was not proved in court that the commission violated the rights of witnesses who might be called to testify.

However, Daniel Isles of Orange, attorney for Joseph "Joe Bayonne" Zicarelli and Angelo "Gyp" De Carlo, said he will appeal the ruling in the Third Circuit Court of Appeals in Philadelphia. He said he will go up to the Supreme Court, if necessary, to overturn the powers of the year-old commission.

De Carlo and Zicarelli are among 14 persons recently called before the SIC to answer questions about criminal activities in the state, especially in Monmouth County. The investigation blossomed as a result of the release in June of transcripts of electronic surveillance made by the Federal Bureau of Investigation, including conversations in the office of Simone "Sam the Plumber" De Cavalcante in Kenilworth.

Joining De Carlo and Zicarelli in the motion to test the legality of the commission's statutes was William Pollack, atorney for Anthony "Little Pussy" Russo, also one of those subpoenaed by the SIC. Pollack said he would take it under advisement whether to appeal Judge Coolahan's ruling.

In a two-hour hearing yesterday, Isles argued that the statute creating the commission was unconstitutional, mostly because the provisions in it for witness immunity were not broad enough.

BLANKET IMMUNITY

He contended that "blanket immunity" should be granted to witnesses who are compelled to testify before the four-man commission. Isles said that if someone is forced to testify under the threat of contempt of of court he should not be liable to prosecution for the entire scope of the questions.

At one point, the Orange attorney took strong issue with an opinion by Chief Judge William H. Hastie of the Third Circuit Court of Appeals, which stated that "present formal challenges to the constitutionality (of the SIC) have no substantiality as would warrant convening a statutory court."

Last week Isles asked that a three-judge tribunal be established to rule on the existence of the SIC.

"Judge Hastie is 100 per cent wrong" Isles said. "He is dead wrong."

Besides the immunity question, Isles also argued the statute was illegal because it provided for penalties if a witness gave a "nonresponsible" answer; it does not give the witness "unfettered" right to counsel, and it provides that anyone disclosing questions or answers made before the commission could be charged as a "disorderly person."

CITES CONSTITUTION

Isles said the statute essentially violates the First (right to freedom of speech), Fifth (right against self-incrimination), Sixth (right to public trial with counsel) and 14th (right to due process of law) Amendments to the Constitution.

Both Isles and Pollack also argued that the commission was an "accusatory" body with no powers of indictment, prosecution or punishment. Isles said the SIC was "out to smear" individuals.

Kenneth P. Zauber, attorney for the commission, argued that the agency's statute

with regard to immunity is "coexistent" with the privileges provided in the Fifth Amendment. He said the testimonial immunity which the commission provides is sufficient.

"They (Isles' clients) not only want to hide in the testimony, they want to bathe in it," Zauber said. "This is what has become known as a total bath."

In announcing his decision, Judge Coolahan said he felt that the immunity provided by the SIC was equivalent to that of the Fifth Amendment. "I feel the statute gives the full protection the Constitution calls for," he said.

Isles said he will file his appeal shortly after a written order by Judge Coolahan is delivered. He said it should be within a week.

[From the Newark (N.J.) Evening News, July 31, 1969]

CRIME PROBERS TO ANSWER CHALLENGE IN COURT

(By Peter Carter)

TRENTON—The State Investigation Commission today promised "to do our talking in court" in response to a challenge to its authority from an attorney representing one of two Mafia figures accused of running away from the panel.

Andrew F. Phelan, executive director of the commission, said the panel intends "to move in proper legal channels" against the two men. But he declined to specify what further legal steps the Commission has in mind.

Marvin Preminger, Brooklyn lawyer representing Robert "Bobby Basile" Occhipinti of Long Branch, one of the two missing men, said he intended to move to vacate a bench warrant for the arrest of Occhipinti.

The warrants for the arrest of Occhipinti and Frank "Condi" Cocchiaro, also of Long Branch, were issued Tuesday by Superior Court Judge George H. Barlow.

The commission asked for the warrants when Occhipinti and Gocchiaro left the State House Annex, scene of the commission's closed-door hearings, after they had been directed to remain in the building "pending further proceedings."

The proceedings were a move by the commission to get a court order from Judge Barlow to compel the two to answer questions, since the panel had granted them immunity from prosecution for their answers.

The bench warrants charge the two men are in contempt of court for violating a directive of the commission while under the panel's subpoena power.

Preminger, reached in Brooklyn where he has his law office, denied his client had fled from the commission. Preminger claimed his client had been under subpoena when he first appeared before the panel July 8 but that Occhipinti's second appearance Tuesday was voluntary and not subject to subpoena.

REFUSED REASON

He said that when Phelan was asked specifically why Occhipinti should remain in the building, Phelan refused to give a reason.

After leaving the hearing, Preminger said he and Occhipinti, followed by a state trooper, walked to Occhipinti's car. He said Cocchiaro was not with them and he has no knowledge of or interest in what became of him.

"We invited the trooper to join us when he said he was under orders to follow us, but the trooper declined," the attorney said. "There was no attempt to stop us."

Preminger said Occhipinti drove him to Philadelphia where the lawyer had an appointment with a client in a federal court case hearing which was held yesterday morning in New York. The attorney said Occhipinti had no connection with the court case and drove him there because Preminger's car was in New York. Afterward, the lawyer said, Occhipinti drove back through New Jersey to New York, leaving him by his auto.

"I intend to move with New Jersey counsel for my client to vacate any bench warrant or contempt orders signed as a result of the lawful departure of my client," Preminger said.

Edward Wacks, Morristown lawyer who is the New Jersey lawyer of record, said he did not know exactly when the motion would be made to vacate the arrest warrant, since Preminger is directing legal affairs for Occhipinti. New Jersey law requires that New Jersey counsel appear in cases where clients are represented by out-of-state lawyers. Wacks was with Preminger and Occhipinti when they left the building Tuesday. But he did not drive across a bridge over the Delaware River into Pennsylvania as Preminger did with Occhipinti.

Asked, that if like Preminger, he had advised Occhipinti to leave the annex when Phelan allegedly did not specify a reason for staying, Wacks said, "I have no comment on that."

The search for the two men, meanwhile, extended into New York City as well as New Jersey and Philadelphia.

Police believe Cocchiaro may have headed for New York so that he, like Occhipinti, would be out of state and out of the jurisdiction of the bench warrents. Police familiar with the ways of organized crime said they suspected the two men might be conferring with higher-ups in the Mafia about what their next steps should be.

Occhipinti is a cousin of Simone "Sam the Plumber" DeCavalcante of Princeton, who is the reputed head of a Mafia family that is extending its influence into the Long Branch area of Monmouth County, focus of the commission's probe of organized crime.

Cocchiaro is said to have taken over operation of Mafia-controlled rackets in "the Long Branch area after Anthony "Little Pussy" Russo of Long Branch stepped down from that role to spend most of his time in Florida.

Phelan rejected Preminger's contention that Occhipinti was a voluntary witness before the commission Tuesday. The executive director said the subpoena reads Occhipinti must appear not only on the first date specified but also on "any adjourned date thereof."

Tuesday's hearing was such an adjourned date and Occhipinti was under direction by subpoena to appear and answer questions, Phelan said.

He added that when Occhipinti returns to New Jersey, it is the commission's intent to arrest him. That goes for Cocchiaro, too, he said.

Police are keeping a check on the homes and known New Jersey haunts of the two men. So far they have not been sighted in New Jersey.

Phelan said that since the contempt charge is only a misdemeanor, he doubts the two men can be extradited should they be found out of state and refuse to return to New Jersey. But he said attempts are still being made to locate them out of state, as well as in New Jersey.

Phelan declined to answer much of Preminger's attack on the commission on the grounds that the courtroom was the place the commission likes to talk

Preminger, a 41-year-old former Brooklyn assistant district attorney, charged that the commission was "so anxious to make a name for itself that it is oblivious to the nature of the laws and oblivious to the fact that all men have equal rights."

RAPS PROCEDURES

He called, the commission's procedures "trial by investigation" and said that is dangerous "as we saw in the hearings by the late Sen. McCarthy." He said the commission members should stop "acting like vigilantes."

Preminger contended the commission only has powers of subpeona and questioning and added that when the panel acts beyond the scope of that authority, "we will have objections."

The Brooklyn lawyer said he knows where Occhipinti is and could produce him any time. Phelan said he would be happy if Occhipinti was produced in New Jersey soon.

Cocchiaro's lawyer, Anthony C. Blasi, who has offices in Newark, told the commission he did not counsel or advise his client to leave the building. He said Cocchiaro left while Blasi was in men's room in the annex. He told newsmen yesterday he has not since heard from Cocchiaro.

[From the Newark (N.J.) Evening News, July 31, 1969]

GANG FIGURE IS INDICTED

NEW YORK.—Anthony Di Lorenzo, reputed heir apparent to the Vito Genevese Cosa Nostra family, was indicted by a federal grand jury today on charges of conspiracy and transporting of 2,600 shares of stolen International Business Machines stock worth over $1 million.

Di Lorenzo, 41, of 230 Durie Ave., Closter, N.J., was arrested by FBI agents last night while driving a 1969 Cadillac at 12th Street and 1st Avenue, Manhattan.

He is president of Anthony J. Di Lorenzo Associates, which had a $25,000-a-year trucking subcontract with the Metropolitan Import Truckmen's Association, of which he was a director.

KENNEDY MONOPOLY

MITA is an association of trucking companies which have a virtual monopoly on all air freight activities at Kennedy Airport, including gasoline and catering supplies for airlines.

Di Lorenzo has not been involved in any federal crime prior to this indictment but has been convicted on three state charges of grant larceny and for aggravated assault with a baseball bat as well as a violation of parole.

He is the third person to be indicted for illegal transportation of stock. In this instance the shares were stolen from the New York office of Hayden Stone & Co., a brokerage firm, in the summer of 1966.

TWO CONVICTED

Two others, Rudolph Izzi, 36, of Brooklyn, was given an eight-year jail sentence and is out on bail pending appeal of his conviction.

The other was Martin Von Zamft, 51, an attorney of Manhattan, who is out on bail of $25,000 awaiting sentence following his conviction in June.

The stolen stock allegedly was used as collateral for loans on an assurance company—Bankers and Telephone Employes of Gettysburg, Pa., which is now in receivership.

The stolen securities were recovered by FBI agents from a safe deposit box in Harrisburg, Pa., in February 1967.

PLEADS INNOCENT

Di Lorenzo pleaded innocent to the indictment when he appeared before Federal Judge John M. Cannella, who had issued a bench warrant for his arrest.

Di Lorenzo sought in vain to have the $200,000 bail reduced on the grounds that he was not running away from anybody and would appear whenever he was wanted.

If convicted, Di Lorenzo faces a maximum penalty of 10 years in jail and a $10,000 fine or both.

[From the Newark (N.J.) Evening News, July 31, 1969]

EBOLI TAKEN OFF HOSPITAL CRITICAL LIST

NEW YORK.—Reputed acting Cosa Nostra boss Thomas Eboli was taken off the serious list today at New York University Medical

Center where he is recovering from his third apparent heart attack this year.

Eboli, 59, of Fort Lee, N.J. was moved from the medical center's intensive care section to another wing of the hospital and is now listed in fair condition, according to a hospital spokesman.

Eboli suffered the attack immediately after returning home Saturday from a Teaneck, N.J., hospital where he was recovering from a July 17 heart seizure.

The latest attack came three days before Eboli was scheduled to appear before New Jersey's state investigation commission.

[From the Newark (N.J.) Evening News, Aug. 1, 1969]

MOVE TO TRY MAFIA PAIR

(By Peter Carter)

TRENTON.—The State Investigation Commission today moved to set the stage for trial of two reputed Mafia figures, should they return to New Jersey.

The commission obtained an order from Superior Court Judge George H. Barlow appointing two of the panel's attorneys as special prosecutors in contempt of court charges against Robert "Bobby Basile" Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch.

The appointment of Kenneth Zauber and Wilbur Mathesius as special prosecutors was a preliminary step toward an attempt next Wednesday to get an indictment from the state wide grand jury charging criminal contempt of court against the two men.

VANISHED TUESDAY

The two men varnished from New Jersey Tuesday after the commission announced it was going to court to get an order compelling them to answer questions since they had been granted immunity from prosecution for any responsive answers they might give.

Bench warrants charging that they left the building where the commission was holding its hearings in violation of an order to remain in the building have been issued for their arrest.

Meanwhile, Marvin Preminger, Brooklyn-based attorney for Occhipinti said yesterday he will have a motion filed with the U.S. District Court calling for a prompt hearing of a suit already filed.

That suit asks for a permanent restraint against the use by the State Investigation Commission of any parts of the more than 2,000 pages of transcripts of electronically "bugged" conversations of Simone "Sam the Plumber" DeCavalcante of Princeton, head of a Mafia family operating in New Jersey.

Preminger said today that Occhipinti is still in New York and that he has spoken to him frequently by phone. Police believe Cocchiaro may be in Philadelphia.

The SIC does not believe it can get a serious enough charge lodged against the two men to extradite them to New Jersey, should they be located out of state and refuse to return voluntarily.

Zauber said the SIC does not fear Preminger's motion for an immediate hearing in federal court on an injunction against the use of the De Cavalcante transcripts.

Zauber said the commission advanced arguments successfully against that challenge and others aimed at its authority during the first week of July, when District Court Judge James Coolahan denied a temporary injunction request by Preminger and lawyers for some of the 14 Mafia leaders and their associates subpoenaed by the commission.

Preminger also said he would have a New Jersey attorney for Occhipinti move before Judge Barlow in Trenton next week to have the bench warrant for Occhipinti vacated. Preminger contends his client was not under subpoena Tuesday and that the commission is exceeding its powers in charging him with contempt and trying to have him arrested.

The commission, with wording of the subpoenas to back it up, contends Occhipinti and Cocchiaro are both under continuing subpoena.

Preminger said yesterday that be believes the commission, as well as any grand jury or court action, is "not only tainted but obliterated" by use of the illegally obtainer De Cavalcante transcripts. Electronic eavesdropping was illegal when the conversations were taped from 1961 to 1965.

He said he will take the position that the U.S. attorney's office in Newark erred in making all of the transcripts public record in court when DeCavalcante's lawyer, S. M. Chris Franzblau, asked for release of the transcripts in the hope they would taint a federal extortion charge pending against his client.

Preminger said only those portions dealing with DeCavalcante should have been released. He said U.S. Supreme Court decisions have held that illegal wiretap information must be guarded closely and kept secret.

Occhipinti and Cocchiaro, both said to be members of DeCavalcante's underworld family, are mentioned in those transcripts.

Preminger said he felt the commission was entirely wrong in continuing to barge ahead with its investigation before the question of the legality of using the transcripts is settled.

"They should be the first ones to want a legal test, because it will be a great waste of time and money if they get knocked down in court at some later date," Preminger said.

[From The Evening News, Newark, N.J., Aug. 2, 1969]

MOVE TO INDICT MAFIA PAIR

(By Peter Carter)

TRENTON.—The State Investigation Commission intends to seek indictments next week charging two Mafia figures with criminal contempt of court.

That intent was made clear yesterday when the commission got an order from Superior Court Judge George H. Barlow designating two of the panel's attorneys as special prosecutors in the cases against Robert "Bobby Basile" Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch.

The attorneys, Kenneth Zauber and Wilbur Mathesius, are expected to seek the indictments from the new statewire grand jury Wednesday.

Judge Barlow already has issued bench warrants for the arrest of the two men on a charge of contempt of the commission's subpoena power.

The two vanished from the State House Annex scene of hearings by the commission, after they had been ordered to stay in the building pending further proceedings.

They also vanished from the state. Occhipinti has been staying in New York. Cocchiaro is suspected of being somewhere in Pennsylvania.

LEFT ANNEX

They left the annex after the commission announced it was going to court to get an order to compel them to answer questions.

But the commission believes that, despite the bench warrants, indictments for criminal contempt, will give them a stronger hand in dealing with the two men, if and when they return to New Jersey.

The panel believes that going through the indictment process and a jury trial would, if the two are convicted, permit the two special prosecutors to ask for jail sentences of up to three years for the two men.

The commission does not believe even the criminal contempt charge will be sufficient basis to extradite the two men back to New Jersey, should they be located out of state and refuse to return voluntarily.

But the panel is known to believe that the two are so deeply involved in the operations of the Mafia family headed by Simone "Sam the Plumber" De Cavalcante of Princeton that they cannot afford to stay out of the state indefinitely.

Occhipinti is said to be a lieutenant in the Mafia family and an enforcer of some of the mob's decisions. Cocchiaro is said to have taken over operation of Mafia rackets in the Long Branch area, focus of the commission's probe into organized crime.

[From the Newark (N.J.) Evening News, Aug. 5, 1969]

OCCHIPINTI STALLED

(By Audrey A. Fecht)

Alleged Mafia figure Robert "Bobby Basile" Occhipinti of Long Branch ran into a procedural snag yesterday in seeking a trial date for a federal court suit challenging the use of FBI tapes containing his electronically "bugged" conversations.

Occhipinti's Brooklyn lawyer, Marvin Preminger, failed to have a New Jersey attorney sign motion papers for the trial date as required by the rules of the U.S. District Courts for New Jersey. The purpose of the rule is to facilitate speedy communication between litigants and the court and to avoid the necessity to reach out-of-state for a lawyer involved in a proceeding.

The clerk of the U.S. District Court returned the papers for signature to the Morristown law firm of Vogel, Chait and Wacks, which is serving as local counsel.

Occhipinti and another reputed Mafia figure, Frank "Condi" Cocchiaro of Oakhurst, left the state last Tuesday after the State Investigation Commission announced it would seek a court order to compel them to answer questions. The SIC is using FBI tapes involving several alleged Mafia figures in its probe of organized crime.

Preminger has said that Occhipinti is in New York. Cocchiaro is believed to be in Philadelphia.

[From the Newark (N.J.) Evening News, Aug. 4, 1969]

OCCHIPINTI SUFFERS SETBACK ON SUIT

A Brooklyn lawyer for reputed Mafia figure Robert "Bobby Basile" Occhipinti of Long Branch today encountered procedural problems in his attempt to file a federal court motion calling for a trial date on a suit already filed.

The aim of the suit is to obtain a permanent restraint against the use by the State Investigation Commission of transcripts containing the electronically bugged conversations of Simone "Sam the Plumber" De Cavalcante of Princeton, alleged Mafia leader for Union and Middlesex Counties. Occhipinti is mentioned in the conversations.

The motion papers sent to the Federal District Court in Newark by Marvin Preminger of Brooklyn were returned for signature to his New Jersey counsel, the Morristown law firm of Vogel, Chait and Wacks.

REQUIRED

Rules for the Federal District Court in New Jersey require signature by local counsel to facilitate speedy communication between litigants and the court and to avoid the necessity to reach out-of-state for an attorney involved in a proceeding.

Occhipinti and another reputed Mafia figure, Frank "Condi" Cocchiaro of Oakhurst, left the state last Tuesday after the SIC announced it was going to seek a court order to compel the two men to answer questions after they were granted immunity from prosecution. Preminger has said that Occhipinti is in New York. Cocchiaro is believed to be in Philadelphia.

[From the Newark (N.J.) Evening News, Aug. 6, 1969]

CRIME UNIT WITNESSES INDICTED

TRENTON.—The statewide grand jury today indicted two reputed Mafia figures on charges of criminal contempt for "wilfully" refusing to comply with the subpoena powers of the State Investigation Commission.

The two are Robert "Bobby Basile" Occhipinti of Long Branch and Frank "Condi" Cocchiaro of Oakhurst. They left the State House Annex, scene of closed-door hearings of the investigation commission, last week after being ordered to remain in the building "pending further proceedings."

Those proceedings turned out to be a move by the commission to get a Superior Court order compelling the two to answer questions. They had been granted immunity from prosecution for any responsive answers.

Occhipinti, according to his lawyer, Marvin Preminger, is in New York City. Police believe Pennsylvania may be out-of-state refuge for Cocchiaro.

A criminal contempt charge is not considered serious enough to support a move to extradite the two men back to New Jersey, should they be found out of state and refuse to return voluntarily.

COULD BE JAILED

But the commission, through the state Organized Crime Unit, obtained the indictments so that if the two are ever apprehended in New Jersey, they could be brought to trial before a jury. The commission believes jail sentences of up to three years could be requested, if the two were convicted of criminal contempt.

Announcement of the indictments was made by Peter R. Richards and Edwin H. Steir, co-directors of the Organized Crime Unit.

They said staff members of the commission testified before the grand jury earlier today.

The indictments are the first obtained from the proceedings of the commission which is not a prosecutive agency but which by statute is required to refer to law enforcement officials any evidence that appears to be prone to prosecution.

Richards and Stier said they were pleased by the prompt action of the grand jury today and added they hoped cooperation between their unit and the commission will "continue to be productive."

Richards and Stier noted that Cocchiaro, 48, and Occhipinti, 49, left the State House Annex when they were faced with the ultimate prospect of going to jail if they continued to refuse to answer the commission's questions, once the panel got a court order compelling them to respond.

They said Occhipinti is a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton whose name dominated the FBI "bugged" transcripts which were filed in Federal Court in Newark in connection with an extortion charge against De Cavalcante. They said Cocchiaro also is reputed to be a close associate of De Cavalcante.

[From the Newark (N.J.) Evening News, Aug. 7, 1969]

OCCHIPINTI SURRENDERS

(By Peter Carter)

NEW YORK.—Robert "Bobby Basile" Occhipinti of Long Branch, N.J., one of two reputed Mafia figures accused of fleeing from the New Jersey State Investigation Commission, today surrendered voluntarily to law enforcement authorities in the Kings County (Brooklyn) district attorney's office.

He was immediately arraigned before Judge Julius Hellenbrand and, as his lawyer, Marvin Preminger, had announced previously, refused to return to New Jersey.

The judge set bail of $75,000 pending an extradition hearing. That hearing will be held Monday before the judge, unless Occhipinti can raise the $75,000.

Wilbur Mathesius, an attorney for the New Jersey commission, who has been named a special prosecutor, urged that no bail be allowed for Occhipinti since he had allegedly defied the commission's subpoena power and vanished from the State House Annex in Trenton and the state July 29.

The commission that day was holding a closed-door hearing in the annex. The panel directed Occhipinti and Frank "Condi" Cocchiaro of Oakhurst, N.J., another reputed Mafia figure, to remain in the building "pending further proceedings." The two, however, left the building and the state.

Kenneth Zauber, another New Jersey investigation commission attorney also named a special prosecutor, said the papers requesting extradition of Occhipinti to New Jersey would be signed later today by Gov. Hughes and hand carried to Lt. Gov. Malcolm Wilson in New York State.

Occhipinti and Cocchiaro were indicted earlier this week on charges of criminal contempt of the commission's subpoena powers.

They were faced with the prospect of either answering the commission's questions or going to jail. The commission had granted them immunity from prosecution for their answers and was going to court on the day they disappeared to get an order directing them to testify. They could have been found guilty of contempt if they had defied such a court order.

The New Jersey Commission also has subpoenaed 12 other alleged Mafia figures and their associates in its probe into organized crime's influence in the Long Branch area of Monmouth County.

Preminger contended again yesterday that the commission was exceeding its powers and that Occhipinti had not been handed a subpoena directing him to remain in the State House annex July 29.

Preminger, who has his office in Brooklyn, said he prefers to fight his legal battles in New York because "we won't feel so much political pressure here."

Mathesius and Zauber will argue the case for extraditing Occhipinti. They were named special prosecutors by order of Superior Court Judge George H. Barlow who sits in Trenton.

[From the Newark (N.J.) Evening News, Aug. 7, 1969]

WILL OPPOSE EXTRADITION

(By Ladley K. Pearson)

NEW YORK.—Robert "Bobby Basile" Occhipinti of Long Branch, N.J., one of two reputed Mafia leaders sought by New Jersey authorities on criminal contempt charges plans to surrender to police here, probably tomorrow, but will fight extradition to New Jersey.

Occhipinti's attorney, Marvin Preminger, said today his client will surrender as soon as police receive a warrant for his arrest from New Jersey authorities. He said he expects the warrant tomorrow.

Preminger, however, added that his client has "absolutely no intention" of waiving extradition and return to New Jersey voluntarily.

"We, of course, will fight extradition," Preminger said in his cluttered office at 66 Court St.

INDICTED BY JURY

Occhipinti and Frank "Condi" Cocchiaro of Oakhurst, N.J., were indicted yesterday by New Jersey's statewide Grand Jury on charges of contempt for "willfully" refusing to comply with the subpoena powers of the State Investigation Commission. Cocchiaro's whereabouts also are not known.

The indictments occurred after the pair vanished from the State House Annex, scene of closed-door hearings of the commission after they were told they faced the prospects of answering the panel's questions or going to jail for contempt.

The two special prosecutors appointed by the court to try the men on contempt charges decided last night the indictments were sufficient grounds to ask for extradition proceedings, should the two not volunteer to return to New Jersey.

Preminger has contended that Occhipinti was not under the subpoena powers of the commission last week and, therefore, was free to walk away from the panel.

Preminger, however, said he has made arrangements with the New York City police department to surrender Occhipinti when the warrant is received by the police. He declined to say where he would surrender his client.

The attorney said he was somewhat bewildered by the indictment. He said the tone on the indictment indicated that his client had ignored a subpoena. "He was never handed a subpoena ordering him to stay in the building," Preminger said.

He said if there are any legal battles to be fought, he preferred fighting them in New York rather than in New Jersey because "we won't feel so much political pressure here."

PLANS NO RETURN

Preminger said that his client had not been in New Jersey for some time and does not plan to return. If he should return and is tried for criminal contempt he could receive a jail sentence of up to three years.

Occhipinti, 49, is a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, whose name dominated the FBI "bugged" transcripts filed in Federal Court in Newark.

The commission, backed up by the indictments returned yesterday, contends that the two men and 12 others subpoenaed by the panel are under continuing directive to obey its orders.

DA NOTIFIED

Kenneth Zauber and Wilbur Mathesius, the commissions lawyers, have notified the district attorney's office in Brooklyn to arrest Occhipinti, if he is not produced today by his lawyer.

They have also notified police in the Miami area of Florida to arrest Cocchiaro on the contempt charges. Zauber and Mathesius last week were designated by Superior Court Judge George H. Barlow as special prosecutors to handle the cases against the two men.

The commission has been investigating organized crime's influence in the Long Branch area of Monmouth County.

ANNOUNCEMENT MADE

Cocchiaro, 48, is said to have strong connection with De Calvacante and to have taken over operation of rackets in the Long Branch area.

The announcement of the indictments of Occhipinti and Cocchiaro was made yesterday by the organized Crime Unit of the State attorney general's office. The co-directors, Peter Richards and Edward Stier said staff members of the commission had testified before the statewide grand jury earlier in the day.

The indictments are the first obtained from the proceedings of the commission, which is not a prosecutive agency but which by statute is required to refer to law enforcement officials any evidence that might be used in prosecution. Richards and Stier said they were pleased by the prompt action of the grand jury today and added they hoped cooperation between their unit and the commission will "continue to be productive."

[From the Trenton (N.J.) Evening Times, Aug. 8, 1969]

OCCHIPINTI DUE TO SURRENDER

NEW YORK.—Robert Occhipinti, the runaway witness wanted for contempt of New Jersey's State Investigation Commission (SIC), was to surrender to authorities here today.

SIC officials said they might take legal action against Occhipinti's lawyer, Marvin Preminger, if he doesn't keep his pledge to bring the reputed underworld figure to the Kings

County Brooklyn District Attorney's office today.

Preminger promised the commission yesterday that he would surrender Occhipinti, but added he would fight attempts to extradite his client to New Jersey.

However, SIC Chairman William F. Hyland said he was skeptical about Preminger's promises, and claimed that the lawyer has failed to follow through on several statements.

Gov. Richard J. Hughes was to sign Occhipinti's extradition papers today and forward them immediately to New York Gov. Nelson A. Rockefeller for approval.

Occhipinti, alias Bobby Basile, and Frank Cocchiaro, alias Frank Condi, were indicted in Trenton Wednesday for contempt of the SIC. The charge stems from the pair's unauthorized departure 10 days ago from commission hearings on organized crime.

They were to be taken to Mercer County Court July 29 and charged with contempt because they refused to answer questions after being granted immunity in return for testimony.

SIC officials believe Cocchiaro, a reputed lieutenant in the Simone R. (Sam) DeCavalcante Cosa Nostra family, is hiding in the Miami, Fla., area.

Cocchiaro, a resident of Ocean Township is a frequent visitor to Miami.

Occhipinti, who has homes in Long Branch, and Brooklyn, is a cousin of DeCavalcante, alleged boss of one of the nation's 24 Cosa Nostra families.

Meanwhile, it has been learned that the SIC has been conducting secret hearings at a motel in Monmouth County. Monmouth is the focal point of the commission's probe.

Police say Cocchiaro oversees DeCavalcante's gambling and loansharking activities in the Jersey shore area. Anthony Russo, a SIC witness two weeks ago, reputedly is the Monmouth County underworld boss for the Cosa Nostra family of the late Vito Genovese.

More than a half dozen secret SIC hearings are believed to have taken place at the Monmouth County Motel. Names of witnesses could not be learned.

The commission's next announced crime hearing is in Trenton Tuesday.

[From the Newark (N.J.) Evening News, Aug. 9, 1969]

OCCHIPINTI BEHIND BARS

(By Peter Carter)

NEW YORK.—Robert "Bobby Basile" Occhipinti, accused of fleeing from the New Jersey State Investigation Commission, had his bail reduced yesterday from $75,000 to $50,000 but couldn't raise the lower amount immediately.

Unless he does raise the money, he will spend the weekend in a Brooklyn jail. He is due to face extradition proceedings Monday in Kings County Criminal Court.

At that time, Kenneth Zauber and Wilbur Mathesius, commission attorneys who have been named special prosecutors, will argue that Occhipinti should be forced back to New Jersey to face trial on an indictment for criminal contempt of the commission's subpoena powers.

The papers requesting extradition of Occhipinti were signed yesterday by Gov. Hughes and hand carried to New York State Lt. Gov. Malcolm Wilson. He is expected to approve them and pass them on to the Brooklyn Court.

Occhipinti surrendered voluntarily yesterday in the Kings County district attorney's office to the warrant charging him with being wanted in New Jersey on a criminal contempt indictment.

Judge Julius Hellenbrand of Kings County Court set bail at $75,000 when Occhipinti was arraigned before him.

Occhipinti's lawyer, Marvin Preminger, argued unsuccessfully that the bail was excessive for a man who had surrendered voluntarily. But Mathesius argued that Occhipinti should not even be granted bail since he had proved his unreliability by walking out on the commission and leaving New Jersey.

Preminger, however, moved later in the day before the next highest court, the New York State Supreme Court to have the bail reduced. Preminger has promised a court fight against extradition of his client to New Jersey.

INDICTED LAST WEEK

Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch and both said to be in the crime family headed by Simone "Sam the Plumber" De Cavalcante of Princeton, were indicted last week by the statewide grand jury.

They left the State House Annex and the state July 29, when they were faced with either answering the commission's questions or going to jail. The commission had granted them witness immunity and was going to court to get an order compelling them to testify or face contempt charges.

The commission contends the two were under continuing subpoena and should have stayed in the annex as ordered "pending further proceedings."

Cocchiaro is believed to be in Florida where police are searching for him.

[From the Newark (N.J.) Evening News. Aug. 10, 1969]

LEGAL TANGLE ON OCCHIPINTI

(By Peter Carter)

TRENTON.—New Jersey will be venturing in the law when it moves tomorrow in Kings County Court in Brooklyn to force the return to this state of Robert "Bobby Basile" Occhipinti of Long Branch.

Occhipinti, a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, head of a Mafia family, is under indictment in New Jersey for criminal contempt of the subpoena powers of the State Investigation Commission.

Criminal contempt is in New Jersey a misdemeanor. Forcible extradition of a person from one state to another usually is allowed only in the more major crime classification of felonies.

However, lawyers for the commission are expected to argue that certain misdemeanors in New Jersey, including an indictable criminal contempt offense, carry jail sentences of up to three years.

EXPECTED ARGUMENT

In most other states, the lawyers are likely to argue, any offense carrying more than a year in jail is normally a felony and subject to extradition proceedings. Therefore, the criminal contempt charge should be considered serious enough to warrant extradition.

Whether this argument can be sustained will be determined by the hearing in the Brooklyn court. Occhipinti's lawyer, Marvin Preminger, has promised a vigorous fight against extradition of his client back to New Jersey.

A hearing on extradition does not involve the merits of the criminal case against Occhipinti or his guilt or innocence.

The state, however, must prove that Occhipinti is indeed the accused, which should cause no difficulty, and that the charge against him is actually a serious crime in New Jersey, which is where the arguments are expected to center.

Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch left the State House Annex and New Jersey after they were faced with the prospect of either answering the commission's question or going to jail for contempt of court.

IMMUNITY GRANTED

The commission had granted them immunity from prosecution and was going to court to get an order compelling them to testify or face contempt charges. The commission in closed-door hearings in the annex has been questioning 14 Mafia leaders and their associates about the influence of organized crime in the Long Branch area of Monmouth County.

Occhipinti and Cocchiaro both left the annex when they had been instructed that they were to remain in the building pending further proceedings. The commission contends that the men were under continuing subpoena and, therefore, were contemptuous when they did not obey the order to stay in the annex.

Cocchiaro is thought to be hiding out in Florida. Police there are searching for him.

Occhipinti, accompanied by Preminger, surrendered voluntarily in the Kings County district attorney's office in Brooklyn Friday. His bail pending tomorrow's hearing was set at $50,000.

If Occhipinti is extradited to New Jersey, he could be tried before a jury in a court in Mercer County on the criminal contempt charge.

OCCHIPINTI GETS HEARING DELAY

(By Peter Carter)

NEW YORK.—Extradition proceedings against Robert "Bobby Basile" Occhipinti, a Mafia figure accused of running away from the New Jersey State Investigation Commission, were postponed today in Kings County Criminal Court in Brooklyn.

The postponement came when the extradition papers could not be forwarded from the New York State governor's office in Albany in time to hold the hearing as scheduled.

Wilbur Mathesius, commission attorney acting as special prosecutor, said he was trying to work out an acceptable date for holding the hearing either late this week or early next week.

Occhipinti, of Long Branch, N.J., and a cousin of Simone "Sam the Plumber" De Cavalcante, head of a New Jersey Mafia family, surrendered voluntarily to law enforcement authorities in Brooklyn Friday. Bail of $50,000 was set for his appearance for the extradition proceedings.

MAKES BAIL

He raised that bail over the weekend, and he appeared at court today briefly with his lawyer Marvin Preminger. They left once it became clear a postponement would be arranged.

Occhipinti and Frank "Condi" Cocchiaro of Oakhurst, N.J., walked out of the State House Annex in Trenton July 29 when they faced the prospect of going to jail or answering, with immunity from prosecution, the questions of the commission in its probe into organized crime.

The commission charges that the walkout from the building and the disappearance from New Jersey flaunted the subpoena powers of the panel. Both men have been indicted in New Jersey for criminal contempt of those powers.

Cocchiaro is believed to be in Florida where police have been asked to search for him.

[From the Newark (N.J.) Evening News, Aug. 12, 1969]

EXTRADITION WARRANT ISSUED FOR OCCHIPINTI

TRENTON.—New York City police have been asked to arrest Robert "Bobby Basile" Occhipinti of Long Branch on an extradition warrant issued yesterday by the New York State governor's office.

The request was made by two special New Jersey prosecutors through the Kings County district attorney's office in Brooklyn after issuance of the papers calling for Occhipinti's extradition to New Jersey to face a criminal contempt charge.

The extradition warrant did not arrive in time yesterday for a scheduled hearing for

Occhipinti in Kings County Criminal Court on a previous warrant charging him with being a fugitive from the New Jersey criminal contempt indictment.

Occhipinti, cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, head of a Mafia family, had been freed in $50,000 bail on the fugitive warrant after surrendering voluntarily in New York on that charge last Friday.

TAKES PRECEDENCE

But attorneys for the State Investigation Commission, who are acting as special prosecutors, said the extradition warrant takes precedence and they want Occhipinti arrested. They said an extradition warrant is not subject to bail, so Occhipinti will have to go to jail if arrested on it.

However his lawyer, Marvin Preminger could have him freed on bail for a few more days, if he institutes a habeas corpus proceeding attacking the validity of the extradition warrant. The bail would be allowed for the few days needed to prepare arguments on the habeas corpus proceeding.

The swift move to have Occhipinti arrested on the extradition warrant was seen as a step to try to forestall any further flight by the Mafia figure.

Occhipinti and Frank "Condi" Cocchiaro, also of Long Branch were indicted by the statewide grand jury for criminal contempt after they left the State House Annex and New Jersey July 29, when faced with either going to jail or answering the commission's questions.

IMMUNITY GRANTED

The commission, probing organized crime in the Long Branch area of Monmouth County, had given the two men immunity from prosecution for any answers they gave and was going to court to get an order compelling them to testify.

Preminger later produced Occhipinti at the district attorney's office in Brooklyn. But Cocchiaro is believed to be hiding in Florida where police have been asked to look for him.

Occhipinti, though he surrendered voluntarily last week, has vowed through Preminger to go to court to fight the extradition move to force his return to New Jersey.

The fugitive warrant hearing scheduled for yesterday was postponed until Monday. But Kenneth Zauber, one of the special prosecutors, said any habeas corpus move by Occhipinti would now supercede that hearing.

Occhipinti accompanied by Preminger, went to the Kings County courtroom yesterday and lingered outside for a few minutes. The two men left when it became apparent the hearing would be delayed.

GROUNDS FOR FIGHT

The only three grounds for fighting the extradition warrant signed and issued by Gov. Rockefeller's office are that the offense charged is not an actual and serious crime in New Jersey, that Occhipinti's identity has been mistaken, or that he was not in New Jersey at the time of the offense.

Meanwhile, the commission has surrounded what it has said is the necessarily private phase of its probe with even more mystery.

The panel cancelled a scheduled appearance behind closed doors today for Louis "Killer Louie" Ferrari of Long Branch said to be a Mafia underling and bodyguard. A panel spokesman said no firm date has been established for what will be Ferrari's second appearance before the commission.

The commission has promised that sometime later this year it will go into the second of public phase of the investigation and will issue public reports, or hold public hearings, or do both.

[From the Trenton (N.J.) Evening Times, Aug. 12, 1969]

THREE WITNESSES TO RETURN AT NEXT WEEK'S SIC HEARINGS

The State Investigations Commission (SIC) will resume hearings here next week when three high-ranking reputed Cosa Nostra figures are scheduled to make second appearances concerning alleged underworld infiltration in Long Branch.

The SIC postponed a session slated for today in the State House Annex, where Louis (Killer Louie) Ferrari, the reputed bodyguard of Anthony (Little Pussy) Russo of Long Branch, was to have made his second appearance.

Russo, who allegedly runs shore-area rackets for the Cosa Nostra family of the late Vito Genovese, will be joined by Angelo (the Gyp) DeCarlo of Mountainside and Joseph (Bayonne Joe) Ziccarelli at the Aug. 20 hearing in the State House Annex, a commission spokesman said.

They are among 14 Cosa Nostra members and associates originally subpoened by the SIC.

EXTRADITION

At the same time, the commission is still trying to extradite from New York a reputed Mafia enforcer who fled SIC hearings last month after being cited for contempt for failing to answer questions.

Attorneys for Robert (Bobby Basile) Occhipinti, who surrendered to the Brooklyn District Attorney's office Friday, are preparing to fight extradition at a court hearing set for Monday.

Frank (Frank Condi) Cocchiaro, who left the SIC hearings along with Occhipinti, is still at large. Unconfirmed reports have placed him in the Miami, Fla., area.

Both Occhipinti and Cocchiaro are associated with the Cosa Nostra family of Simone R. (Sam the Plumber) DeCavalcante of Princeton Township.

An SIC spokesman said he expected the inquiry to continue another "couple of months" before a final report is isued.

BROOKLYN HUNT ON: NO SIGN OF OCCHIPINTI

(By Peter Graves)

TRENTON.—The whereabouts of Robert "Bobby Basile" Occhipinti of Long Branch, a Mafia figure accused of fleeing from the State Investigation Commission, was a mystery today.

Commission attorneys acting as special prosecutors said an effort by the Kings County district attorney's office in Brooklyn to locate Occhipinti in that borough has been unsuccessful.

They reported the district attorney's office as saying Occhipinti was not at the house he had been staying at in Brooklyn when a law enforcement official called there.

They also said the district attorney had asked Occhipinti's lawyer, Marvin Preminger, to find his client. Preminger was quoted as saying he would try but if he was unsuccessful, as he apparently was, the police would have to locate Occhipinti and arrest him on a New York State governor's warrant calling for his forcible extradition back to New Jersey.

Commission officials were known to believe that Occhipinti may stay in hiding at least until Monday, when his postponed hearing on a previous warrant charging him with being a fugitive from a New Jersey criminal contempt indictment is due for a hearing in Kings County Criminal Court.

Occhipinti is still under $50,000 bond for that scheduled appearance and probably would not like to have it forfeited by failing to show up.

Wilbur Mathesius and Kenneth Zauber, the special prosecutors, have requested the Kings County district attorney's office to apprehend Occhipinti on the extradition warrant.

Mathesius said he was "disappointed" that Occhipinti had not been apprehended Monday night when the request was first made to the district attorney.

DISLIKED CHOICE

Occhipinti and Frank "Condi" Cocchiaro, also of Long Branch, left the State House Annex in New Jersey July 29 when they were faced with the prospect of answering the commission's questions or going to jail for contempt.

The commission had granted them immunity from prosecution for answers and was going to court to get a court order compelling them to testify. The panel is probing organized crime in the Long Branch area of Monmouth County.

The two were subsequently indicted by the statewide grand jury for criminal contempt of the commission's subpoena powers. Preminger surrendered Occhipinti in Brooklyn last Friday on the fugitive warrant.

But the later extradition warrant is not subject to bail, probably a reason why there is no surrender this time by Occhipinti.

Cocchiaro is believed to be hiding out in Florida where police have been asked to look for him.

Occhipinti is a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, head of the Mafia family operating in New Jersey. Cocchiaro is said to be an official in that same crime family.

[From the Newark (N.J.), Evening News, August 15, 1969]

OCCHIPINTI SURRENDERS AT PRINCETON

(By Joseph Sullivan)

PRINCETON.—Robert "Bobby Basile" Occhipinti surrendered to State Police here today rather than sit in a New York jail while fighting extradiction to New Jersey.

Occhipinti walked into State Police headquarters on Route 1 at 11:40 a.m. accompanied by his attorney, Samuel Bozza of Newark, and two bail bondsmen. He is scheduled to be arraigned later today in the Mercer County courtroom of Judge George Barlow.

Occhipinti and another reputed Mafia figure, Frank "Condi" Cocchiaro, are under indictment by the Statewide Grand Jury for allegedly being in contempt of the subpoena powers of the State Investigation Commission.

Both men ducked out on a commission hearing last month. Cocchiaro is still at large and believed to be in Florida.

Occhipinti, cousin of reported Mafia leader Simone "Sam the Plumber" De Cavalcante of Princeton, had been freed in $50,000 bail on a fugitive warrant after surrendering voluntarily in New York last Friday.

Two special New Jersey prosecutors had requested the Kings County district attorney's office in Brooklyn to arrest Occhipinti on an extradiction warrant signed by Gov. Hughes. This move apparently led to Occhipinti's decision to surrender today.

Attorneys for the investigation commission said an extradiction warrant is not subject to bail, and Occhipinti would have to go to jail if he were picked up on it.

Marvin Preminger, Occhipinti's New York attorney, had said his client would surrender on the extradiction warrant Monday in Brooklyn.

[From the Trenton (N.J.) Evening Times, Aug. 15, 1969]

BASILE ARRANGES TO GIVE SELF UP

PRINCETON.—Robert (Bobby Basile) Occhipinti, one of the two runaway witnesses of the State Investigations Commission, (SIC) was set to come back today.

Basile, who has been identified as a member of the Simone R. (Sam) DeCavalcante family of the Cosa Nostra, fled from the State House Annex during an SIC hearing July 29.

The SIC had been seeking to extradite Basile from Brooklyn, where he went after fleeing New Jersey. But he notified authorities he would surrender today at the Princeton State Police Station.

No explanation of Basile's voluntary surrender was given, but it was suspected that it might be an attempt to assure his release on bail.

CONTESTING BAIL

The SIC had anounced it would seek to have Basile held without bail upon extradition to New Jersey. SIC attorneys Kenneth Zauber and Wilbur Mathesius said they still would ask that Basile be held without bail when he is arraigned, probably this afternoon before Superior Court Judge Arthur Salvatore.

Had the state been forced to present a full case for extradition from New York, it might have strengthened an attempt to have him held without bail.

But a voluntary surrender carries with it a certain implication of cooperation, and assuredly would weaken the SIC's case for no bail.

The Princeton Station of the New Jersey State Police was selected as the site for Basile's surrender because the State Police detective handling the search for Basile is stationed there, it was explained.

FORMAL PROCEDURE

After being booked, he would be taken to the Mercer County Court House for formal court proceedings and agrument on the issue of bail.

The actual charge against Basile is contempt of the State Investigations Commission's power of subpoena. Basile's attorney, Marvin Preminger of Brooklyn, claims there was no subpoena outstanding at the time Basile "left" the SIC waiting room. But the SIC contends its original subpoena for Basile, issued before the initial SIC hearing several weeks ago, still stands.

This presumably will be the main point at issue if Basile's contempt charge reaches trial.

The SIC wants it to be a jury trial and that now is possible, since he was indicted by the Statewide Grand Jury.

The extradition proceeding, which now will be dropped, was to have taken place Monday in a Brooklyn courtroom.

SECOND WITNESS

The other witness who fled the SIC hearing on the same day as Basile is Frank (Big Frank Condi) Cocchiaro, reputed lieutenant in the DeCavalcante family.

Cocchiaro, who lives in Ocean Township, Monmouth County, but originally came from Brooklyn, has not been seen since his flight. He is believed to be in Florida.

Like Basile, he has been indicted for contempt.

[From the Newark (N.J.) Evening News, Aug. 16, 1969]

OCCHIPINTI FREED ON BAIL

(By Joseph F. Sullivan)

TRENTON.—Robert "Bobby Basile" Occhipinti was freed in $25,000 bail yesterday only to learn moments later he will be back in court Monday.

Agents of the State Investigation Commission tagged the Mafia figure with an order directing him to show cause why he shouldn't be held in civil contempt for refusing to answer the commission's questions about organized crime in New Jersey.

Occhipinti and another underworld figure, Frank "Condi" Cocchiaro, walked out on a commission hearing July 29 and set in motion the chain of legal moves that led to his surrender yesterday at the Princeton state police barracks.

Cocchiaro is still at large, presumably in Florida where police have been alerted to look for him.

The two men left the hearing last month during a recess called because they refused to answer questions. During the recess, commission attorneys petitioned Superior Court Judge George H. Barlow for a court order directing the men to testify.

At this point, Occhipinti and Cocchiaro, both of Long Branch, decided they had more pressing business elsewhere and walked out of the state house annex.

RIGHT QUESTIONED

During this time, Occhipinti, who also has a home at 1060 81st st., Brooklyn, was represented by New York attorney Marvin Preminger, who publicly doubted the commission's right to hold Occhipinti under continuing subpoena and the weight of the subsequent statewide grand jury indictment for criminal contempt.

Preminger said his client would surrender in Kings County Court Monday to fight extradition to New Jersey, but Occhipinti arranged to surrender to SIC prosecutors Kenneth Zauber and Wilbur Mathesius at the Princeton barracks yesterday and hired a new lawyer in the process.

Samuel Bozza of Newark, who accompanied Occhipinti when he surrendered, and also at his arraignment later before Judge Barlow, told the court he disagreed with Preminger concerning the strength of the SIC subpoena powers. He said part of Occhipinti's present troubles stem from the fact he was "ill advised."

Barlow set $25,000 bail at Mathesius' request and a tentative date for a jury trial on the criminal contempt charge of Sept. 9. If convicted, Occhipinti could be fined $1,000 and sentenced to three years in jail.

As he left the courtroom, SIC agents James Lacey and Edward O'Neill served him with papers concerning the civil contempt action, including a bill of particulars on what the commission wants him to talk about.

Bozza was not at his side and Occhipinti was nonplussed by the sudden service at the courtroom door. He accepted the papers with a wry smile and said, "are you sure you guys don't have any more of these things."

Zauber said if Occhipinti is convicted on the civil contempt charge he could be jailed until he decides to purge himself of the contempt citation by answering the commission's questions.

This move could set the stage for the awaited court test of the commission's power to confer immunity from prosecution on a witness in order to force him to testify.

COMMISSION AVAILABLE

Zauber said the commission will be available Monday to listen to Occhipinti if he decides to cooperate. The next scheduled commission hearing is Wednesday, when Joseph "Bayonne Joe" Zicarelli, Angelo "Gyp" DeCarlo of Mountainside, and Anthony "Little Pussy" Russo of Long Branch are scheduled to appear.

Occhipinti paid a $5,000 preminum on a $50,000 bond to remain free in New York after he surrendered on a fugitive warrant, and he paid $2,500 yesterday for the $25,000 bail money to stay out of jail.

Since he walked out of the hearing 18 days ago it has cost Occhipinti $7,500 to remain on the street and he faces an entirely new challenge to his freedom Monday.

[From the Trenton (N.J.) Evening Times, Aug. 18, 1969]

CONDI PLANS SURRENDER TO NEW JERSEY COPS

(By Paul Nini)

Frank Cocchiaro, alias Frank Condi, was expected to surrender to state police at Princeton today.

Cocchiaro and Robert "Bobby Basile" Occhipinti fled from the State House Annex where the State Investigations Commission (SIC) was conducting hearings into organized crime almost three weeks ago.

Although the surrender was scheduled to take place at 11 a.m., neither Cocchiaro nor SIC attorneys appeared at the appointed hour.

Cocchiaro, 48, was to be processed at Princeton before being arraigned later today on contempt charges at the Mercer County Court House. SIC attorneys Wilber Mathesius and Ken Zauber were expected to ask for "no bail".

The expected surrender was to come three days after Cocchiaro's business associate, Occhipinti, gave himself up at the Princeton station.

PLEADED INNOCENT

Occhipinti, 49, of Brooklyn, pleaded innocent to the criminal contempt charges and was released on $25,000 bail pending a trial September 9. The cousin of reputed Mafia figure Simone R. (Sam) DeCalvalcante, Basile was to appear before Judge Arthur A. Salvatore today on a motion to show cause why he should not be held in contempt for not answering the SIC questions.

Mathesius said that if Basile refuses to answer questions about his alleged relationship with suspected Mafia members in the state, the judge can imprison him "until he does."

The maximum penalty for criminal contempt is three years in prison and a $1,000 fine. SIC attorneys said both men could purge themselves of civil contempt if they answer the SIC's questions.

CONTEMPT INDICTMENTS

The statewide grand jury returned contempt indictments against both men, August 6. Basile and Cocchiaro were granted immunity from prosecution during the SIC hearings which are scheduled to resume Wednesday.

Cocchiaro was believed to have been in Florida since fleeing from the State House Annex July 29. Basile has been in Brooklyn.

Cocchiaro and Basile are partners in a Long Branch air conditioning firm, which authorities say is a front for DeCalvalcante's rackets at the shore.

The FBI has identified Cocchiaro as a lieutenant in the DeCalvalcante. Cosa Nostra family.

[From the Newark, N.J. Evening News, Aug. 19, 1969]

PROBERS' SHOWDOWN IN OCCHIPINTI CASE

(By Joseph F. Sullivan)

TRENTON.—The State Investigation Commission's power to force witnesses to testify is on the line today.

Superior Court Judge Arthur A. Salvatore is hearing arguments on a commission move to have Robert "Bobby Basile" Occhipinti held in civil contempt for refusing to answer questions about Cosa Nostra operations in Long Branch.

The court hearing marked the first revelation of the questions posed by the SIC at its closed door hearings. The questions were revealed as the commission sought to bolster its case before Judge Salvatore.

While a portion of the interrogation that was read into the record produced no surprises, it provided the first glimpse into the commission's line of questioning, which up until now has been cloaked in secrecy.

Judge Salvatore ordered the questions read because he said it was pertinent to the determination of Occhipinti's guilt or innocence on the civil contempt charges.

Andrew Phelan, SIC director, told Judge Salvatore yesterday Occhipinti should be jailed until he decides to purge himself of civil contempt by answering questions under the umbrella of witness immunity conferred upon him prior to a closed hearing July 29.

At that time, SIC Chairman William Hyland notified Occhipinti the commission had granted him immunity from prosecution based on any information he might give in the hearings.

In the face of this, Occhipinti steadfastly refused to answer Hyland's questions as to whether he is a Cosa Nostra member, whether he was sent to Long Branch by his Cosa Nostra boss and whether it is the policy of Cosa Nostra members to corrupt officials and "insinuate themselves into the functions of labor groups in Monmouth County."

Occhipinti also was asked if he had been a member of the Carlo Gambino Cosa Nostra family and whether he knew or had met a number of reputed underworld figures such as Gerardo "Gerry" Catena, Thomas "Tommy Ryan" Eboli, Vito Genovese, Simone "Sam the Plumber" De Cavalcante and Anthony "Little Pussy" Russo.

He also refused to tell, citing his lawyer's advice and his constitutional right against self-incrimination, whether he had ever talked to Long Branch Police Chief Joseph D. Purcell, either on the telephone or in person.

The commission chairman also asked Occhipinti how many Cosa Nostra families operate in Monmouth County and whether he had ever witnessed the payment of any "ice" to any official in Long Branch. The term "ice" was not defined but investigators indicated referred to protection payoff money.

Occhipinti sat stony-faced as his new attorney, Samuel Bozza of Newark, argued unsuccessfully for a postponement of yesterday's hearing. New York attorney Marvin Preminger represented Occhipinti at the July 29 hearing and Bozza said he wanted time to catch up with his client's problems.

Salvatore turned down Bozza's request but recessed the hearing until later today after permitting Phelan time to get the 76 questions put to Occhipinti on the record.

Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch, left the State House Annex during a recess in the July 29 hearing and were later indicted by the statewide grand jury for being in criminal contempt of SIC subpoena powers.

Occhipinti surrendered Friday at the Princeton state police barracks and is free in $25,000 bail for a Sept. 9 trial on this charge.

SIC attorneys Kenneth Zauber and Wilbur Mathesius waited at the Princeton barracks for an hour yesterday on a tip Cocchiaro was ready to surrender in the same manner as Occhipinti. Instead Bozza showed up alone to say Cocchiaro would not keep his appointment.

Cocchiaro and Occhipinti are partners in a Long Branch air conditioning company. Both men also have been identified by SIC spokesmen as members of the Cosa Nostra family headed by De Cavalcante.

The court move that began yesterday attracted the attention of attorneys representing other alleged Cosa Nostra members called by the SIC.

[From the Newark (N.J.) Evening News, Aug. 19, 1969]

SILENCE TODAY MAY BRING JAIL TERM: BASILE FACES CONTEMPT CLUB

(By Thomas H. Greer)

Robert (Bobby Basile) Occhipinti, reputed member of the Cosa Nostra family of Simone R. (Sam the Plumber) DeCavalcante, was scheduled to return to Mercer County Court today to answer civil contempt charges for his refusal to answer questions before the State Investigation Commission (SIC).

If Occhipinti continues his silence, SIC attorneys say the Mafia enforcer can be jailed until he agrees to answer.

The questions which Occhipinti refused to answer in the closed SIC session on July 29 were made public for the first time in court yesterday. There was no real surprises, but Occhipinti remained silent. He pleaded his rights under the fifth Amendment and an argument (not disclosed) presented by his lawyer. He refused to answer 73 questions in all.

COCCHIARO MYSTERY

Meanwhile, the whereabouts of Frank (Frank Condi) Cocchiaro, who fled from the State House Annex and the SIC hearing on July 29 with Occhipinti, remains a mystery.

Cocchiaro, 48, was expected to surrender to state police at Princeton yesterday. However, he failed to appear.

Occhipinti, 49, of Brooklyn, surrendered Friday. He pleaded innocent to criminal contempt charge for leaving the SIC hearings and was released under $25,000 bail. His trial on the charges is set for September 9.

Occhipinti and Cocchiaro are partners in a Long Branch air conditioning firm which the SIC contends is a front for the underworld activities of DeCavalcante's family.

The SIC yesterday asked Mercer Judge Arthur A. Salvatore to find Occhipinti guilty of civil contempt.

Salvatore adjourned the hearing until today to permit Occhipinti's lawyer, Samuel Bozza of Newark, more time to prepare a legal brief in his client's defense.

Bozza said there is a fine line between civil and criminal contempt and he is not sure that his client should not be charged with criminal contempt for defying a public body (SIC). He said many "intricate and complex legal problems" are anticipated.

The outcome of the court hearing may have an important bearing on the SIC's investigation of organized crime and official corruption. It will provide a test of the commission's powers in seeking jail terms for alleged Cosa Nostra figures who decline to answer the SIC's questions.

"We are not interested in prosecuting this man," said Andrew Phelan, SIC special prosecutor. "We are only interested in answers. We are seeking that he answer the questions—and if he fails that he be incarcerated."

Judge Salvatore ordered the questions from the closed session read. He said this information is pertinent to his determination of Occhipinti's guilt or innocence on the civil contempt charges.

Many of the questions involved alleged Mafia activities in Monmouth County and in the City of Long Branch. Both Monmouth and Long Branch have been focal points of the commission's investigation.

Occhipinti, a cousin of Mafiia overlord DeCavalcante, now lives in the Long Branch area.

[From the Newark (N.J.) Evening News, Aug. 20, 1969]

OCCHIPINTI HEARING TO RECESS 3D TIME?

(By Thomas H. Greer)

Mercer County Judge Arthur A. Salvatore today was expected to recess the civil contempt hearing of Robert (Bobby Basile) Occhipinti for the third consecutive day.

Judge Salvatore revealed his plans yesterday and said this third delay would be for him to review legal briefs before returning a decision on the reputed Cosa Nostra enforcer's refusal to answer questions before the State Investigation Commission (SIC).

The judge adjourned the hearing each of the past two days, first to permit Occhipinti's attorney, Samuel Bozza of Newark, to prepare legal briefs and yesterday to permit SIC lawyers to prepare similar briefs.

The SIC has asked Salvatore to find Occhipinti guilty of civil contempt for his refusal to answer questions at the July 29 SIC session. SIC says if Occhipinti continues his silence, he can be jailed until he agrees to answer.

Meanwhile Frank (Frank Condi) Cocchiaro, who fled the SIC hearing on July 29 with Occhipinti, remains at large.

Cocchiaro, a Long Branch business partner of Occhipinti and an alleged underworld figure himself, was expected to surrender to state police at Princeton two days ago. However, he failed to appear.

Occhipinti, who surrendered last Friday, also is charged with criminal contempt for leaving the SIC hearing. He is under $25,000 bail and faces a jury trial on the charge Sept. 9.

Yesterday, Salvatore requested legal briefs from Andrew Phelan, SIC executive director. He said they would be necessary because Bozza had filed similar briefs earlier in the day.

Bozza said he would have no witnesses in the hearing. There was some indication Occhipinti might take the witness stand.

UNANSWERED QUESTIONS

The SIC's only witness was Leo Meile, the SIC court reporter, who read from the transcript of the hearing the questions Occhipinti refused to answer.

Bozza's brief, although not made public, is believed to challenge the SIC's power to grant to all underworld figures who testify immunity from prosecution as a result of their testimony.

He also is expected to question why his client is charged with civil contempt and not criminal contempt.

SIC's brief is expected to attempt to justify the commission's actions under the law.

Occhipinti is a cousin and reputed enforcer of Simone R. (Sam the Plumber) DeCavalcante's Cosa Nostra family.

[From the Newark (N.J.) Evening News, Aug. 21, 1969]

JAIL FOR SILENT WITNESSES? SIC HALTS HEARINGS, AWAITS COURT RULING

The State Investigation Commission (SIC) hearings into organized crime in New Jersey have been halted until the courts rule on the Commission's contention that it can throw reluctant witnesses in jail.

William F. Hyland, the SIC's chairman, said yesterday that the hearings will be postponed until after September 10, when three reputed Mafia figures will appear in court. They are charged with contempt for failing to answer the Commission's questions after being granted immunity from prosecution.

"No important purpose would be served by hearings between now and the tenth," Hyland said. "We want the courts to clear up the matter."

Andrew Phelan, the SIC's executive director, said he had expected an even earlier court test of the Commission's immunity power, under which a witness who doesn't answer can be charged with civil contempt and thrown into jail unless he decides to talk.

"I'm surprised it wasnt' taken to court two months ago," Phelan told newsmen.

The halt in hearings came after the Commission had heard three witnesses—Anthony ("Little Pussy") Russo, Joseph Arthur ("Joe Bayonne") Zicarelli and Ruggierio ("Richie the Boot") Boiardo.

Russo and Zicarelli, who hearings, were charged with contempt and their cases were set for September 10, along with that of a third reputed Mafioso, Robert ("Bobby Basile") Occhipinti.

Boiardo, who law enforcement officials consider one of North Jersey's top crime figures, was appearing for the first time and left after a short hearing. His appearance had not been advertised by the SIC, which has held several sessions without publicity.

Meanwhile, Mercer County Judge Arthur A. Salvatore adjourned the contempt hearing of Occhipinti at Judge Kingfield's request so that a decision on his case would not proceed the Zicarelli-Russo hearing.

In announcing suspension of the hearings, Hyland said he did not anticipate any long delay.

Later, SIC officials discounted any permanent crimp in the hearings, although they conceded that whatever court decision came out of the September 10 hearings would be appealed. Some appeals, particularly those that go to the U.S. Supreme Court, can take several years.

The Commission's hearings began July 8, prompted by tapes released in federal court of conversations held by Simone Rizzo ("Sam The Plumber") DeCavalcante, reputed Mafia boss of Central Jersey. Since then, more than a dozen alleged mob figures have appeared, along with several other persons mentioned in the DeCavalcante tapes.

Hyland said after yesterday's proceeding that he believes the Commission's activities

so far have put a crimp in mob activity in the state.

"I have a very firm conviction that the activities of many governmental agencies have had a disquieting effect on those in our state who are part of organized crime," he said. "It has had results all the way down the line, although some may be difficult to measure."

[From the Newark (N.J.) Evening News, Aug. 21, 1969]

INVESTIGATION AGENCY'S POWERS HINGE ON SEPTEMBER 10 COURT TEST

(By Joseph F. Sullivan)

TRENTON.—The State Investigation Commission has gone as far as it can in the probe of organized crime in New Jersey until the court test of its powers Sept. 10.

The commission has extended its controversial immunity protection to three reputed Mafia members and, when they still refused to testify, petitioned the courts to find the witnesses in civil contempt.

If the moves are successful the witnesses Joseph "Bayonne Joe" Zicarelli and Robert "Bobby Basile" Occhipinti and Anthony "Little Pussy" Russo, both of Long Branch, could be sent to jail until they cooperate with commission interrogators.

If the court decision goes against the commission it would effectively lessen the agency's value as an investigative force since no one could be compelled to testify.

Commission Chairman William F. Hyland said yesterday that whatever the outcome of the court test the commission's activities in its first months of existence "have had a disquieting effect on the operations of organized crime in New Jersey from the top to bottom."

PREPARING LEGAL CHALLENGES

Hyland said all of the commission's energies in the coming weeks would be aimed at preparing for the legal attacks expected to be launched by attorneys for the uncooperative witnesses.

Michael Querques of Orange, attorney for Zicarelli, has promised a broad-based attack on the commission and its statutory ability to proceed as it has against the witnesses. Querques yesterday said he would raise "nine or 10 points" in his attack and predicted the court battle would last "a long time."

Andrew Phelan, SIC executive director welcomed the opportunity to dispose of all the untested legal questions surrounding the young state agency.

Phelan said, "I'm confident we're on good ground," and said he believed the appeals would be processed quickly.

Superior Court Judge Frank J. Kingfield yesterday set the date for the court hearing after SIC attorneys asked him to hold Zicraelli and Russo in civil contempt. Both men had been granted immuinty from self-incrimination by the commisson and directed to answer questions about Costa Nostra infiltration of legitimate businesses and corruption of public officials.

REFUSED TO TESTIFY

When they still refused to testify the men were escorted to Kingfield courtroom on the same third floor of the State House Annex and processed for the coming hearing.

The swiftness of the procedure prompted Querques to tell Kingfield "You caught us with our pants down."

William Pollack, attorney for Russo, also assured Kingfield his client would be available for the Sept. 10 hearing. He said Russo "is not going to run away like some others did." He was referring to Occhipinti and Frank "Condi" Cocchiaro, also of Long Branch, who left the State House Annex July 29 while under orders to stay and await further questioning.

Occhipinti turned himself in last Friday but Cocchiaro is still at large and Hyland declined to comment yesterday when asked if he knew of Cocchiaro's whereabouts.

The unauthorized leave of the two men prompted the assignment of extra state police at yesterday's hearings. Troopers in uniform and plainclothes were in the third floor corridor and at all building exits in case a witness tried to leave before he was excused.

The appearance of Kingfield, who is technically on vacation, surprised Querques, and the arrival of Ruggerio "Richie the Boot" Boiardo of Livingston as a witness caught newsmen covering the hearings off guard. He was not among those scheduled to appear before the commission.

WITHOUT COMMENT

The 80-year-old Boiardo was accompanied by Washington attorneys Thomas Wadden and Thomas Dyson with Querques sitting in as New Jersey counsel.

Hyland refused to comment on Boidardo's testimony or lack of it following a pattern set with other witnesses. Since this was Boiardo's first visit, no attempt was made to give him immunity or force him to testify.

The witness immunity protection offered by the commission will be one target of legal attack Sept. 10. Hyland noted the state cannot grant immunity from federal prosecution but said that because of federal immunity statutes similar statutes in other states have been upheld.

He also said the commission will have some anti-crime recommendations for the New Jersey Legislature and possibly for Congress, in the months ahead.

Mercer County Court Judge Arthur A. Salvatore was prepared yesterday to rule on the commission's move to cite Occhipinti for contempt but he adjourned until Sept. 10 "for practical reasons." Although Salvatore retains jurisdiction in the Occhipinti case it is expected that Kingfield will deliver the opinion on the validity of the commission's strategy when he decides the cases of Zicarelli and Russo.

Hyland said the next scheduled commission hearing is Sept. 17 when Angelo "Gyp" De Carlo is the only scheduled witness. De Carlo underwent surgery Tuesday for internal complications.

[From the Newark (N.J.) Evening News, Aug. 21, 1969]

"BAYÓNNE JOE" IS CAMERA SHY

TRENTON.—Joseph "Bayonne Joe" Zicarelli has an aversion for news photographers and he found a way to duck them when his appearance before the State Investigation Commission ended yesterday.

Zicarelli gave an elevator operator a $10 bill and said, "Get me out of here." He was brought to a basement level and left, while the photographers waited elsewhere.

Anthony "Little Pussy" Russo of Long Branch, another witness found more trouble awaiting him when he was excused by the commission. His car was ticketed for overtime parking at a meter while he was questioned about organized crime in a State House Annex hearing room.

[From the Newark (N.J.) Evening News, Oct. 16, 1969]

SINATRA IGNORES JERSEY WARRANT, GOES YACHTING

FREEPORT, BAHAMAS.—Frank Sinatra has arrived in the Bahamas for a stay, apparently not heeding an arrest warrant issued for him in an investigation of organized crime in New Jersey.

The warrant, enforceable only in New Jersey, was issued Tuesday at the request of the New Jersey State Investigation Commission.

Sinatra and his retinue arrived Tuesday night and took up residence in an 8-room suite at the Lucayan Beach Hotel. He went yachting yesterday abroad a chartered boat, then gambled at several casinos.

[From the Newark (N.J.) Evening News, Oct. 22, 1969]

SINATRA WON'T STAR IN NEW JERSEY "CIRCUS"

LOS ANGELES.—Singer Frank Sinatra, subpoenaed by New Jersey investigators of organized crime, said yesterday he won't appear voluntarily because "I am not willing to become part of any three-ring circus."

Sinatra, 53, said he would answer "any and all appropriate questions" by deposition or personal interview—but that investigators would have to force him to appear before any hearing, open or closed.

He explained that he is "tired of being considered an authority on organized crime," saying the implication that he knows about the underworld is baseless.

A warrant was issued last week for Sinatra's arrest after he failed to answer the subpoena from the New Jersey State Investigation Commission which is probing organized crime in Monmouth County. The subpoena said Sinatra was being called to talk about organized crime in the entire state. It did not elaborate.

PREPARED STATEMENT

In a prepared statement on the warrant—which is not enforceable outside New Jersey—Sinatra said: "Notwithstanding the fact that I am of Italian descent, I do not have any knowledge of the extent or the manner in which organized crime functions in the state of New Jersey or whether there is such a thing as organized crime.

"In short," he said, "I could not and cannot now understand how or in what manner I could qualify as a witness with respect to the subject the commission claims it is investigating."

Sinatra was served with the subpoena last June 25 while he was aboard his yacht, the Roma, off Bahr's Landing Restaurant in Highlands, N.J. He said his attorney telephoned the commission to ask the reason for the subpoena.

"The commission's attorney refused to give any information which could lead any reasonable person to believe that the commission could gain anything other than publicity by requiring me to attend its hearing," Sinatra said. "While protesting that they are not seeking publicity, the commission has insisted that I make an appearance before the commission, which appearance would result in extensive publicity.

LEGAL ACTION

"I have instructed my attorney that I would not voluntarily appear before the New Jersey State Commission of Investigation. If the commission seeks to enforce my appearance, all proper and lawful means will be ulitized to determine whether or not, under the present circumstances, my appearance can be compelled.

"I have been, and still am, willing to answer any and all appropriate questions by deposition or personal interview, but I am not willing to become part of any three-ring circus which will necessarily take place if I appear before the State Commission of Investigation in New Jersey, whether the hearings be public or private."

Sinatra was ordered to appear at a private hearing last Aug. 19 but was granted a month's delay, after which the commission said it heard nothing more from him.

"I am tired of being forced to interrupt my professional and personal life to appear and testify about matters which have the same strange blend of fiction and partial facts as are related in some of the current works of fiction," he said in the statement.

"Authors and their publishers appear to be of the opinion that they can publicize and increase the sales of a book if a fictional character having some relationship to or-

ganized or unorganized crime is portrayed in such manner as to suggest that my life is being depicted.

"Similarly, if an investigatory body has not achieved any results and desires some publicity to show they are accomplishing something, I am subpoenaed, with the knowledge that my appearance or nonappearance will result in extensive publicity."

[From the Newark (N.J.) Evening News, Oct. 22, 1969]

CLAIMS AIDE WAS PAID FOR INFLUENCE

WASHINGTON.—A longtime friend of House speaker John W. McCormack was paid between $45,000 and $52,000 to try to win favored treatment for a convicted embezzler, it was reported today.

The latest report on the alleged activities of lawyer Nathan Voloshen was carried by both the Washington Star and the Washington Post. Both newspapers said a federal grand jury in New York will be told Voloshen tried to intervene on behalf of Edward M. Gilbert, a one-time Wall Street wonder who was convicted on charges involving the embezzling of almost $2 million.

INVOLVED IN CONTRACTS

The reports also said McCormack's recently suspended administrative assistant, Martin Sweig, was involved in the contacts with prison officials involved in Gilbert's case.

McCormack suspended Sweig last weekend after the Securities and Exchange Commission alleged Sweig arranged for Voloshen to meet with the SEC to plead for an end to a ban on trading of Parvin Dohrmann Co. stock. The SEC has accused some Parvin Dohrmann stockholders of fraudulent activities.

McCormack said he knew nothing of any attempt by Sweig or Voloshen to intervene in the Gilbert case.

The newspapers said Voloshen and Sweig tried to talk New York parole officials into granting Gilbert an earlier parole. One of the telephone calls, the report said, was made in a voice that was intended to sound like McCormack's. The Star said Sweig in the past has imitated McCormack in telephone conversations.

Mr. McCLELLAN. I am glad to accept the amendment. If the senior minority member of the subcommittee would like to make a comment, I yield the floor to him.

Mr. HRUSKA. Mr. President, the amendment proposed here is a good one. I hope it will be adopted. It covers an area that, frankly, we had not quite thought about and had not considered to a point where we were prepared to include it.

As the paragraph, section 302, is now written, it applies to witnesses who flee to avoid testimony before a State investigating commission after they have been served with process. That provision is good. It does not cover, however, the situation where individuals flee before they are served with process, and where they flee in order to avoid the service of process upon them, in order that they will be required to appear to testify.

As I understand it, it is a very salutary amendment, and I would urge its adoption.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. McCLELLAN. Mr. President, let me add this comment: To secure a conviction under this amendment, it would have to be shown that the party left the jurisdiction with the intent to evade process. I do not know whether such intent can always be proved, but when it can be proved, there ought to be a penalty for it.

I commend the Senator for having offered the amendment, and I trust that it will be adopted.

Mr. CASE. I thank the Senator from Arkansas and the Senator from Nebraska.

I do not intend to ask for a rollcall vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment was agreed to.

Mr. CASE. I move to reconsider the vote by which the amendment was agreed to.

Mr. HRUSKA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, I want to address an inquiry to the distinguished chairman and the Senator from Nebraska. I do this at the behest of the members of the Committee on Commerce. We have a special interest in the provisions of title 9 of the Organized Crime Control Act of 1969.

Title IX creates a new chapter in title 18 of the code to deal with racketeering activity to acquire an interest in or establish an enterprise engaged in interstate commerce.

The impact of organized crime on interstate commerce is an issue about which the Committee on Commerce has been concerned in specific ways, particularly as it might relate to getting into any form of the transportation business.

The Senator from Nebraska will recall that we had a problem last year in which a group of gambling interests were trying to achieve control of Pan American Airways. We have done some preliminary work in trying to establish the volume of this activity and its impact on our system of commerce.

As my colleagues are probably aware, pursuant to Senate Resolution 202 of the 81st Congress the hearings of the Special Committee To Investigate Organized Crime—the so-called Kefauver Crime Committee of the 81st and 82d Congresses—were transferred to the Senate Commerce Committee upon dissolution of the special committee.

All the papers and all the files have been sent to the Archives, and they are still there. We have some problems once in awhile with respect to people who want to look at them. They are not people who are simply curious. They are mainly researchers and writers who want to write about this matter.

The committee has authorized me to say that we recognize the responsibility and jurisdiction of our committee to protect the channels of commerce from the influence of organized crime. I am hopeful that as our scheduling and time permit, we will be able to go into this matter in some depth. I would state, however, that the preliminary data we have at our disposal at this time indicates that organized crime does indeed have a substantial impact upon interstate commerce. In short, organized crime is big business today.

Mr. HRUSKA. It is a big industry.

Mr. MAGNUSON. I can understand the Committee on the Judiciary going into the matter. I am wondering whether title IX is directed mainly at a situation in which money from criminal activities is tranferred into some kind of business that may be legitimate, in interstate commerce, but the proceeds from crime would be used to get into the business.

I wanted it clear that we would have some jurisdiction, hopefully, in a situation in which gambling interests, where they are illegitimate, went into interstate commerce, that we would have to take a look at it. I am wondering whether the Senator from Nebraska and the Senator from Arkansas would interpret title IX to try to stop what should be stopped, where the proceeds of organized crime are used to get into a business. Much of that is not so much interstate commerce as it is a local business. It might be, as we used to see in the gangster movies, a florist shop or a gravel pit, or something of that kind.

But when it gets into the field of transportation, we feel that we should take a look at it. I refer to a situation in which the proceeds can be traced to some illegal action. Robbery would be the extreme example.

If the Senators could clarify that, I would be glad to inform my committee. There is a fine line.

Mr. McCLELLAN. There is a fine line. It is certainly not the purpose or intent of the Committee on the Judiciary or the subcommittee to encroach upon the jurisdiction of other committees. However, organized crime does generally involve interstate commerce.

One purpose of title IX is directed to funds which are received from illicit activities, funds that ought play no role in interstate commerce. For example, if it is organized gambling——

Mr. MAGNUSON. If it is illegal gambling.

Mr. McCLELLAN. Yes; if it is illegal gambling, engaged in by syndicates or shylocking or whatever, and those funds are used for investment in legitimate business in interstate commerce that would constitute a crime under title IX. That kind of activity is what we are trying to prevent.

Mr. MAGNUSON. I think that clears up the matter. Also, I suppose the proceeds from illegal activities in one State that are transported to another State, to be used in further illegal activities would be included?

Mr. HRUSKA. They might be involved in title IX. I agree with the comments of the Senator from Arkansas.

Mr. McCLELLAN. We hope that the Committee on Commerce, of which the distinguished Senator from Washington is the chairman, will go further into the subject.

Mr. MAGNUSON. Mainly in the field of transportation—small airlines and trucklines, and operations of that kind. There are many instances of illegal operations in those fields.

I hope the amendment will be a deterrent, that the effects of the bill will be salutary, and that our committee will not have too much to do in this field.

Mr. KENNEDY. Mr. President, organized crime is a blight on our Nation. It has tainted our politics, our business, our unions. It has promoted our drug traffic, which is perhaps the single factor most responsible for the frightening increase in street crime.

Organized crime affects all Americans, black and white, rich and poor. But its impact falls most heavily on the urban poor. They are usually the special target of illicit gambling and narcotic activities, and they are the most frequent victims of crime in the streets.

All of us are deeply committed to the fight against organized crime. And despite some recent campaign rhetoric, that fight did not begin just yesterday. The Federal organized crime drive began and reached its presently accelerated pace from 1961 to 1968.

In 1961, Attorney General Robert Kennedy told the Senate that—

> Because many rackets are conducted by highly organized syndicates whose influence extends over State and National borders, the Federal Government should come to the aid of local law enforcement authorities in an effort to stem such activity.

The Attorney General requested and secured passage of legislation which prohibited interstate travel and the use of interstate facilities for the purpose of engaging in gambling operations, narcotic operations, extortion, bribery or arson. This legislation provided an important new arsenal for Federal officials in their war against organized crime.

Attorney General Kennedy also vastly increased the number of lawyers in the Organized Crime Section of the Criminal Division of the Department of Justice. And he established the first intelligence unit on organized crime capable of monitoring and coordinating information from the over 20 Federal agencies whose operations touch on this crucial problem.

A few years later President Johnson established a National Crime Commission under the chairmanship of Attorney General Nicholas Katzenbach. I suggest that every Member of the Senate read the Commission's 1967 Report. They will find that the Commission recommended special grand juries to investigate organized crime, a general immunity statute to assure compulsion of testimony, the abolition of rigid evidentiary rules in perjury prosecutions, protective facilities for witnesses in organized crime trials and extended sentences for organized crime leaders. In short, the Crime Commission dealt with nearly all of the problems which S. 30 is now trying to meet.

Urged on by the Crime Commission, the Johnson administration secured passage of the law enforcement assistance program, which in my view is one of the most important contributions the Federal Government has ever made to the fight against organized crime. As all of us know, organized crime has thrived in this Nation in large measure because our local law enforcement agencies have been undermanned, undertrained and underpaid. An undermanned and undertrained police force is simply not capable of combating the sophisticated operations of the crime syndicate. And an underpaid police force is tragically susceptible to the kind of corruption which makes widespread gambling and narcotics operations possible. The law enforcement assistance program began to meet this problem. If authorized grants for "the organization, education, and training of special law enforcement units to combat organized crime, including the establishment and development of State organized crime prevention councils, the recruiting and training of special investigative and prosecutive personnel, and the development of systems for collecting, storing, and disseminating information relating to the control of organized crime." Twenty-six States have already submitted comprehensive plans for dealing with organized crime under the law enforcement assistance program.

Finally, the special strike forces established by Ramsey Clark in several major cities have proved a particularly potent weapon against organized crime. They are at the core of the present administration's efforts to combat organized crime.

I recite this history in order to emphasize that we should not approach the present legislation, or any other crime legislation, in a partisan manner.

The fight against organized crime is not a fight only by those of one party or one philosophy. It is a fight in which all of us must continue to participate. At the same time it is vital that we not be misled into thinking there is a panacea, that we not accept uncritically any bill entitled "Organized Crime" and that we appraise the merits of each piece of legislation calmly and candidly. For my part I believe the legislation before us today may make some valuable contributions to the fight against organized crime. Title VI on depositions may help prevent the intimidation of witnesses and thus increase the number of successful criminal prosecutions. Title VIII, and particularly the proposed National Gambling Commission, may give us a new means of dealing with and understanding the gambling problem. And title IX, on racketeer influenced and corrupt organizations, may provide us with new tools to prevent organized crime from taking over legitimate businesses and activities. The Senator from Arkansas (Mr. McCLELLAN) is certainly to be commended for his work in these areas.

But there are certain aspects of S. 30 which I find objectionable. As both the Senator from Michigan (Mr. HART) and I stated in the committee report the reach of this bill goes far beyond organized criminal activity. Many of its features propose substantial changes in the general body of criminal procedures. For example, the dangerous special offender provisions are a dramatic new departure for Federal law. Yet, they are not limited to the area which the Judiciary Committee studied for so long—organized crime. They can be applied to any major Federal crimes—from violations of our civil rights laws to violations of our selective service laws. Now perhaps the special sentencing procedures should apply to all major Federal crimes. But this is certainly not a question which has been thoroughly studied by the committee.

I also object to title VII of the bill which expressly overrules the recent decision of the Supreme Court in Alderman against United States. I think it is clear that Alderman is a constitutional decision, and I do not think we serve the cause of law and order by ignoring the mandate of the Nation's highest court.

Finally, I object to the section of title IX which authorizes judges to use even the most blatantly illegal evidence for sentencing purposes under the new dangerous special offender provisions. I think this section will encourage law enforcement officials to engage in illegal conduct.

I am offering three amendments which remove these objections. I hope that Senators will support them and will pass a bill which deals specifically with the problem of organized crime and which does not infringe the basic constitutional rights of our citizens.

AMENDMENT NO. 447

Mr. President, I call up my Amendment No. 447 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

> On page 92, it is proposed to strike out lines 10 and 11, and insert the following: "of a defendant in a court of the United States for a felony enumerated in title 18, United States Code, section 1961(1), as amended by title IX of this Act, and committed when the defendant was over the age of".

Mr. KENNEDY. Mr. President, the purpose of the amendment is to limit the sentencing provisions of title X to organized crime offenders. My amendment accomplishes this by making title X applicable only to those convicted of the crimes listed on pages 74 and 75 of S. 30.

The dangerous special offender of title X are a dramatic new departure for Federal law. Yet they are not limited to the area which the Judiciary Committee studied for so long—organized crime. They can be applied to any major Federal crimes—from violations of our civil rights laws to violations of our Selective Service laws. For example, there is soon going to be a trial in Detroit of four policemen accused of conspiring to deprive citizens of their civil rights during the Detroit riots. Under title X these defendants might be subjected to special sentencing. And the defendants in the well-publicized Chicago conspiracy trial might also be subjected to special sentencing. Now perhaps this is good. Perhaps the special sentencing procedure should apply to all major Federal crimes. But certainly this is not a question which has been studied by the committee. And I think it deserves thorough study before

it becomes an integral part of Federal criminal law.

I would like, if I could, to get some reaction from the distinguished Senator from Arkansas on this provision and see if it might be acceptable.

As I mentioned, the scope and the purpose of the amendment is really to limit the special sentencing provisions to those crimes which have been included on pages 74 and 75 of the legislation. That is the thrust of my amendment, and if it were the opinion of the distinguished manager of the bill that there ought to be included additional crimes that relate to organized crime, I would certainly be most willing to see those crimes included.

The amendment I have offered would, I believe, be consistent with the scope of the legislation. I think it strengthens the bill.

Mr. McCLELLAN. Mr. President, I do not know, in dealing with criminals and organized crime, whether we should omit any felony. We might be able to identify some of the areas in which organized crime is active today, but what it might be doing tomorrow may be something else.

If we undertake to do that, we might very well leave another loophole from which no one benefits except the criminal.

Why do it? It is not necessary. Who would be protected in this? It is not the public. It is not the victims who are protected. No one is protected except the very men we seek to control.

I hope this title will not be weakened to that extent. It seems to me that it would be a grave mistake to restrict dangerous offender sentencing to any list of specified offenses supposedly typical of organized crime.

If we put down murder and leave out assault with intent to murder, the latter offense would not be covered.

Tomorrow we may have a new crime on pornography enacted. Perhaps they will find it a very fruitful field and engagement in it. We would be able to do nothing about it because we would not have specified it in the bill.

Nobody would benefit from such a limitation except the criminal.

I do not propose to support an amendment from which no one will benefit except the criminal.

We cannot specify everything. We can not anticipate everything; we have to make a statute general.

If there is any group, any category that we ought to deal with from a broad standpoint, it is those engaged in organized crime.

If we name one crime, they will commit another. We run the risk of leaving a loophole and saying that it can be taken into account in imposing additional sentences.

I believe the statute is badly needed. I gave the illustrations in my opening remarks on the bill about the Mafia leaders, the Cosa Nostra leaders, who have been convicted time and time and time again. And they are not getting adequate sentences. The same judge that sentenced Corallo in New York to 2 years for a $40,000 or a $50,000 bribery charge, sentenced him later, when he again came before him for a kickback charge, and gave him only 3 years.

This bill is meant to put some starch in the judges who are doing the sentencing and to give the U.S. attorneys some leverage to secure sentences, to obtain sentences that are commensurate with the crime committed.

I cannot go along with the proposed amendment. It confers no benefit except upon the man we are trying to punish.

Mr. KENNEDY. Mr. President, I would like to respond to the comments made by the distinguished Senator. I do not think it does us any good to reiterate the purposes and the thrust of this legislation and even to suggest that anyone who is trying to provide any kind of an amendment is not interested in attacking the problem of organized crime.

That is not what is being suggested by the distinguished Senator from Arkansas, I am sure.

I would like to ask the Senator about the case of the four policemen who were involved in that incident in the course of the riot in Detroit. They are now being tried for engaging in a conspiracy in violation of civil rights. If they are convicted of a conspiracy to violate civil rights, then they can be sentenced for three times as long because of title X.

What about Dr. Spock, who was tried under a conspiracy charge for violation of the Selective Service Act? If he was convicted of violating the Selective Service Act on the basis of a conspiracy, then he was susceptible to a much higher sentence under the provisions of this act.

Does this country feel so strongly about Dr. Spock that it wants to have him included? If it did, it is very interesting I think that everybody ought to know it before voting on the measure.

We will cover every kind of felon and provide additional sentences for them, whether it is Dr. Spock or Lester Maddox of Georgia, if he were to be found guilty of a conspiracy for failing to go ahead with the integration of the schools, or Governor McKeithen if he were found guilty of a conspiracy. We could sentence them for a much longer period?

Why not eliminate this possibility.

I did attend some of the hearings, although I did not have the opportunity to attend all of them that I should have liked to attend, but there was never any evidence introduced in the course of those hearings that such a broad sentencing statute was needed.

Mr. McCLELLAN. I am not after Dr. Spock. I do not know that he would come within this bill. Certainly, for only one offense neither Dr. Spock nor anyone else would normally come within this title X. I do not know why his name becomes so important or relevant to this debate. This measure refers to several categories. It would include anyone who is engaged in organized crime, anyone who is a professional criminal, and anyone who is a repeat felony offender.

I do not know why anyone should not count violations of the Civil Rights Act, the draft laws, or anything else that is a felony. However, I do not think we should enumerate in a statute every offense that might occur in an aggregate fashion.

Mr. KENNEDY. Mr. President, the Senator has expressed the matter well.

What I am saying is that if we do not want to include every conspiracy felony we should pass amendment No. 447.

Mr. McCLELLAN. Mr. President, I wish to read a part of the Judiciary Committee report on S. 30. I refer to the FBI's statistical analysis summarized in table 3, on page 43, which reveals that 68.4 percent of those arrested by Federal authorities after receiving two or more felony convictions went on after their Federal arrests to accumulate an average of 4.3 new arrests per offender. Since that analysis discloses also that nearly 60 percent of La Cosa Nostra members upon new convictions of Federal felonies would qualify as "recidivists" under title X, it would have a major impact upon both La Cosa Nostra and other hardcore repeaters. It is just not true, therefore, to say that we did not intend to have this bill operate beyond a narrow definition of organized crime.

Yesterday I read an article in my hometown newspaper about a fellow who had been convicted at least two and perhaps three times. He had been in the penitentiary once for murder, as I recall. He served 4 or 5 years. When he got out he committed another crime and he has now been sentenced to life in prison. The point is that in sentencing these people who are hardened criminals, who are engaged in this kind of activity, we ought to be able to give out appropriate sentences. Some judges will not sentence criminals as they should. The court should identify people who are incorrigible. Many times they are set free, further to endanger society; they are given an opportunity to commit other crimes.

In looking at the record, I do not know why any felony that has been committed should be excluded. I do not know why any felony should be excluded in considering the aggravation of his possible sentence.

I do not know Dr. Spock and I do not know that he ever received a conviction that was sustained. I understand that there was an appeal in connection with his conviction, and the conviction was set aside. He was not a man who had three or four felony convictions. Nor was he a person who engaged in crime as a profession.

What he is supposed to have done would not normally be considered organized crime. It is certainly different from what those people do who perpetrate heinous crimes and live on the fruits of crime.

Mr. KENNEDY. Directing the attention of the Senator from Arkansas to page 94 where we get into special offenders, it is stated:

> A defendant is a special offender for purposes of this section if—
>
> (3) such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct.

That is sufficiently broad to include the example I gave of either the police-

men being tried in Detroit at the present time or Dr. Spock or Reverend Coffin.

The thrust and the purpose of this amendment is to insure that this law is not made so broad, so expensive and so all-encompassing as to catch people it was not intended to catch.

We have had the study by the Crime Commission. That study is one of the most exhaustive and expansive studies ever made on the subject of crime. We also have available the hearings held by the distinguished Senator from Arkansas who is the expert in this body on this subject. If we cannot enumerate the kinds of criminal activities that make up organized crime, then I do not think we further the cause of justice by enacting a statute so all-encompassing that we pick up groups we never intended to pick up. I think that runs contrary to the purpose, scope, and direction of this very worthwhile legislation.

Mr. HRUSKA. Mr. President, in title X, to which this amendment is directed, we have a brand new concept in Federal jurisprudence. It is a brand new concept, it is considered very important, and is a necessary tool to deal with the types of crime characteristic of the syndicate. This title deals with a dangerous special offender. That dangerous special offender has led such a life and has continued to live a life of illegal activity so as to qualify for treatment under title X. It is not everyone who can qualify for this treatment.

I am confident that Dr. Spock would not qualify for membership in the club that is nown as title X. As far as I know from what I have read about him, he has never been convicted of any other crime in his life. He would not qualify.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. HRUSKA. No, I do not yield until I have made my statement and my explanation. When I have done so I will be happy to yield.

If a man has engaged in the type of criminal activity to a point he is a dangerous special offender as defined by this act, if he has found criminal conduct to be so profitable and attractive and so irresistible that there is no hope for his rehabilitation, immediately upon getting less than a maximum sentence for the crime, at the end he gets out and resumes his criminal career. It is that kind of man that title X is directed toward. He should be incapacitated. The purpose of title X is to put that kind of fellow behind the bars and keep him in custody for or a long as is reasonable under the circumstances and keep him out of circulation. To that extent, the purposes of public interest will be subserved, and well subserved.

Who can qualify for membership, for being treated in this special way? Dangerous special offenders. Page 94 of the bill defines, in subsection (e), what a special offender is. Here is what it says. It says that for the purposes of this section a defendant is a special offender when "on two or more previous occasions the defendant has been convicted in a court of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of 1 year, and for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony."

That does not apply to many people. Not many people are convicted of serious crimes that will warrant imprisonment for more than a year on two or more occasions. That is a special brand of person, and he, therefore, should be treated specially. Title X tries to do that.

Here is another man coming under that definition: a person who "committed a felony as part of a pattern of conduct"—not an isolated example, not where he slipped or did something ill-advisedly or precipitately, but where it was a part of a pattern of conduct—"which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise."

That is the special criminal. That is the kind who will never be rehabilitated. There is no hope for him, because he has participated in a life of illegal conduct and has developed a skill and expertise to come by his funds in an illegitimate and illegal way.

There is a third category: "Such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct."

That is the only way it can be described with sufficient particularity to warrant a court to say that if that man has been engaged in that kind of activity, he qualifies for the special treatment of additional punishment provided under title X.

What does the amendment propose to do? In the case of that type of special dangerous offender, the guy who is engaged in helping organized crime to run the mechanism or apparatus of organized crime, or who has been convicted two or more times of a felony which would result in a sentence of more than a year, we are going to say, "Oh, don't let us be hard on him; we must excuse him and limit the areas in which he would be guilty of committing a felony and give him a sort of loophole because, poor fellow, maybe he did not know what he was doing."

After he has been through the mill twice, after he has engaged, knowingly, and consistently, in a pattern of conduct in which he develops an expertise and an ability to come into income without honest labor, in which he would be capable, it seems to me at that point we should not be charitable to him; we should be charitable to the members of the public upon whom he will prey if he is turned loose at too early a time and if we give him the benefit of a loophole of this kind.

I say this amendment should be rejected, and resoundingly rejected, because it would impair the effectiveness of the dangerous special offender sentencing, provisions. The illustrations given on the floor by the chairman of the committee should convince anyone who was in sufficient possession of the facts to give the proposal proper consideration.

It has been suggested that the proposal has not been thoroughly considered in committee or subcommittee. Mr. President, it was debated extensively in the subcommittee—very extensively—and we weighed it very carefully. The minutes will so show. It is deserving of that kind of treatment because it is a new and novel approach which is badly needed in dealing with the problem of organized crime.

Now I yield to the distinguished Senator.

Mr. KENNEDY. I prefer to get the floor in my own right.

Mr. HRUSKA. Very well. The Senator asked me to yield.

Mr. KENNEDY. I intended to ask some questions at the time the points were being made.

My good friend and colleague read from subsection (e), which defines a defendant who is a special offender for the purposes of this section. The Senator reviewed subsection (1). He talked about two or more previous convictions.

The Senator read subsection (2), which refers to a defendant who committed such felony as part of a pattern of conduct in which he manifested special skill.

But, just before subsection (3) appears the word "or," and it states "such felony was, or the defendant committed such felony in furtherance of," and so forth.

One felony—the first felony. It is not, as the Senator from Nebraska suggested, that he has to be convicted of two or more felonies. This is the defendant who gets convicted for the first time. It says so right there.

I know the Senator from Nebraska did not intend to leave the RECORD with the impression that the only people we are trying to reach, even if they were guilty of a conspiracy, would be those who were guilty of a conspiracy two or three times. This gets at Dr. Spock or Sloan Coffin. Dr. Spock was tried for a violation of the Selective Service law. He was found guilty, although his conviction was overturned by the appellate court. Rev. Coffin may conceivably be tried again. If he is tried and convicted on a conspiracy charge, I ask the distinguished manager of the bill, or the Senator from Nebraska, why, under subsection (e) paragraph (3), he would not fall into the special offender class.

I do not think that was the purpose of this provision or this legislation. The amendment I have proposed would limit it to those who are described on pages 74 and 75 of the bill. If my friend will put other crimes of the organized crime variety in there, I will cosponsor the proposal.

But let us not just broaden this language out to include anybody who

has been a part of a conspiracy, any conspiracy.

That is what we are doing. And I think it is important that every Member of this body understand that any person who is guilty of any kind of conspiracy may now face a much longer penalty.

Mr. President, this legislation was never meant for that purpose. As explained so well by my two distinguished colleagues, we are interested in organized crime, not whom we can pick up in this net. Therefore, Mr. President, having in mind the purpose for which this measure was introduced, with all due respect to my friend from Nebraska, I fail to see why someone who is in violation of conspiring to evade the Selective Service laws, or those police officials who are being tried out in Detroit now for violating civil rights—if they are found guilty—should be included together in this provision.

Mr. McCLELLAN. Mr. President, just briefly, I should like for the RECORD to be clear on this: that the provisions of the bill that the distinguished Senator from Massachusetts is objecting to are not just a brainstorm of this committee or members of this committee. They are not something we just thought up and threw into the bill. They have the support of very competent authority and very reliable sources.

The many bodies that have recommended adoption or use of special offender sentencing statutes have not found it wise to restrict them to lists of offenses. The first American special offender sentencing statutes, of course, were the State general recidivist laws. At the present time, such laws are found in some 45 States. There has been no movement away form the approval of those statutes, and they are not confined, in their operation, to lists of specified crimes.

In addition, it now has become generally accepted that the concept of special sentencing should be extended beyond recidivists to professional or organized crime offenders. And in the past 7 or 8 years, a number of qualified bodies have strongly recommended it.

First, in 1962, there was the Model Penal Code promulgated by the American Law Institute, whose council of some 42 leading lawyers and jurists was chaired by Harrison Tweed, and included Judge Henry J. Friendly and Prof. Samuel Williston.

In 1963, such a proposal was made in the Model Sentencing Act adopted by the Council of Judges of the National Council on Crime and Delinquency. Among the members of the Council of Judges were Justice William J. Brennan, Jr., Judge Irving R. Kaufman, Chief Justice Paul C. Reardon, and Justice Joe W. Sanders.

The President's Crime Commission, which, of course, was chaired by Attorney General Katzenbach, and included Judges Charles D. Breitel, William P. Rogers, and Herbert Wechsler, reached the same conclusion in 1967; and, in the same year, the American Bar Association approved such a proposal on the recommendation of committees chaired by Judges J. Edward Lumbard and Simon E. Sobeloff.

What is significant, it seems to me, at this point, is that none of the proposals made by those distinguished bodies recommended that special sentencing be limited to a list of offenses. On the contrary, each proposal was made to cover all felonies.

After thorough subcommittee hearings and study, the Committee on the Judiciary agreed, for good reasons. The inadequacies and defects which title 10 will correct in our existing laws and procedures for sentencing in aggravated cases are common to all Federal felonies. To correct them only for certain crimes would distort the basic concept of special sentencing. It would permit inconsistent, unequal, and unfair treatment of defendants who are similarly situated, and it would not get the job done of protecting honest citizens from all unusually dangerous felons.

Mr. President, that is the issue here, whether we are going to soften this up. Again I say, in all kindness, I do not know who on earth is going to benefit from this except perhaps the man who ought to be in the penitentiary. If anyone else on earth is going to benefit from it, I do not know who it is. The problem is that too many judges are not giving the sentence the law permits them to give for these heinous crimes. That is why the legislatures of the several States, and why this body today, are considering this kind of a statute: In order to try to protect society against these dangerous criminals.

That is what we are driving at, to try to prevent crime, to try to punish those who commit crime, to try to bring this thing under control, to where it will be safe in America again for our people to walk the streets without fear of violence, where legitimate businesses will be free from infiltration by the crooks, the extortionists, the racketeers, and the gamblers, and where we can improve our society and its quality and afford greater protection to our people from the ravages of organized crime.

I hope we will not weaken this proposal.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. HRUSKA. Mr. President, this being a new concept in penology, as it is, providing for additional sentencing for the especially dangerous offender, is it not true that the subcommittee and the committee paid special attention to placing in this title X those constitutional safeguards and those constitutional limitations which are necessary in order to give a man an effective and proper day in court on this issue of additional sentencing?

Mr. McCLELLAN. Yes, it is. I think we have taken due care. Here, in this bill, before these additional penalties can be imposed, the man is entitled to a hearing. He is even entitled to an appeal. Strict rules of evidence with respect to convictions are not enforced, but he has his day, he can be heard, and he can appeal from the judgment of that court on this sentence.

In other words, we try to protect him, Mr. President, against abuses. We try to preserve the rights of anyone caught in the meshes of the law, to give him his fair trial, and then to give him his fair sentencing hearing. We go further than what the law requires now, because we are going further than the present penalties go. We are imposing an additional penalty because he is dangerous, because he ought to be removed from society; but we are giving him his day to be heard.

I do not know how we can do better. If we are going to deal with organized crime, with these violent offenders, with these professionals, with those who live off crime, we had better use every legitimate weapon under the Constitution of the United States and invoke that power, because, as the President said today, and as has been said repeatedly on the floor of the Senate and in reams of newspaper comment, we have a war on our hands, a war on crime.

Are we going to soften up and say, "Let them commit one kind of felony and they will get off"? I do not know whether all the offenses can be named. If a law is passed to create a new crime somewhere the sentencing law would have to be amended. I am advised that no State of the 45 States which have passed recidivist laws has done that. Nobody recommended it, in a competent source, from the evidence we have. Why should the Senate retreat? I hope it will not.

Mr. KENNEDY. Mr. President, I am just about prepared to vote on this amendment.

I am further distressed that the manager of the bill and the ranking minority member of the committee are unable to meet what I think have been the legitimate challenges that have been presented by this amendment, and that is that those who are involved for the first time in any felony, involved in a conspiracy, fall within the general definition of the special offender.

I think it is important, since it has been made a part of the issue here this afternoon, what sort of offenders would not be affected by my amendment. My amendment has no effect on persons convicted under any of the provisions of title XVIII relating to bribery; relating to sports bribery; relating to counterfeiting; relating to theft from interstate shipment; relating to embezzlement from pension and welfare funds; relating to extortionate credit transactions; relating to the transmission of gambling information; relating to mail fraud; relating to wire fraud; relating to obstruction of justice; relating to obstruction of criminal investigations; relating to the obstruction of State or local law enforcement; relating to interference with commerce, robbery, or extortion; relating to racketeering; relating to interstate transportation of wagering paraphernalia; relating to unlawful welfare fund payments; relating to the prohibition of illegal gambling businesses; relating to interstate transportation of stolen property; relating to white slave traffic; restrictions on payments and loans to labor organizations; embezzlement from union funds; any offense involving bank-

ruptcy fraud, fraud in the sale of securities, or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

No one convicted of a felony involving those crimes would be touched by this amendment.

If there are other kinds of relevant crimes which should be included, I would cosponsor an amendment including them.

Mr. HRUSKA. I ask for the yeas and nays.

Mr. KENNEDY. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), and the Senator from New Hampshire (Mr. MCINTYRE), are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH), is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is necessarily absent to attend the funeral of a friend.

The Senator from Florida (Mr. GURNEY), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Kentucky (Mr. COOK), the Senator from New York (Mr. GOODELL), the Senator from Oregon (Mr. HATFIELD), the Senator from Kansas (Mr. PEARSON), the Senator from Ohio (Mr. SAXBE), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from North Dakota (Mr. YOUNG) is detained on official business.

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GURNEY), the Senator from Ohio (Mr. SAXBE), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "nay."

The result was announced—yeas 11, nays 62, as follows:

[No. 6 Leg.]

YEAS—11

Cranston	Kennedy	Nelson
Harris	McGee	Ribicoff
Hart	Mondale	Young, Ohio
Hughes	Muskie	

NAYS—62

Allen	Ellender	Packwood
Aiott	Ervin	Pastore
Anderson	Fannin	Pell
Baker	Fong	Proxmire
Bayh	Fulbright	Randolph
Bellmon	Griffin	Russell
Bible	Hansen	Schweiker
Boggs	Holland	Scott
Brooke	Hruska	Smith, Maine
Burdick	Inouye	Sparkman
Byrd, Va.	Jackson	Spong
Byrd, W. Va.	Jordan, N.C.	Stennis
Cannon	Jordan, Idaho	Stevens
Case	Long	Symington
Cooper	Magnuson	Talmadge
Cotton	Mansfield	Thurmond
Curtis	McClellan	Tydings
Dole	Metcalf	Williams, N.J.
Dominick	Miller	Williams, Del.
Eagleton	Montoya	Yarborough
Eastland	Murphy	

NOT VOTING—27

Aiken	Gurney	Moss
Bennett	Hartke	Mundt
Church	Hatfield	Pearson
Cook	Hollings	Percy
Dodd	Javits	Prouty
Goldwater	Mathias	Saxbe
Goodell	McCarthy	Smith, Ill.
Gore	McGovern	Tower
Gravel	McIntyre	Young, N. Dak.

So Mr. KENNEDY's amendment was rejected.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BYRD of West Virginia. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there any further amendments?

Mr. MANSFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The ASSISTANT LEGISLATIVE CLERK. The Senator from Montana (Mr. MANSFIELD) proposes an amendment: At the end of the bill add the following new section entitled, "Designation and Return of Obscene or Offensive Mail Matter."

Mr. MANSFIELD. Mr. President, I ask that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the ment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, reads as follows:

That (a) chapter 53 of title 39, United States Code, is amended by adding at the end thereof the following new section:

"§ 4061. Designation and return of obscene or offensive mail matter

"(a) (1) In order to protect a person's right of privacy, the envelope or cover of any mail matter that includes any obscene mail matter or any mail matter that may be obscene or offensive shall be marked by the sender with the words 'The Enclosed Material May Be Obscene or Offensive to the Addressee'.

"(2) For purposes of this subsection—

"(A) 'obscene mail matter' or 'mail matter that may be obscene or offensive' means any matter which—

"(i) is tangible, including any device, and used or adapted, or capable of being used or adapted, to depict or arouse (through readings, sound, touch, or observation) nudity, interest in nudity, sexual conduct, sexual excitement, or sadomasochistic abuse; or

"(ii) solicits or offers to send matter of the type described in clause (i) of this subparagraph.

"(B) 'nudity' means the showing of the human male or female genitals, public area, or buttocks with less than a full opaque covering, the female breast with less than a fully opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

"(C) 'sexual conduct' means acts of masturbation, homosexuality, sexual intercourse, physical contact with a person's clothed or unclothed genitals, public area, or buttocks, or, in the case of a female, physical contact with her breast;

"(D) 'sexual excitement' means the condition of human male or female genitals in a state of sexual stimulation or arousal; and

"(E) 'sadomasochistic abuse' means flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

"(b) (1) In order further to protect a person's right of privacy, any mail matter received by an addressee, and determined by him in his sole discretion to be obscene, may be returned to the sender through the mails, without prepayment of postage by the addressee, by placing the words 'Obscene Mail Matter' in the upper right hand corner of the address area of the envelop or other cover used to return such matter.

"(2) The sender shall pay, for each piece of mail matter returned under this subsection as being obscene, postage at the rates of first-class mail plus an additional service charge.

"(3) The service charge, which shall not be less than 50 cents for each piece, shall be determined and adjusted at least once each year by the Postmaster General and shall approximate the cost incurred by the Department with respect to the delivery of such matter and the collection of postage and other expenses incurred. The service charge shall be in lieu of any other charges assessed under this title for unpaid or part paid mail.

"(c) A sender who fails to mark the envelope or other cover of mail matter as required by subsection (a) of this section, or who refuses to pay the postage or the service charge for any piece of mail matter, returned under subsection (b) of this section as obscene or offensive, shall be subject to a civil penalty of $5,000 for each piece of such matter which is not marked or refused. A civil action to collect any such civil penalty may be brought by the United States in the district court of the United States for any judicial district in which the sender resides, has his principal place of business, or is found, or in the district court for the judicial district to which mail matter, subsequently resulting in the civil action to collect the civil penalty, was sent. Process of any such court for any such district issued in any such action may be served in any other judicial district.

"(d) The Postmaster General may prescribe such rules and regulations as may be necessary to carry out the provisions of this section."

(b) The analysis of such chapter, immediately preceding section 4051, is amended by adding at the end thereof the following new item:

"4061. Designation and return of obscene or offensive mail matter."

Mr. MANSFIELD. Mr. President, I will be brief.

The amendment is in effect the bill, S. 3220 which I introduced on December 9 of last year and which was read twice and referred to the Committee on Post Office and Civil Service.

Mr. President, just as the "pushers" are the ones most responsible for and,

therefore, the most guilty in the traffic of narcotics so is the "pusher" who distributes pornographic material through the mails the most responsible and the most guilty in that area.

It is not a question so much of being the recipient of narcotics or pornographic materials, although that is a vital question, but, rather, it is more a question of how we must deal with those who have the primary responsibility. In that respect, I am glad to note, very glad to note, that the Judiciary Committee has reported out a narcotics control bill which will be brought up on the floor of the Senate very shortly.

This pending amendment deals with pornography. It seeks to put the "fix" on those who are primarily responsible for the propagation and continuation of the distribution of unsolicited pornographic materials into the homes of our people.

This traffic in smut must cease and those who are responsible for it must be punished.

Mr. President, pornography, obscenity, filth, and perversion; that is the package that is sent to my constituents in Montana. That is what is being sent to citizens across the land. And its distributors reach into the privacy of one's home through an instrumentality of the Federal Government—the U.S. Post Office Department.

Much is said lately about our first amendment. Freedom of religion and of the press; the right to assemble peaceably and to speak out—these are fundamental guarantees under our Constitution. But what is also protected is our right of privacy and that right, though long recognized as equally fundamental, is perhaps the least enforced of all of our freedoms when it comes to the filth and dirt that is brought to our homes by the Post Office.

I do not criticize the Post Office Department. Its hands are tied. But we in the Congress could untie them if we act now—this year—to crack down on the peddlers of filth.

I note that the President of the United States in the state of the Union message today said:

> Last year this Administration sent to the Congress 13 separate pieces of legislation dealing with organized crime, pornography, street crime, narcotics and crime in the District of Columbia.

The latter have all passed the Senate already; the pending bill deals with organized crime—my proposal deals with pornography.

The President said further on:

> My proposals to you have embodied my belief that the Federal Government should play a greater role in working in partnership with these agencies.

The sending of obscene materials through the mails is purely a Federal matter, as I see it.

My proposal would compel the filth peddler to mark the envelope he uses—the one that is now often blank—with a warning that the enclosure could be obscene or offensive. With such a warning there can be no mistake. The addressee is fully protected. He would be put on notice, as would his entire household. He would know and his family would know that what is inside may violate his standards of decency and those he wishes to impress upon his children. And that is his right.

May I say that such a warning is not new to the legislative field. It has already been imposed by the Congress in the case of cigarettes. Indeed, without even deciding that there is a danger involved in smoking, cigarette manufactuers are compelled to warn each purchaser of a possible hazard. By the same token, under my bill, it need not be decided that the material enclosed is obscene, per se. But if there is that possibility, then the envelope must say in plain and simple words, "The Enclosed Material May Be Obscene or Offensive to the Addressee."

A second feature of my proposal would permit the addressee of obscene mail to return the matter to the sender, without charge. And it is left up to the addressee himself to decide what violates his standard of decency. The return mail fee would be paid by the original sender—the pusher, in other words—with an additional handling charge.

Finally, violators of either of these provisions would be met with a penalty of $5,000.

Perhaps my proposal is not a perfect solution. It is one, however, that I believe brings into proper balance the right of privacy on the one hand and the right of the press to use the mails on the other. If enacted it will for the first time impose an effective check on the distribution of obscenity in our society and place the burden where it belongs—on the filth peddler.

Mr. McGEE. Mr. President, will the Senator yield?

Mr. MANSFIELD. Yes, indeed. I yield to the chairman of the Committee on Post Office and Civil Service, in whose committee S. 3220, the bill now in the form of an amendment, is resting.

Mr. McGEE. Mr. President, the Committee on Post Office and Civil Service is very deeply concerned with this matter to which the distinguished majority leader has addressed himself. We have received a good bit of voluntary advice in this area. It would be my first impression that if we were to label a matter obscene in advance without some kind of an agreement on tests we might have some difficulties in definition, as this simple illustration will make clear.

We receive a great deal of this so-called obscene mail from our constituents around the country. They want us to do something about. I received a very thick packet from a women's club in an unnamed city. It contained pages that had been torn from a magazine called Charm and another magazine called Harper's Bazaar, in which they showed perfume ads and ads for supporting clothing of one sort or another. The request was that we get my committee busy and ban this pornography from the mail. For someone it was offensive, but for most persons, I suppose it was salesmanship, advertising, or whatever one may call it.

To my mind there is a pretty clear line that one can draw beyond which things are pornographic, but I am not a dictator. This is the problem of the committee in responding to this situation.

I remember receiving in another envelope the colored pages from a prominent mail order house—well, it was Sears, Roebuck—that contained ads for all the unmentionables they refer to. To someone that was so pornographic that they wanted Sears, Roebuck to stop those ads.

What is means is that we must have a little more latitude there. I suggest to the Senator that to stamp an article that is being mailed for advertising purposes as obscene, and that it may be offensive, perhaps would require a very careful look so that one could say it is obscene.

In this way we would get at what the distinguished majority leader is talking about. I would like to say to him that the Committee on Post Office and Civil Service would be willing to look at the majority leader's proposed amendment, in order to come up with a recommendation to this body that might be approved by Members of this body to assist in what I think is a very meritorious curbing of the attitude of laxity and permissiveness that seems to be taking advantage of the householder, who has no name in many of these mailings, and most of all, the children in the household. However, we have psychiatrists who testify that none of this material is looked at by anyone except men over 50. I do not mean to attach any significance to that age, but was merely giving my age category as an example. Whatever the age, it is still an intrusion on privacy. I believe we would have to have a very careful weighing of the language that would be required in the circumstances.

My committee is willing to move right now to have a look at this matter. I do not think it would be next week or the following week. At the moment we are preparing to go to conference on a postal pay bill left over from last session and a postal pay matter which is a measure of some considerable urgency.

However, between those matters, I say to the Senator from Montana and I pledge, we will make every effort to take up the matter and make a constructive recommendation along the lines the majority leader has set out in the amendment.

Mr. MANSFIELD. I appreciate the position in which the chairman of the Committee on Post Office and Civil Service finds himself. I know that he will give this matter his prompt attention. I hope it would be possible to report out legislation dealing with obscenity through the mail—not the Sears, Roebuck type but the real type—within the next month or two. If the Senator could give me a definite assurance that something would be done within 1 or 2 months, I would be appreciative and I would withdraw my amendment.

Mr. McGEE. Within that 1- or 2-month time interval I am sure we can have adequate opportunity for the committee to consider this matter and report back to this body and make a recommendation. I will make every effort to

move in that direction and encourage any action in that direction.

Mr. MANSFIELD. I appreciate the remarks of the Senator from Wyoming, who is chairman of the Committee on Post Office and Civil Service. His word is always his bond.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). The amendment is withdrawn.

The bill is open to further amendment.

Mr. MANSFIELD. Mr. President, I wish to inform the Senate, and I have discussed this matter with the acting minority leader, as well as the chairman of the committee and the ranking minority member of the committee, that it would be our intention to dispose of as many amendments as possible tonight. Senators who have amendments should be ready to offer them.

I thank the Senator from Michigan.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SPONG in the chair). Without objection, it is so ordered.

Mr. HART. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. On page 58, strike out all of title VII and insert in lieu thereof the following: Section 701.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Is there not included in the document I sent forward the addition of some language?

The PRESIDING OFFICER. Yes.

The ASSISTANT LEGISLATIVE CLERK. The Senator from Michigan proposes an amendment for himself and Mr. KENNEDY.

Mr. HART. Mr. President, I suggest we start over again. I send an amendment to the desk, for myself and the Senator from Massachusetts (Mr. KENNEDY), and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

Strike all of Title VII—Litigation Concerning Sources of Evidence—and substitute the following:

"Section 701. Chapter 223, title 18, United States Code, is amended by adding at the end, thereof, the following:

"'3504, Disclosure of Evidence. Any evidence or material disclosed to a party solely for the purpose of permitting a determination as to the admissability at trial of that or other evidence and material shall not be disclosed by any party or by the court except to the extent that the placing of such evidence or material in the court record is required for the purposes of court rulings.'"

The PRESIDING OFFICER. Does the Senator from Michigan offer the second amendment as a modification of the first?

Mr. HART. Mr. President, as far as the offerers are concerned, it makes no difference. I was under the impression that the document I sent forward the first time contained in full the language that was reported in the second document just read. The intention of the offerers is to strike title VII, but to add the language that is contained in the second document. I would appreciate a suggestion from the Chair as to which is the most convenient way to proceed.

The PRESIDING OFFICER. The initial amendment was reported. Therefore, it would have to be modified or withdrawn.

Mr. HART. Mr. President, I withdraw the first stated amendment, and offer the second instead.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. We are now proceeding on an amendment offered to strike title VII and to add the language with respect to the limited disclosure. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HART. Mr. President, some of us feel that the amendment offered is of substantial importance. I shall not, unless it is desired, detain the Senate at this hour.

I would hope, however, that overnight, and as our colleagues read the RECORD, they will consider the desirability, as this amendment would do, of preserving the decision of the Supreme Court in *Alderman v. United States*, 394 U.S. 165. This case, the opinion in which was written by Mr. Justice Byron White, was handed down in 1968. The committee bill, by title VII, would overrule that decision, and that, in the judgment of those of us offering the amendment, would be both unconstitutional and undesirable.

I would suggest, Mr. President, that while the majority report of the committee argues that the Alderman decision was based on the supervisory power of the Supreme Court over other Federal courts, and hence an action which Congress can override, actually the Alderman case was based on constitutional requirements, and hence is something which Congress, absent a constitutional amendment, cannot act to override.

I suggest that the cause of law and order is really not advanced by ignoring the mandate of the highest Court in the Nation. I would hope that tomorrow we will be able to persuade a majority of our colleagues that this is a worthwhile approach and recommendation.

I yield now to the Senator from Massachusetts, actually the original drafter of the amendment, who has now permitted me to offer it as a cosponsor.

Mr. KENNEDY. Mr. President, I think the explanation of the Senator from Michigan is complete. The Supreme Court has stated a position, and I share the belief of my distinguished colleague from Michigan that it is inappropriate, if not actually unconstitutional, to retain the present provisions of title VII the organized crime bill.

I feel that the amendment he has offered for himself and for me brings this legislation into conformity with the Supreme Court decision, and I share his hope that it will be accepted.

Mr. HART. I thank the Senator.

Mr. McCLELLAN. Mr. President, let me add a few comments before we quit tonight. It is well within the affirmative power of the Congress to enact proposed section 3504(a)-(2) of title VII. It is not, as suggested, unconstitutional. Paragraph (2) would overrule the Supreme Court's decision in *Alderman v. United States*, 394 U.S. 165 (1969), which held that Government records of any illegal electronic surveillance which a criminal defendant has standing to challenge must be given to him without a preliminary judicial determination that they have possible relevance to his case.

The reason why Congress can reverse the rule laid down by the Alderman case is that that decision was not an interpretation of the Constitution, but an exercise of the Court's power to supervise the administration of Federal criminal justice.

That power was described by Mr. Justice Frankfurter for the Court in *McNabb v. United States*, 318 U.S. 332, 340 (1943), in these terms:

[T]he scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence.

It is a basic rule of practice of the Supreme Court to place its decisions upon nonconstitutional grounds, such as statutory interpretation or the supervisory power, whenever doing so permits avoidance of a constitutional issue. See, for example, *Peters v. Hobby*, 349 U.S. 331 (1955). It must be presumed, therefore, that the Court followed this practice in the Alderman case unless the contrary can be affirmatively shown.

In its statement of the holding of the case, the Court declared:

We conclude that surveillance records as to which any petitioner has standing to object should be turned over to him without being screened *in camera* by the trial judge. *Alderman v. United States, supra* at 182.

Nowhere did the Court explicitly say that this practice was mandated by the fourth amendment. Instead, the Court merely ruled that this practice would "substantially reduce" the incidence of error by guarding against the "possibility that a trial judge acting in camera would be unable to provide the scrutiny which the fourth amendment exclusionary rule demands"—394 U.S. at 184. In short, the fourth amendment guarantees freedom from unreasonable searches and seizures, and this freedom must be enforced by the suppression sanction, but the disclosure rule implementing that sanction is not constitutional doctrine, as it is well settled that the details of implementation of constitutional guarantees often lie below the threshold of

constitutional concern. (See *Ker* v. *California*, 374 U.S. 23, 34 (1963).) The significance of the use of the word "should" in the Alderman holding is emphasized by the Court's later concession that its decision "is a matter of judgment" on which "its view" was that in camera inspection by the trial court is inadequate—394 U.S. at 182. Indeed, the Court expressly based its decision in part upon its desire to "avoid an exorbitant expenditure of judicial time and energy," 394 U.S. at 184, a consideration most appropriate in the exercise of the supervisory jurisdiction. Thus, the Court's language indicates that the ruling was supervisory. Nothing in it may be used to make the necessary affirmative showing that the Court was reaching out needlessly to decide a constitutional issue.

A supervisory decision by the Supreme Court is subject to change or overruling by the Congress. Exactly such a course was followed when the Congress enacted the Jencks Act, 18 U.S.C. 3500 (1958), modifying the Supreme Court's decision in *Jencks* v. *United States*, 353 U.S. 657 (1957). Thus, the Congress is equally free to enact title VII of S. 30 despite the Supreme Court's supervisory decision in the Alderman case.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

Mr. McCLELLAN. No; it is to go over until tomorrow. I understood we wanted it to be the pending business tomorrow.

Mr. HART. We merely wanted this brief explanation in the RECORD.

Mr. McCLELLAN. We have nothing further on this matter at this time.

Mr. YOUNG of Ohio. Mr. President, the proposed Organized Crime Control Act of 1969 reported by the Committee on the Judiciary supposedly provides precedures necessary to abolish organized crime. However, in doing so the bill also presents one of the most serious attacks in our Nation's history against individual privacy and the concept of due process of law.

The bill proposes substantial changes in the general body of criminal procedures. It establishes new rules of evidence and procedures applicable to all criminal jurisprudence. Unfortunately, these provisions do not restrict themselves solely to organized criminal activities. They also seriously threaten the civil liberties of all Americans. While this proposal does contain some meritorious features, I would prefer to see no legislation at all rather than to vote for the bill as reported by the Judiciary Committee.

As a former chief criminal prosecuting attorney, I believe now as I believed then that certain punishment, like a shadow, should follow the commission of a crime. However, I also believe that in determining whether or not an individual is guilty of a crime he be afforded every protection assured him in the first 10 amendments to our Constitution.

Very definitely, I think all Americans would do well to reread the first 10 amendments to the Constitution of the United States, which we affectionately term the Bill of Rights. These amendments were adopted on demand of those patriots who won our War of Independence. Except for the fact that these demands were adopted by the Congress and by the legislatures of the Thirteen Original States, that Constitution adopted by the members of the Constitutional Convention sitting in Philadelphia, presided over by George Washington, would not have been adopted and ratified by the several States at the time it was.

An example of the flagrant flouting of constitutional guarantees is contained in title II which establishes a general immunity statute applicable to any Federal court, grand jury, or administrative proceeding, as well as congressional proceeding. It replaces a host of carefully drawn and limited specific immunity provisions and makes inroads on the fifth amendment protection against self-incrimination which are both undesirable and unconstitutional. Being a blanket provision, title II obviously is not limited to organized crime. Furthermore, the bill restricts immunity to protection of an individual against use of compelled testimony or documents but not against prosecution for matters as to which a person was compelled to testify or produce documents.

In 1892, the Supreme Court held a similar immunity statute unconstitutional because it protected against use of evidence but not against prosecution. Since that time Federal immunity statutes have typically provided immunity against prosecution as well as use. This provision of the bill is a serious erosion of the rights guaranteed all Americans in the fifth amendment to the Constitution of the United States.

As another example, title VII creates a drastically altered procedure for considering any claim—in any Federal, State, or local court or agency—that evidence is inadmissible because it is the direct or indirect product of a violation by anyone of the Constitution, or any Federal law or regulation. These novel provisions, which are not limited to organized crime cases, are clearly an overreaction to recent Supreme Court decisions concerning the unique problem of unlawful electronic eavesdropping or wiretapping.

Rather than to encourage greater invasion of individual privacy, I would favor enactment of legislation to prevent law-enforcement or other officials of our Government from engaging in or authorizing so-called bugging of conversations between any persons whatever. We should outlaw all wiretapping, public and private. I am opposed to any legislation permitting wiretapping, even if such wiretapping were authorized by a U.S. district judge, except only when clear and convincing proof is offered and it is determined by the U.S. district judge that the security of the Nation itself would be jeopardized and endangered unless such action were taken.

Supreme Court decisions since 1914 have established the so-called exclusionary rule under which physical or oral evidence obtained directly by, or as the fruit of, activity that violates the Constitution is inadmissible in Federal and State proceedings. In addition, with respect to the peculiar problem of unlawful electronic eavesdropping or wiretapping the Supreme Court held last year in Alderman against United States that once illegal surveillance is established the Government must disclose all records thereof to a defendant so that defendant may determine what other evidence may be inadmissible as being the fruit of such illegal surveillance.

Title VII seeks to change both of these principles which were adopted by the Supreme Court to protect constitutional rights.

Mr. President, these are just two examples of the possibilities in this bill for flagrant violation of the constitutional rights of each and every American citizen. There are many more.

While the bill does contain some features which would assist law-enforcement officials in controlling crime, it is, as reported from the Judiciary Committee, in essence an assault on liberty in the disguise of crime control.

Those sections which would restrict and seriously endanger the civil liberties of Americans should be rejected unless the bill is amended to restrict their scope solely to organized criminal activities.

Mr. President, the Washington office of the American Civil Liberties Union recently prepared a detailed analysis of the manner in which the provisions of the proposed bill run counter to the law and spirit of the Constitution and contain manifold possibilities for abuse. I ask unanimous consent that this analysis be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

ORGANIZED CRIME CONTROL ACT—S. 30

TITLE I—SPECIAL GRAND JURIES

Section 101 of Title I seeks in a variety of ways to increase the autonomy and expand the powers of federal grand juries. However, like most provisions of S. 30, § 101 is in no way limited to the needs of the fight against organized crime. The ACLU objects to the grant of power under Title I for federal grand juries to issue reports and presentments critical of public employees when there is insufficient evidence to support indictments. Any individual, group or organization made the subject of a grand jury report has no adequate means of defending himself against criticism issued by this official body which has secured its information by using subpoena power and compulsory testimony, and whose proceedings are secret. Such a procedure is fundamentally unfair and inherently abusive. The attempts to provide safeguards in § 101 are simply not adequate to protect against unfairness and abuse.

Particularly objectionable is the authority in proposed § 3333 of 18 U.S. Code for submitting reports concerning "noncriminal misconduct, malfeasance or misfeasance in office by a public officer or employee" (defined to include any Federal, state, territorial, or local government officer or employee). There is no limitation on the nature of the "misconduct"; there is only a requirement that the facts have been revealed in the course of an investigation into offenses of any sort against the federal criminal laws. Thus, a jury investigating alleged bribery of police officers could apparently report on whether particular policemen may have breached some non-criminal regulation, such as being improperly uniformed. The breadth of this new power is intolerably great.

Though a person named in a report of "noncriminal misconduct" is given an opportunity to testify, the value of that right is critically undercut by the fact that he

does not know the identity of his accusers, and has no right to cross-examine or present witnesses or to obtain and present documentary evidence.

A further principle defect to be noted is that the provision for judicial review of such reports is largely illusory. A report may be made public if it is supported by "a preponderance of the evidence." However suitable that standard is in an adversarial civil proceeding, it is a plainly inadequate safeguard where, by and large, only one side may present evidence. For the same reason the provision for an appeal by a person named is also an illusory safeguard.

Finally, though a criticized public employee is given an opportunity to answer before a report is made public, it is doubtful in the extreme that 20 days will be sufficient where the grand jury may have had over three years to investigate and need not reveal the basis for its allegations.

Two other "report" provisions deserve brief comment. The provision for proposing recommendations for legislative, executive or administrative action is inconsistent with the doctrine of separation of powers. *See, e.g., United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947); *Application of United Elec. Workers*, 111 F. Supp. 858, 864 (S.D.N.Y. 1953). A grand jury is an arm of the court, and its members, like members of the judiciary, are not accountable to an electorate and are ill-equipped to render political decisions, particularly since their secret proceedings prevent the public from evaluating the bases of their recommendations. Since the grand jury has no power to act upon its recommendations, the risk of "exposure for the sake of exposure" is even greater, *see, e.g., Watkins* v. *United States*, 354 U.S. 178, 200 (1957), even if identified persons are not specifically criticized.

The provision for reports "regarding organized crime conditions in the district" has the unusual virtue of being related to the stated purpose of S. 30, but is vague and undefined. The lack of any clear meaning creates a serious possibility of abuse.

Section 102 of Title I, which purports to make "minor language changes" and clarifications in the so-called Jencks Act (18 U.S.C. § 3500) concerning production of statements by government witnesses, actually appears to make profound and retrogressive changes in the law relating to grand jury transcripts and Rules 6 and 16 of the Federal Rules of Criminal Procedure.

Under the Jencks Act, "statements" by a government witness to a government agent and in the possession of the government are not producible prior to trial and may be produced only after the witness has testified. Under § 102, this restriction on pretrial discovery would be extended in two ways. First, it would apply to "statements" made by a witness to anyone, if they happen to be in the possession of the government. Second, "statement" is redefined to include grand jury testimony.

Under present law either type of "statement" is in some circumstances producible before trial pursuant to Federal Rules 6(e) and 16 (a) and (b). *See, e.g., United States* v. *Hughes*, 413 F. 2d 1244 (5th Cir.), *cert. granted, sub nom. United States* v. *Gifford-Hill-American, Inc.*, 38 U.S.L.W. 3222 (U.S. Dec. 15, 1969) (No. 515, O.T. 1969); *United States* v. *American Oil Co.*, 386 F. Supp. 742, 751–53 (D.N.J. 1968). The amendments of the Federal Rules in 1966 and the recent court decisions, *see, e.g., Dennis* v. *United States*, 384 U.S. 855, 870 (1967), have reflected and furthered a widespread recognition that the proper trend should be toward "disclosure, rather than suppression" and more, rather than less, pretrial criminal discovery. In running counter to that salutary and enlightened trend, § 102 does not even have the benefit of a stated rationale or demonstration of supposed need. It was added to S. 30 in Committee and was not the subject of comments at the hearings. The Committee Report mentions an intention to substitute "a uniform statutory procedure" for the "varying practices" of the courts. But § 102 establishes that uniform procedure on perhaps the very lowest level of pretrial discovery, requiring little discovery that would not be permitted in any event under *Dennis* and amended Rule 16, and curtailing substantial discovery now routinely available. As drafted, the provision is ill-considered and unjustified.

TITLE II—GENERAL IMMUNITY

Title II establishes a general immunity statute applicable to any federal court, grand jury or administrative proceeding, as well as Congressional proceeding. It replaces a host of carefully drawn and limited specific immunity provisions and makes inroads on the Fifth Amendment protection against self-incrimination which are both undesirable and unconstitutional.

Being a blanket provision, Title II obviously is not limited to organized crime. But there are defects more striking than its unselective breadth, particularly the restriction of immunity to protection against *use* of compelled testimony or documents (or the "fruits" thereof) against a person in a criminal case, rather than protection against *prosecution* for matters as to which a person was compelled to testify or produce documents.

In 1892 the Supreme Court held a similar immunity statute unconstitutional because it protected only against *use of evidence* but not against *prosecution*. *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892). Since then federal immunity statutes have typically provided immunity as to prosecution, not only use. *Counselman* is still the law. *See Stevens* v. *Marks*, 383 U.S. 236, 244–45 (1966). Only a few years ago the Judiciary Committee reported an anti-racketeering bill (S. 2190) with immunity against prosecution rather than just use because of doubts that otherwise the law would be unconstitutional. *See S. Rept. No. 1498*, 89th Cong., 2d Sess. 19–20 (1966). Nothing has happened since then to lessen those doubts.

Title II may be of doubtful constitutionality on another ground. It only gives protection against the use of compelled testimony against the witness "in any criminal case." Although the Fifth Amendment is also framed in terms of "any criminal case" it has long been the law that the Fifth Amendment offers protection as to a variety of penalty or forfeiture proceedings. *Boyd* v. *United States*, 116 U.S. 616 (1886); *cf. One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U.S. 693 (1965). If Title II is intended to apply to anything less than what is covered by the Fifth Amendment it is unconstitutional, for the scope of the immunity must at least equal the scope of protection of the Fifth Amendment. *E.g., Brown* v. *Walker*, 161 U.S. 591 (1896).

Title II has other defects. Although a court order must be obtained in order to require a witness to testify in court proceedings, the requirement is a sham since the court "shall" issue the order if requested by the district attorney, and therefore it has no discretion. If he has the approval of the Attorney General, the Deputy Attorney General or an Assistant Attorney General, a district attorney may request such an order anytime *he* thinks a person has refused *or is likely to refuse* to testify on self-incrimination grounds and if *he* thinks the testimony *may be necessary* to the public interest. Such elastic standards leave enormous uncontrollable leeway and possibility for abuse.

In addition, the power of the district attorney to compel a witness to testify is not even limited to cases in which the government is a party. It is apparently available in any case in a federal court, including civil actions between private parties. The need for or propriety of such power in any civil proceeding, and particularly in a nongovernmental proceeding, is highly questionable. This unjustifiable breadth—coupled with the lack of any effective court review or control, and the power granted under Title III to incarcerate a witness who refuses to testify—compounds the potential for abuse.

Finally, in requiring that a witness must refuse to testify and specifically claim his Fifth Amendment privilege, Title II creates unnecessary pitfalls for the unwary or unsophisticated, particularly where the district attorney, agency or committee has already obtained or issued an order compelling testimony. A naive or ill-advised witness may well feel that there is no point in claiming his privilege because he can be ordered to testify, and for even the fullest, most incriminating testimony he would receive no immunity whatsoever.

TITLE III—RECALCITRANT WITNESSES

Section 301 of Title III provides that any witness in any court or grand jury proceeding who refuses to testify after being ordered to pursuant to Title II may be summarily confined by the court, without a jury trial, until he is willing to testify. Again, § 301 is not limited to proceedings relating to organized crime nor even, due to the breadth of Title II, to criminal proceedings initiated by the government.

Moreover, since Title I extends the life of a grand jury to up to 36 months—and at times more—and since § 301 does not require that the investigation in question still be in process, such a provision seems punitive, rather than merely an attempt to get a witness to talk.

Section 301 also seems to alter the usual rule on bail. Under Rule 46(a)(2) of the Federal Rules of Criminal Procedure, bail pending appeal may be allowed "unless it appears that the appeal is frivolous or taken for delay." Under present practice the standards of Rule 46 are currently applied in appeals from civil confinement of the sort authorized by § 301. *See, e.g., United States* v. *Coplon*, 339 F. 2d 192 (6th Cir. 1964) (denying bail where appeal "clearly frivolous").

Section 301 contains a provision which, according to the Committee Report (p. 149), is merely "designed to make mandatory what is now present practice" as to bail pending appeal. In fact, however, § 301 institutes a novel standard: a person shall not be admitted to bail pending appeal "unless there is a substantial possibility of reversal." If that provision is intended to mean no more than Rule 46, it is unnecessary and confusing. If it does mean more it is unjustified and objectionable, as it imposes an unduly great burden on an incarcerated appellant and unnecessarily circumscribes a court's discretion.

TITLE IV—FALSE DECLARATIONS

Title IV contains provisions plainly designed to make it easier to convict people for perjury, with a corresponding erosion of the present portections against unwarranted perjury convictions.

Although Title IV does not appear to cover any false statements not already covered by the existing perjury laws (18 U.S.C. §§ 1621–22), it does abrogate three long-established, time-tested rules designed to protect against unwarranted perjury proceedings. It does away with the historic two-witness rule. See *Weiler* v. *United States*, 323 U.S. 607 (1944). It permits convictions to be based solely on circumstantial evidence rather than direct evidence of falsity. It relieves the government of the obligation to prove that a statement was in fact "knowingly false," by permitting a conviction to be based on nothing more than allegedly "contradictory declarations." Such a procedure is inconsistent with the presumption of innocence.

Finally, although Title IV properly bars prosecution if a witness admits in a continuous proceeding the falsity of a contradictory statement in that proceeding, it limits that bar to situations where at the time of the admission the false statement "has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed." These conditions are too vague and subjective to provide sufficient notice and guidance to a person as to whether he is committing a crime. Indeed, if contradictory statements standing alone are sufficient for a conviction beyond a reasonable doubt, then it is difficult to see how the same contradictory statements, once made, have not made manifest that the falsity has been or will be exposed. As a result no admission would be soon enough to bar prosecution.

As usual, Title IV is not limited to proceedings involving organized crime.

TITLE V—PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

Title V, which authorizes the Attorney General to provide facilities for the safety and security of government witnesses concerning organized criminal activity, appears to be a useful tool for securing needed testimony. However, in light of the concern felt recently about detention facilities under the Emergency Detention Act of 1950, it would be desirable to make it perfectly clear that no witness can be unwillingly confined or detained in such facilities.

TITLE VI—DEPOSITIONS

Title VI provides for the taking of pretrial depositions from witnesses when "due to exceptional circumstances it is in the interest of justice." Although many of the provisions of Title VI are identical to the existing provisions of Rule 15 of the Federal Rules of Criminal Procedure, which authorize a defendant to take a prospective witness' deposition in certain circumstances, there are important differences which make Title VI objectionable.

While Rule 15 permits depositions to be taken only in limited specified circumstances (*e.g.*, where testimony is "material" and the witness may be unable to attend trial), Title VI adopts a vague standard which tends to carry us unduly close to a "paper record trial." This risk is heightened by the absence of any provision in Title VI governing the *use* of a deposition. (Rule 15 specifies carefully how and when a deposition can be used at trial.)

There are even more fundamental objections. Title VI does not substantially expand a defendant's right to pretrial discovery. However, it does force defense counsel to cross-examine government witnesses long before trial, and hence long before it has been possible to learn the full scope of the evidence. As a result, unlike in a civil case, such pretrial depositions will tend to impair a defendant's constitutional right to cross-examine witnesses. This impairment exists even though Title VI requires the government to produce at the deposition any statement of the witness which it would be required to produce if the witness testified at trial. Title VI is premature until a defendant is given substantially greater rights to pretrial discovery.

Finally, though it is largely justified in the Committee Report (pp. 60–61) by problems in cases concerning organized crime, Title VI is not limited to cases involving organized crime.

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

Title VII creates a drastically altered procedure for considering *any* claim—in *any* federal, state or local court or agency—that evidence is inadmissible because it is the direct or indirect product of a violation *by anyone* of the Constitution, or *any* federal law or regulation. These novel provisions, which are not limited to organized crime cases, are clearly a reaction to recent Supreme Court decisions concerning the unique problem of unlawful electronic eavesdropping or wiretapping, but in applying to all unlawfully obtained evidence they are equally clearly an overreaction. Even the Justice Department concedes that constitutional problems may exist under Title VII and urges that it be limited to claims involving electronic eavesdropping and wiretapping.

Supreme Court decisions since 1914 have established the so-called exclusionary rule under which physical or oral evidence obtained directly by, or as the fruit of, activity that violates the Constitution (*e.g.*, an unlawful search or coerced confession) is inadmissible in federal and state proceedings. *See, e.g., Weeks* v. *United States*, 232 U.S. 383 (1914); *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385 (1920); *Mapp* v. *Ohio*, 367 U.S. 643 (1961); *Wong Sun* v. *United States*, 371 U.S. 471 (1963); *Katz* v. *United States*, 389 U.S. 347 (1969). In addition, with respect to the peculiar problem of unlawful electronic eavesdropping or wiretapping, the Supreme Court held last year in *Alderman* v. *United States*, 394 U.S. 165 (1969), that once illegal surveillance is established the government must disclose all records thereof to a defendant with standing to complain so that the defendant may determine what other evidence may be inadmissible as being the fruit of such illegal surveillance.

Title VII seeks to change both of these principles which were adopted by the Supreme Court to protect Constitutional rights. As to the fruits of illegal action, Title VI arbitrarily bars any claim of inadmissibility if five years have elapsed between the unlawful act (or unlawful compulsion of testimony and grant of immunity) and the event as to which the evidence is sought to be admitted. In other words, Title VII seeks to make the extraordinary—and plainly unconstitutional—determination that, in *all* types of cases and in *all* types of federal, state and local courts or agencies, after five years a person no longer has a Constitutional right to exclusion of the fruits of illegal action as evidence of subsequent events.

Title VII also explicitly seeks to overrule *Alderman*. Under Title VII no disclosure of illegally obtained evidence or the fruits thereof may be required unless the information "may be relevant" to a pending claim of inadmissibility *and* such disclosure is in the interest of justice. Although a stated purpose of Title VII is to reduce the burden of suppression motions on the courts, the reinstitution of an "any relevancy" requirement inevitably returns to the judiciary the screening burden which *Alderman* sought to remove. Moreover as *Alderman* recognized, disclosure is often needed in order to show even "arguable relevance."

The requirement that disclosure be in the interests of justice may be thought to place a burden on the aggrieved party rather than the opponent of disclosure. Any such standard should require disclosure unless it is shown by the opponent of disclosure that, even with the use of protective provisions, it would not be in the interest of justice. *Compare* Fed. R. Civ. P. 16(e).

The exclusionary rule has been a favorite target of those critics of court decisions who cry in dismay, "the criminal goes free because the constable blunders." But in the case of illegal electronic eavesdropping or wiretapping, the government engages in a deliberate violation of the rules which under the Constitution law enforcement officers are bound to obey. Furthermore, of all the methods by which we attempt to insure that law enforcement officers act in accordance with the Constitution, only the exclusionary rule has been at all effective. Its withdrawal would greatly diminish the protection from this type of government activity which the Constitution guarantees to all.

Underlying Title VII is a disturbing disregard for constitutional rights—covering privacy, unlawful searches, self-incrimination, among others—and an equally disturbing assumption that the people who will be affected by Title VII are all guilty criminals seeking only delay and "technicalities" to avoid conviction. Such an assumption is not only inaccurate but totally inconsistent with our traditional presumption of innocence.

TITLE VIII—SYNDICATED GAMBLING

Title VIII makes it a Federal offense to engage in "an illegal gambling business" or to participate in a "scheme to obstruct" state criminal laws with the intent to facilitate such business, without regard to any connection with interstate commerce. In addition, Title VIII provides for a Commission on the Review of the National Policy Toward Gambling, which is not to be established until two years after the effective date of the bill.

Because Title VIII is aimed at a single type of crime, one commonly associated with organized crime, its defects are not as glaring as are those in other Titles. But its provisions are needlessly broad and encompass far more than the "large-scale illegal gambling enterprises" at which Title VIII is ostensibly aimed.

As the Committee Report (p. 155) makes clear, the provision making it a crime to "participate in a scheme to obstruct" state criminal laws with the intent to facilitate an illegal gambling business deliberately uses the vague term "scheme" in order to reach a wider range of activity than would be encompassed in the more traditional concept of a "conspiracy." The bill thus disregards the constitutional mandate that a criminal law must be sufficiently specific to give notice of the prohibited conduct and goes beyond even the dragnet concept of conspiracy, which Supreme Court Justice Jackson (a former Attorney General) characterized as an "elastic, sprawling and pervasive offense . . . so vague that it almost defies definition." *Krulewitch* v. *United States*, 336 U.S. 440, 445–6 (1949) (concurring).

The breadth and vagueness of the "scheme to obstruct" provision are matched by the lack of precision in defining "illegal gambling business." Although the Report states that the law is not intended to cover sporadic or small-scale gambling or to apply to "players" in illegal games (pp. 73, 115), the staute itself easily encompasses such petty crimes and criminals and by its terms could apply to two men who park illegally on their way to an all-night poker game. Also, because an "illegal gambling business" need only be in violation of the law of "a State or political subdivision thereof," Title VIII might be read as affecting gambling operations which are lawful in one place but would violate the law elsewhere. The New York State lottery is an example.

In addition, Title VIII creates a conclusive legislative presumption that any "gambling business" which is operated for two or more successive days by five or more persons has a gross business revenue in excess of $2000 in a day, which brings it within the coverage of Title VIII. Here too, the Report claims that the provision is intended only to facilitate a showing of probable cause for obtaining a search or arrest warrant (p. 156). However, Title VIII itself includes no such limitation and on its face is equally applicable to creating a presumption of a statutory violation in the context of a finding of guilt or innocence attrial. In any event, the determination of probable cause is a matter of Constitutional dimension and cannot be conclusively determined for all cases by legislative fiat.

There is another disturbing feature of Title VIII, at least as viewed in the Committee Report. In the Report (pp. 74–75) it is frankly suggested that Title VIII will permit cases to

be won that are now lost for want of proof of the required "interstate" element (which is the only basis for federal intervention in matters otherwise subject to state or local control) and will permit warrants to be obtained and raids made which may produce sufficient evidence of the interstate element to support prosecution under existing laws. Such jurisdictional bootstrapping and obvious willingness to play fast-and-loose with Constitutional requirements strike a dire warning as to the future of our civil liberties. As Justice Brandeis said, "the greatest dangers to liberty lurk in insidious encroachment by men of zeal . . . " *Olmstead* v. *United States*, 277 U.S. 438, 485, 1928). Here the Report's approach sanctions and encourages open encroachment. Such tendencies accelerate if unchecked and should be unequivocally rejected.

TITLE IX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Title IX of the bill attempts to use civil and criminal substantive and procedural provisions developed in the anti-trust field to attack the infiltration of legitimtate business by organized crime. Persons found guilty of a "pattern of racketeering activity" may be fined, imprisoned and required to forfeit all property acquired through the prohibited activity. In addition, courts may impose civil remedies on the business enterprises of such individuals by ordering divestiture, prohibition of business activities, or dissolution, and reorganization. Although Title IX represents an imaginative and novel approach to a most serious problem, it is not without its flaws.

The substantive prohibitions of Title IX have been substantially revised so as to eliminate most of the previously objectionable features. However, there are still some unintended problems of undue breadth or lack of clarity. Thus, Title IX creates various prohibitions on what a person may do through, or with income derived directly or indirectly from, "a pattern of racketeering activity" or "collection of an unlawful debt" The breadth problems arise from the definitions of those terms.

"Pattern of racketeering activity" is defined as two or more acts of "racketeering activity," *i.e.*, any of various specified federal or state offenses. Although it is necessary that one of the acts occur after enactment of the Act, here is no limitation on how far in the past the other may have occurred. This is particularly troublesome because Title IX does not seem to require that income be drived from both acts in a "pattern of racketeering activity," nor does it clearly require that a person have "participated as a principal" in each of the two or more "racketeering activities" which make up the "pattern of racketeering activities." Thus, Title IX might be read as applying to an individual who in the 1930's "participated," but not as a principal, in an offense "involving" some sort of "bankruptcy fraud," and, entirely on his own, thirty five years later, participated as a principal in a minor mail fraud. Title IX would appear to subject such a person to a possible 20 year sentence, $25,000 fine, and forfeiture of any interstate business interest he may have acquired to any degree, even "indirectly," with the proceeds of the mail—all of this in addition to the penalties provided by law for the underlying offenses. While such a case may not necessarily arise, it is the duty of the draftsman to provide limitations in the law itself, and not leave the matter to the possible benevolence or abuse of a prosecutor.

A further problem of undue breadth is the inclusion of acts or offenses "involving" "dealing in narcotics or other dangerous drugs" in the definition of "racketeering activity." Surely the law is not aimed at offenses involving mere possession or purchase of drugs for one's own use, but the words "dealing in" are not words of fixed meaning and could be read as covering mere possession or purchase of drugs for one's own use.

The final problem caused by the breadth of coverage relates to the definition of "unlawful debt," which is defined as (among other things) a debt "which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to gambling . . . and was incurred in connection with the business of gambling. . . ." Due to the variation in gambling laws from state to state, Title IX might be read as covering gambling debts which some states would regard as lawful and others as unlawful. Under such circumstances a person has inadequate notice of the possible criminal nature of his actions.

A number of other serious questions are raised by the procedural provisions because of the virtually unrestricted powers of investigation and exposure they bestow on law enforcement agents.

Under proposed § 1968, the Attorney General may issue a "civil investigative demand" requiring the production of documentary material whenever he "has reason to believe" that any person or enterprise has possession or custody of material relevant to "a racketeering investigation." Although the section is adapted from similar provisions in the antitrust laws, its scope has been considerably extended in the process of adaptation. Thus the proposed provisions apply to natural persons as well as corporations, and they are not limited to individuals or entities "under investigation" as are the comparable antitrust laws.

Although Title IX clearly contemplates that the records obtained in this dragnet fashion may be used in subsequent criminal as well as civil proceedings, no provision in the statute safeguards the individual's Fifth Amendment privilege against self-incrimination in a later proceeding. If material acquired in connection with a civil investigation can be used in a subsequent crimnal case, any Fifth Amendment privilege would thereby be destroyed. Unless this privilege covers all prosecutions which result from the gathering of this information, broad civil investigative powers in an area involving criminal activity would clearly be unconstitutional. The question of availability of the privilege in such a case is currently pending in the Supreme Court, *United States* v. *Kordel*, 407 F. 2d 570 (6th Cir. 1968), *cert. granted*, 395 U.S. 932 (1969) (O.T. 1969, No. 87). Because the inquiries may be directed at a group "inherently suspect of criminal activities" they create a significantly greater danger of encroachment on the Fifth Amendment privilege than do those in "an essentially non-criminal and regulatory area of inquiry" like the antitrust laws. *Marchetti* v. *United States*, 390 U.S. 39, 57 (1968).

Title IX requires that all civil proceedings thereunder be open. However justifiable as to the antitrust laws, such a requirement seems particularly inappropriate in an area where there are likely to be threats to the safety of the persons involved and widespread publicity.

Moreover, "exposure for exposure's sake" as a means of punishing individuals not under indictment has been condemned by the Supreme Court. See *Watkins* v. *United States*, 354 U.S. 178 (1957). Where the exposure provision is combined with unlimited civil investigative powers, the resulting opportunity for government harassment of individuals is boundless. Such a system of informal and unsafeguarded punishment not only violates due process but also undermines the Fifth Amendment privilege against self-incrimination, a privilege which reflects, in the words of Justice Stewart, "the concern of our society for the right of each individual to be let alone," *Tehan* v. *Shott*, 382 U.S. 406, 415–16 (1966), and a privilege which may be exercised by *every* individual.

Despite the constitutional uncertainties created by the broad scope of the civil investigative demand, no court order is required for its issuance. An individual wishing to protest the scope or manner of the demand must himself initiate court proceedings and then bear the burden of justifying his non-compliance with the demand. Protection of individual rights in the sensitive Fifth Amendment area is therefore, left to the discretion of prosecuting authorities, who will understandably be more interested in a successful attack on organized crime than in protecting the targets of that attack. As the Supreme Court has made amply clear in another context, preservation of constitutional rights should not be left to the self-restraint of law enforcement agents, no matter how commendable their actual behavior. *See Katz v. United States*, 389 U.S. 347 (1967).

While Title IX represents a potentially fruitful approach to the problem of organized crime, its grant of virtually unlimited investigative powers to the government creates a serious danger that the government's understandable zeal in the pursuit of organized crime may result in a pervasive undermining of important civil liberties, an erosion that would inure to the detriment of us all.

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

Title X permits punishment of up to 30 years imprisonment for so-called "dangerous special offenders". A "special offender" includes a person previously convicted two or more times in any court (and imprisoned one or more times) of offenses punishable by imprisonment for more than one year—regardless of how long ago the convictions occurred or for what crimes, or whether the person was over or under juvenile court age.

A "special offender" is also defined as including a person whose present felony was "part of a pattern of conduct which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise . . . ," with the government being permitted to show "that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such conduct." Even the Justice Department opposed a similar proposal in the original bill as being so vague as to create due process problems and, being unable to suggest constitutionally acceptable language, called for its deletion. *See, e.g., Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939). The present version is not materially better. For example, it is unclear whether a "criminal" pattern of conduct includes misdemeanors as well as felonies. Moreover, the criminal conduct need not have been previously established beyond a reasonable doubt, but can be established in the sentencing hearing (or the trial itself) by a mere preponderance of the evidence, on the basis of *any* type of evidence, even if obtained in violation of the defendant's constitutional rights. Finally, to permit an *adverse* inference to be drawn from *any* unexplained income or property is a plain violation of the Fifth Amendment privilege against self-incrimination. See generally, *Marchetti* v. *United States*, 390 U.S. 39 (1968); *Grosso* v. *United States*, 390 U.S. 62 (1968).

Some of the same objections may be made to treating a person who commits a felony as part of a conspiracy with three or more persons "to engage in a criminal pattern of conduct" as a "special offender" if he agreed to or did (1) "initiate, organize, plan, finance, direct, manage or supervise" part of the conduct or (b) use force or give or receive a bribe as part of the conduct. Again there is a problem of undue breadth. In addition to organized crime cases, this provision might

be read as applying to civil rights activists or political demonstrators (where a pattern of "criminal" conduct might be a series of technical trespasses). The Dr. Spock case and the pending case of the Chicago 7 come to mind.

A defendant is defined as "dangerous" if a longer period of confinement "is required for the protection of the public from further criminal conduct by the defendant." That provision gives a judge no standards by which to assess whether a thirty year sentence may be thus "required" instead of a five or ten year sentence. Such breadth and discretion create grave risks of abuse. *See Minnesota ex rel. Pearson* v. *District Court,* 309 U.S. 270, 276–77 (1940).

Title X also provides for appellate review of sentencing under the "dangerous special offender" provisions. Such review, while particularly apt in that context, should not be so limited and should be extended to all cases.

However, though the general principle of appellate review is sound, the particular provisions of Title X are not. Specifically, authorizing the appellate court to *increase* the sentence on the government's appeal raises serious Constitutional problems under both the due process clause and the double jeopardy clause of the Fifth Amendment. *See Trono* v. *United States,* 199 U.S. 521 (1905); *Kepner* v. *United States,* 195 U.S. 100 (1904). The Supreme Court has never upheld such an increase in sentence. In the recent case of *North Carolina* v. *Pearce,* 37 L.W. 4605 (June 23, 1969), the Supreme Court held that due process barred a judge from increasing a sentence *after a new trial* unless the defendant's identifiable conduct subsequent to the original sentencing supports the more severe sentence and is made part of the record. These same due process considerations should limit the government's right to have a sentence reviewed on appeal. The defendant would be deterred from appealing if he knew the government could then appeal as well and have his sentence increased.

The constitutional problems are heightened because of the apparently broad scope of review given to the appellate court. The appellate court is not limited to considering the appropriateness of the sentence in light of the fact that the defendant *is* a "dangerous special offender." Rather, in an appeal by the government the appellate court could review a district court's determination that a defendant is in fact *not* a "dangerous special offender." Since that determination is in effect the equivalent of a determination that the defendant is not guilty of a crime, appellate review provisions in effect authorize the government to appeal an acquittal by the district court. Such appeals are plainly unconstitutional. *Kepner* v. *United States, supra.*

Finally, Title X would permit a court to receive and consider in connection with sentencing information of any sort from any source about a defendant's "conduct," subject to "no limitation." This provision covers sentencing of all defendants, not just "dangerous special offenders." More importantly, it would purportedly permit a court to consider—without regard to relevance—a coerced confession, evidence seized in violation of the Fourth Amendment, or the rankest hearsay, all of which would be plainly inadmissible in a trial to determine guilt or innocence. Yet due to the scope of the "dangerous special offender" provisions, the sentencing proceeding will often be tantamount to, and far more important in terms of possible consequences, than such a trial. Thus, the sentencing judge will have to determine whether there has been a "pattern" of criminal conduct or a "conspiracy" to engage in such a pattern of conduct, and he will be able to impose a sentence that may be five or ten times as long as would follow a conviction for the underlying felony alone.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE RESOLUTION 319—SUBMISSION OF A RESOLUTION TO ESTABLISH A SELECT COMMITTEE TO INVESTIGATE IMPROPER ACTIVITIES IN LABOR-MANAGEMENT RELATIONS

Mr. GRIFFIN. Mr. President, the controversy surrounding the recent United Mine Workers' election and related events have focused attention on the need for congressional investigation in the field of labor-management relations, as well as the need for a reexamination of the laws in this field to determine whether existing laws are adequate.

Last week I wrote to the distinguished chairman of the Permanent Subcommittee on Investigations, the Senator from Arkansas (Mr. McCLELLAN), urging that his subcommittee investigate the charges growing out of the recent election, as well as other charges of improper activities in the labor-management field.

The special investigative talents necessary for such a task, as well as the outstanding contribution in this field made by the Senior Senator from Arkansas, indicate that his subcommittee would be uniquely qualified to delve into current problems facing some rank and file union members.

Of course, I recognize that the Committee on Labor and Public Welfare of the Senate has legislative jurisdiction in this area. The request I directed to the distinguished Senator from Arkansas was not intended to overlook the interest of the Committee on Labor and Public Welfare in this field. However, I sought to recognize that the legislative committee has many legislative items on its agenda and lacks the investigative manpower necessary to undertake such an inquiry.

Mr. President, back in 1957, Congress was faced with reports of improper activities in the field of labor-management relations. Then, as now, there was a conflict or a question of jurisdiction as between the permanent investigating subcommittee and the Labor and Public Welfare Committee. It was obvious at that time that many rank and file workers were being shortchanged by some union leaders and by some practices in the labor-management relations field.

The select committee established in 1957, was a bipartisan committee made up of four Democratic and four Republican Members of the Senate. It was headed, of course, by the distinguished Senator from Arkansas (Mr. McCLELLAN).

I am introducing today, Mr. President, a resolution calling again for the establishment of a similar select committee to investigate improper activities in labor-management relations. The resolution follows the pattern of the 1957 resolution that created the select committee which was headed by Senator McCLELLAN. It will be recalled that the work of that select committee culminated in the enactment of the Labor-Management Reporting and Disclosures Act of 1959, sometimes referred to as the Landrum-Griffin Act.

Of course, when the work of that select committee was completed, it went out of existence. My resolution would provide that this select committee would operate until February 1971, and that it would make legislative recommendations for strengthening the laws in this field.

I am aware of the fact that the Labor Subcommittee of the Committee on Labor and Public Welfare may choose to proceed with its own investigation of the mine workers election. In that event, of course, the junior Senator from Michigan could not prevent it. But I believe that the interests of rank-and-file union members and the interests of the public could be better served by again establishing a select committee as proposed in my resolution, following along the lines of the select McClellan committee established in 1957.

I believe experience has demonstrated that this would be the way to proceed in order to provide for the kind of an investigation which rank-and-file union members as well as the American public expects and will demand of Congress.

Mr. President, I ask unanimous consent that the text of the resolution be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. The resolution will be received and appropriately referred; and, without objection, the resolution will be printed in the RECORD.

The resolution (S. Res. 319), establishing a Select Committee to Investigate Improper Activities in Labor-Management Relations, was referred to the Committee on Labor and Public Welfare, and is printed in the RECORD as follows:

S. RES. 319

Resolved, That there is hereby established a select committee which is authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

SEC. 2(a) The select committee shall consist of 8 members to be appointed by the Vice President, 4 each from the majority and minority Members of the Senate, and shall, at its first meeting, to be called by the Vice President, select a chairman and vice chairman, and adopt rules of procedure not inconsistent with the rules of the Senate governing standing committees of the Senate.

(b) Any vacancy shall be filled in the same manner as the original appointments.

TACOMA COFFEE HOUSE INCIDENT

Mr. GOODELL. Mr. President, in 1790, when the States were considering the ratification of our Constitution, they demanded the inclusion of a Bill of Rights. The Founding Fathers knew that only through the guarantee of certain freedoms could our democracy flourish.

The two centuries which have passed since our founding have not lessened the import of those rights. Any infringement upon them undermines the very basis of our democracy.

Mr. President, it has been brought to my attention that the Department of the Army is presently undertaking steps to place certain coffee houses near military bases "off limits" for reasons which may violate first amendment guarantees.

One such incident has occurred in Tacoma, Wash, where the Armed Forces Disciplinary Control Board has initiated such action against the Shelter Half Coffee House. The stated basis for this action is that the coffee house is a "source of dissident counseling and literature and other activities inimical to the good moral, order, and discipline within the armed services." Apparently, the Disciplinary Control Board concerns itself with the disemination of ideas during the time servicemen are off duty. It is difficult to see how the free interchange of ideas during the time soldiers are off duty can interfere with the performance of their military functions.

I have terefore written to the Secretary of the Army requesting a full investigation of this matter. Mr. President, I ask unanimous consent to have the content of that letter printed in the RECORD.

There being no objection, the letter was ordered printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., January 22, 1970.

Hon. STANLEY R. RESOR,
Secretary of the Army, U.S. Department of the Army, The Pentagon, Washington, D.C.

DEAR MR. SECRETARY: It has been brought to my attention that the Armed Forces Disciplinary Control Board, Western Washington-Oregon Area, has initiated action to place the Shelter Half Coffee House of Tacoma, Washington, "off limits" to all personnel serving in the Armed Forces.

The Disciplinary Control Board took this action on the basis that the Coffee House was a "source of dissident counselling and literature and other activities inimical to the good morale, order, and discipline within the Armed Services." To date of January 22, 1970, has been set aside for the proprietors of the Coffee House to appear before the Disciplinary Control Board and show cause why it should not be placed "off limits."

The Board does not allege any criminal activities on the part of either servicemen or the Coffee House. It concerns itself with the dissemination of ideas during the time servicemen are off-duty. The free interchange of ideas, particularly during off-duty hours, should be guaranteed as a basic right of all Americans, whether in the military service or not. Therefore, the Disciplinary Control Board's proposed action appears to violate the First Amendment which guarantees freedom of speech, press, and assembly. These freedoms are the backbone of American democracy; they inhere to every American at birth and cannot be infringed merely because the man dons a uniform.

In May 1969 the Department of the Army issued a directive on "Guidance on Dissent." This directive explicitly points out the necessity of protecting servicemen's constitutional rights. On September 12, 1969, the Department of Defense issued a directive, "Guidelines for Handling Dissent and Protest Among Members of the Armed Forces." This directive made no mention of the necessity of protecting these constitutional rights.

Article III, Section B of the September directive states that commanders have the authority to place establishments "off limits" when the "activities taking place there . . . involve acts with a significant adverse effect on members' health, morale, and welfare." Because these latter terms are not clearly defined, nor the need for protection of servicemen's constitutional rights specifically enumerated, it appears that the interchange of ideas and opinions between servicemen and civilians is not within the discretionary powers of the local military commander.

The nebulous nature of the charges brought against the Shelter Half Coffee House appears to be a further broadening of the discretionary powers of local commanders without concommitant safeguards for servicemen's constitutional rights.

I am particularly concerned by this type of incident because it occurs in the wake of other incidents in which the military has appeared to be less than sensitive to servicemen's rights. Among these are charges of harassment of military personnel who voice dissenting views on the war in Vietnam and cruel and unusual punishment of servicemen confined to military prisons.

I therefore request that you immediately conduct a full investigation of the Shelter Half Coffee House incident.

I further urge that you immediately issue orders to all commanding officers prohibiting the placing of civilian establishments off limits merely because they constitute a place for discussion, counselling, and literature of a nature which the Army may not approve.

Very truly yours,

CHARLES E. GOODELL.

ADVISORY PANEL TO PUBLIC WORKS COMMITTEE ON ECOLOGICAL AND ENVIRONMENTAL POLICY IS FORMED

Mr. RANDOLPH. Mr. President, on January 18, 1970, I announced the formation of a panel of expert consultants to advise the Committee on Public Works on a continuing basis concerning matters bearing on ecological and environmental policy.

It was stated in the announcement that I have been cognizant, as have other members of the committee, of the need for expert and independent scientific and technical guidance on the complex problems over which we have legislative jurisdiction. For several months we have been discussing with eminent and nationally recognized scientists the feasibility of establishing an advisory panel to bring to the deliberations of the Public Works Committee the best of contemporary scientific thought in the field of ecological and environmental policy. The response from the scientific community has been universally favorable.

The growing concern among scientists concerning the degradation of our environment is being transformed into the desire for action. Our panel of consultants will provide a new, more effective and more direct channel of communication between the scientific community and the legislative processes.

The panel will advise the committee and the staff on the specific programs and policies under the jurisdiction of the committee, such as highway and related transportation problems, water resources development, and the general problems of water and air pollution and solid waste disposal. We will also seek assistance from the panel on long term environmental problems that are not now being closely addressed by any of the committees of the Congress—such as the environmental implications of our present and future fuels policies, the climatic effects of jet aircraft, the impact on the environment of other existing and anticipated technologies, and the need for new water resources development policies in relation to population trends.

I am gratified to announce the following persons who have agreed to serve as consultants to the committee. Other experts will be added as the focus of committee activities is directed to specific areas of inquiry:

Dr. James R. Arnold, professor of chemistry and dean of sciences, University of California at San Diego.

Dr. Rolf Eliassen, professor of environmental enginering, Stanford University.

Dr. Jean H. Futrell, professor of chemistry, University of Utah.

Dr. Ralph Lapp, nuclear physicist.

Dr. Gene E. Likens, associate professor, ecology and systematics, Cornell University.

Prof. Ian McHarg, Department of Landscape Architecture and Regional Planning, University of Pennsylvania.

Dr. Charles L. Schultz, Brookings Institution and former Director of the Bureau of the Budget.

Dr. Ernest Tsivoglou, Department of Sanitary Engineering, Georgia Institute of Technology.

Dr. Kenneth Watt, professor of zoology, systems of ecology, University of California.

Dr. G. M. Woodwell, ecologist, Brookhaven National Laboratory.

Dr. Joseph L. Sax, professor of law, University of Michigan.

Dr. Robert R. Curry, petroleum geologist, University of Montana.

The Committee on Public Works has had broad jurisdiction in environmental matters, by law and precedent, for many years. The committee has primary jurisdiction over water pollution under the Legislative Reorganization Act of 1946.

In 1963, we established the Special Subcommittee on Air and Water Pollution, which became a standing subcommittee in 1965. Since the establishment of this subcommittee, the Committee on Public Works has authored all the major water pollution, air pollution, and solid waste disposal legislation. In addition, we have in the past 6 years included our concern for environmental quality in our highway legislation, in legislation authorizing major water resources development programs, and in our regional economic development programs.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

ORGANIZED CRIME CONTROL ACT OF 1969

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the unfinished business, which will be stated.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 30) relating to the control of organized crime in the United States.

Mr. THURMOND. Mr. President, the problem of crime in American society has reached crisis proportions. Those of us who live in the Nation's Capital are very familiar with the climate of fear created by criminal activities. Fear for one's bodily safety and for the security of one's home and property has become a standard condition for living in Washington and in most other major American cities.

Citizen reaction to the growth of criminal activity throughout our Nation was in part responsible for the election of President Nixon. As President he has sent to the Congress a package of legislation designed to reverse the crime rate throughout the country and here in Washington. Hearings have been held and the Subcommittee on Criminal Laws and Procedures and the full Judiciary Committee have acted favorably on the bill now before us known as the Organized Crime Control Act of 1969. I believe it is time for this body to recognize the importance of this problem by passing this legislation which will create additional weapons for the President's arsenal in the war against crime.

Mr. President, when most of us think of organized crime, we immediately think in terms of illegal gambling and other forms of vice. We should remember, however, that the growth of organized crime has contributed greatly to crime in the streets. The high incidence of armed robbery of both businesses and individuals and the increasing rate of breaking and entering into private homes can be traced to the increase in narcotic addiction. Dope addicts have to steal to support their habits. They must either steal cash or goods which can be "fenced" for cash. Organized crime is instrumental in the illegal narcotics trade and also in the fencing of stolen goods. Thus we can see that if organized crime is successfully attacked, a decrease in street crime which affects all citizens would also occur.

The calculated growth of crime and particularly organized crime through various activities such as gambling, loan sharking, narcotics and other forms of vice has numerous causes, but chief among them has been the U.S. Supreme Court, which has tied the hands of law-enforcement officers by creating unrealistic procedures that work to the advantage of organized crime.

Mr. President, part of the crime problem we face in this country comes from an insidious and invisible empire designated by various names, the best known of which are the Mafia and the Cosa Nostra. It is because of various Supreme Court opinions that have been handed down and the runaway crime rate that we are now considering S. 30, which contains provisions designed to obtain convictions of criminals. Let us not, like the Supreme Court, create loopholes through which criminals can walk by narrow and unrealistic technical and procedural considerations.

The crime situation has changed since I was a circuit judge, and I feel that the language of this bill is now mandatory. There is sound legal argument to support each and every provision of this legislation. It was hammered out in the subcommittee, and carefully considered by the full committee, after several productive meetings in which members of the committee gave their best effort to developing the most effective legislation possible within constitutional boundaries.

Mr. President, I shall briefly review the bill. Under title I, special grand juries to concentrate on criminal activities are provided for in major metropolitan areas. These grand juries will be empowered to stay in session up to 36 months, can subpena witnesses, compel testimony and issue public reports as well as bring indictments. Under title II, provisions are contained in the bill for expanding the granting of immunity from self incrimination in legislative and court proceedings in order to make better use of witnesses in criminal proceedings. Under these provisions, immunity from the use of testimony itself, rather than from prosecution itself is afforded. This will facilitate compelling witnesses to testify, as this immunity will prevent the use of the fifth amendment. Title III provides for contempt proceedings without bail for recalcitrant witnesses in grand jury and court proceedings. Title III also makes witnesses who avoid State proceedings subject to Federal prosecution. This, in conjunction with the previous title concerning immunity, will help prosecutors in obtaining convictions where they have been in the past hampered because they were unable to secure testimony. Title IV makes it easier to convict witnesses of perjury. Title V provides that the U.S. Attorney General can maintain witnesses and their families under Federal protection when they testify in matters involving organized crime. Title VI provides for the taking of depositions of witnesses in criminal cases in order to preserve their testimony in the event they are unable to testify. Title V and title VI should be most beneficial in aiding Federal prosecutors in securing the testimony of witnesses against people involved in organized crime. The present difficulties in gathering evidence have been a substantial impediment to the effective prosecution of criminals involved in organized crime.

Mr. President, title VII of the bill deals with litigation concerning evidence. This is a difficult and complicated subject. The most common situation which will be covered by this particuar provision would be a criminal trial in which a defendant tries to delay the trial by getting into extensive and entangled litigation on questions regarding admissibility of evidence. This provision creates a type of statute of limitation so that, as to a crime occurring 5 years after the event, a criminal can no longer raise questions related to illegally obtained evidence in prior prosections.

We must remember that defendants who are part of organized crime have the funds with which to secure the services of experienced criminal lawyers who are experts in the use of technical and procedural arguments to secure the release of their clients. This is a complicated device, but it is one which is necessary in order to meet the requirements of modern-day criminal jurisprudence.

Mr. President, a significant portion of this legislation deals with syndicated gambling, and provisions are contained in the bill designed to severely curb and limit the activities of gamblers, and thus remove a major source of income from organized criminals. One such provision would allow both State and Federal law enforcement agencies to use evidence obtained by means of electronic devices in gambling prosecutions.

In this day and time, racketeers are very much interested in gaining inroads into legitimate business in order to set up "fronts" for their illegal operations. The committee has come up with a provision, designated as title IX of S. 30, which makes it possible to ferret out and expose such activities of criminals and their influence in supposedly legitimate businesses through the use of antitrust devices. This is an important provision of this legislation which will go a long way toward eliminating an avenue whereby the criminal element has disposed of its ill-gotten gains through legitimate business.

Mr. President, one of the favorite devices of organized crime is to infiltrate a company, build it up, and then let it go broke so that it can take advantage of certain tax provisions and other devices thus disposing of or protecting a large treasury of illegally obtained dollars. This provision will help in curbing this activity.

There are some in this country who make a profession of being criminals and they are very difficult to deal with. Putting them in prison for a short period of time does not do much good. First, it does not take them out of circulation permanently; second, they are hardened criminals and do not intend to be rehabilitated. The special offenders provision in this legislation provides for a special sentencing of dangerous repeat offenders. It would allow the removal of professional criminals from the American environment.

Mr. President, these provisions are new and unique approaches to combat organized crime. These ideas are the products of fine legal minds in the Department of Justice; they have also been approved by those of us on the Judiciary Committee and on the subcommittee who have practiced law and are familiar with the problems of law enforcement and the problems of criminal activities.

Mr. President, people across this Nation are crying out for the Congress to act on the problems of organized crime, for the Congress to assume its repsonsibility and provide the tools whereby these insidious criminals may be brought to justice, before their power inreases even more. Much of the growth of organized crime and violence can be directly linked to the growth and magnitude of the criminal organization known as the Mafia or Cosa Nostra. This legislation provides an effective way to destroy their legiti-

mate business fronts, expose their leaders and commit them to prison for their crimes.

Mr. President, undoubtedly there are those among us who will urge that various amendments be adopted to this bill. The cause of civil liberties will be advanced as a reason for weakening the bill. I urge my colleagues to reject attempts to weaken this bill. Experience has shown that defendants connected with organized crime have a much greater acquittal rate than other defendants. Much of this has been related to the difficulty of collecting and admitting evidence in these cases. The Mafia, or Cosa Nostra, is organized on the principle of protecting the leaders from criminal prosecution. Extensive attempts to fix cases through bribery and intimidating witnesses, jurors, and even judges have been uncovered. At present, we are losing the war against organized crime. Law enforcement personnel on both the Federal and State levels must have sufficient weapons if they are to prosecute these criminals effectively. I urge that the Organized Crime Control Act of 1969 be promptly passed and that all amendments which would weaken this legislation be defeated.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HUGHES in the chair). Without objection, it is so ordered.

The question is on agreeing to the amendment offered by the Senator from Michigan (Mr. HART) on behalf of himself and the Senator from Massachusetts (Mr. KENNEDY).

Mr. HART. Mr. President, when we concluded last night both the Senator from Massachusetts (Mr. KENNEDY) and I, as offerers of the amendment, and the able Senator from Arkansas (Mr. McCLELLAN), as manager of the bill, had brief comments with respect to it.

I think the subject matter, while of very great importance, is not difficult of understanding. Nor would it require any further lengthy explanation beyond the outline that I shall offer in a moment.

I make this comment conscious that what attaches may provoke inquiries as to when we may anticipate a vote. In this Chamber, we realize fully that none of us can make a judgment with respect to time. But I would not anticipate that more than an hour would intervene before a vote, and indeed it may be substantially less.

Mr. President, the Supreme Court in 1969 handed down a decision captioned "Alderman against the United States."

The committee bill in the title which we seek to strike by our amendment would have the effect of overruling that decision. The committee report argues that the Alderman case was not a constitutionally based decision, that it was a decision based solely on the power of the U.S. Supreme Court to regulate the procedures of the Federal court system. If that is true, the committee's report argues, then Congress is free to overrule a procedural direction.

It is my feeling, and the feeling of those of us who offer an amendment, that the Alderman case was clearly based on a constitutional right. If this is true, we in Congress are in no position to undertake to repeal a constitutional right by legislative action.

But beyond that, it seems to those of us who offer the amendment that the Alderman decision was a wise decision and a sound resolution of the question. Thus, even assuming that we have the power, we ought not to set Alderman aside.

In the Alderman case, the Court held that when the Government tries a defendant whom it has illegally wiretapped, it is required to turn over to the defendant the tapes of the conversations illegally heard. And the reason for the ruling, the Court makes very clear.

As we all understand, the fourth amendment prohibits the Government from the use of any evidence obtained as a result of the exploitation of its illegal conduct—in this case, the illegal wiretap.

It is not always easy to determine, however, whether a certain piece of evidence which is presented in the trial was derived ultimately from that illegal tap. Often the trial judge will be unable to make this determination because he is not familiar with the facts of the case. He may regard as irrelevant an illegally overheard conversation which, in fact, would provide the Government with crucial evidence against the defendant. Who is the person best able to examine the illegal taps and determine the likelihood that any Government evidence was the result of leads from the illegal conduct of the Government? The defendant and his lawyer.

So in this case the Supreme Court concluded that all of the tapes of illegally overheard conversations must be turned over to the defendant and his counsel who are entitled to a full adversary hearing on the admissibility of any challenged evidence. Bear in mind the setting, not alone in the Alderman case, but in comparable situations. A criminal indictment or a criminal trial is involved. At some stage the defense discovers, or to their credit the Department of Justice acknowledges, that the Department of Justice has illegally tapped the defendant. The question, then, is raised, Is any of the evidence that is being presented or was presented the fruit of the illegal conduct? To determine this one must go to the whatever memorandums or minutes exist, that reflect those items which were picked up in the course of the illegal conduct, or the log of the tape in a case such as confronted the court in Alderman.

But who is best qualified, looking at that log, to sense what items are relevant to a claim that inadmissible evidence is being presented in the criminal case? Initially, in the Alderman case, the Department of Justice itself said:

> Leave it up to us; we will turn over to the defendant those items of the log, if any, which may be relevant.

Later the inconsistency and the weakness of that position became very clear. The Department said:

> We will turn over the log to the court in camera. The court will decide that which may be relevant; that which may be relevant will then be turned over to the defendant.

The Department of Justice, given all good intention and motive, is not the most reliable source to identify those items and elements which might protect against a conviction springing from the fruit of illegal conduct, nor is the court, and certainly not in advance of the completion of the trial. Even then, the court in camera, without argument, is not in as good a position to protect against a fourth amendment deprivation of the defendant as the defendant and his counsel.

The majority of the Supreme Court in the Alderman case said as much. The opinion in that case was written by Mr. Justice White, whose background, as all of us know, includes service as Deputy Attorney General in a period when that Department really first initiated the war against organized crime. Certainly, the judgment was made against a background which includes a full understanding of the burdens and the difficulties under which law enforcement agencies must operate. Nonetheless, in his judgment and in the judgment of the Court, the fourth amendment required that there be made available to the defendant and his counsel the logs, the direct fruit of the illegal activity, in order that other illegal fruit might be identified, and the defendant be in an effective position to argue in connection therewith.

The court recognized the illegal taps might contain information damaging to the parties or even to the national security. The court pointed out, of course, that there could be obtained from the court an order requiring that such information be kept secret and if it was not kept secret there could be a contempt of court citation.

Title VII of the bill takes an altogether different approach. It states that "disclosure of any illegal evidence shall not be required unless such information may be relevant to a pending claim of such inadmissibility and such disclosure is in the interest of justice." But there is no way to determine whether illegal evidence may be relevant to a claim of inadmissibility except by turning it over to the defendant and allowing him to argue its relevancy.

Further, under the bill before us, in this title, even potentially relevant information need not be disclosed if the disclosure is not in the interest of justice. That is a rather vague and sweeping cloak, and behind this vague standard the Government could refuse to reveal its illegal conduct and could deny the defendant his right to trial untainted by unconstitutionally obtained evidence.

Further, Mr. President, although not mentioned in our preliminary discussion of last night, there is another feature that those of us who sponsor the amendment find objectionable in title VII. The bill provides that if the illegal conduct with respect to the obtaining of evidence

occurred 5 years prior to the event, the fact of the illegality shall have no effect on the conduct of the case nor the rights of the defendant. There can be no presumption that illegally obtained evidence will not be used to prove events 5 years later. This is true particularly in organized crime where long-term activity and relationships are being explored. Parenthetically, the title to which we direct this criticism in the form of our amendment is not limited to organized crime cases.

Last, Mr. President, those of us offering the amendment realize the necessity of assuring that the disclosure of illegally obtained evidence is made only to the defendant for the purposes of contesting the admissibility of the evidence at the trial.

All of us, I think, were surprised, and after pause most of us were shocked, at the recent wholesale disclosure of wiretap information made in connection with a case in New Jersey.

We have, therefore, added language in the amendment which would expressly limit disclosure to those occasions when it is required for trial purposes.

Mr. President, the significance of the Alderman case is not to be measured by the amount of the news column coverage that was given it. It is of enormous significance to any defendant who discovers that he has been subjected to illegal search or wiretapping or bugging by the Department of Justice. Once that discovery is made, once that action is acknowledged to have been taken by the Department, it is of enormous importance, if the fourth amendment protection is to be significant, that there be available to that defendant and his counsel the fruit of the illegal action, in the case of the tap, the log. Only then can we assure that the defendant has the opportunity to demonstrate that one or more items of evidence presented against him sprang from and can be traced to the illegal conduct of the Department.

To do less, in our judgment, is to deny that defendant, who may or may not be a "nice" or popular fellow, the right that all of us, including the most popular, are entitled to.

It is for that purpose, Mr. President, that the Senator from Massachusetts (Mr. KENNEDY) and I have proposed the amendment.

Mr. HRUSKA. Mr. President, the proposed amendment which we are now considering seeks to delete title VII of the bill. That title is entitled "Litigation Concerning Sources of Evidence." While it will and is intended to cover general situations, it will apply most particularly to situations involving the product of electronic surveillance.

Title VII, put in its simplest terms, will do two things affecting hearings on admissibility of evidence. First, it will free the courts from the burden of hearing certain tenuous and stale claims which are customarily filed only for the purposes of delay; and, second, in other cases, it will prevent unnecessary harm to the rights and reputations of third parties and to the interest of national security.

It will accomplish the first of these by providing that if the questioned information was procured more than 5 years before the offense was even committed, no consideration should be given to an allegation that such information led to the evidence of the offense committed over 5 years later.

It will accomplish the second of these objectives by directing that, before the Government files containing unlawfully obtained information are turned over to a defendant, the judge must determine that the information contained in those files may be "relevant" to the case and that disclosure is "in the interest of justice."

That is the purpose of title VII; and it is the purpose of the amendment to strike those provisions.

Under present case law—and particularly as made more definite and clear in the Alderman decision—two things must happen before files are turned over to the defendant for scrutiny to determine the admissibility of evidence. First of all, there must be a showing that the defendant has a standing to claim such a disclosure. Second, it must be proved by the defendant that it was as an illegal act on the part of the Government that the electronic surveillance was either installed or used and that the transcripts and logs which resulted from that electronic surveillance are, as a result, illegal.

As these two requirements are shown, as I understand it, the Government must turn over all files recording that particular electronic surveillance. It must turn over to the defendants, for the defendants to scan for any causal relationship of any of the evidence which may or which will be used against the defendant at the trial in question.

It is at that point that the real mischief of the present case law asserts itself, because the defendant's counsel at that point get voluminous logs and transcripts which he can study and scan. As a result of his desire to study and scan, he can secure continuances that are inordinately long. He can, in preliminary proceedings and before the trial on the merits starts, call witnesses by the dozen, and perhaps by the score, in order to have testimony and evidence adduced to try to impeach the logs and the transcripts on the ground that they were illegally obtained and that they in some way relate to the evidence which will be used in the trial.

This takes a long time, Mr. President. If anyone wants a classic example of the results of this kind of rule, he can study the case of Jimmy Hoffa and his prosecutions, which lasted over several years even after they had the trial on the merits. This was one of the tactics that were resorted to.

Mr. President, we have come to a point in this respect, as we have in others, where it is right and proper to protect the constitutional rights of the accused. We have reached a point where we must assure two things: One, that he will not abuse the procedures which are resorted to in order to assure him of his constitutional rights; and the second matter we ought to consider is that the interests of justice, public safety, and the public interest also have a standing under the Constitution and that those constitutional rights should be protected and given some concern.

That is what title VII is designed to do, and it would do it.

Then we come to this question: In title VII, or in anything that would replace title VII, what tests will the judge impose to determine that the defendant should be able to get the logs or the transcripts of electronic surveillance?

Under the Alderman rule, the defendant gets everything. He gets everything, regardless of the time element, and regardless of the relevance.

Title VII proposes that there will be two tests applied by the court in determining whether the logs should be furnished to the defendant. The first of those tests is that the judge looks at the time when the electronic surveillances, for example, were made. If that time shows more than a 5-year interval between the making of the electronic surveillance and the event which the evidence about to be used against the defendant concerns, then automatically the judge says, "It can have no relevance; it is excluded."

That is a good rule. It is a constitutional rule. It is an orderly rule. It is a rule that can be applied by statute and by the courts in all of those instances which enable the courts to supervise the rules under which evidence may be admitted or not admitted. Otherwise, there would be no order; there would be no dispatch; there would be no possibility of attaining justice or trying cases with any degree of effectiveness.

So first of all the judge looks at the bug and finds out from the transcript or the log whether the electronic surveillance occurred more than 5 years before the event the evidence about to be used relates to. If it did, the motion is out. That would have removed, in the Jimmy Hoffa case, years of subsequent delay that were actually experienced, and it would do the same thing in a great many cases.

The second thing the judge does at that point, under title VII, if the period is less than 5 years, is this: he scans the transcripts, the logs the evidence procured by electronic surveillance, and makes a decision as to the relevance of the contents and substance thereof to the evidence which is actually offered and will be used in the trial against the defendant. If he decides there is no relevance, he so rules. He then takes the logs or transcripts, seals them up, and preserves them for purposes of use on appeal if an appeal is taken.

Then he turns to the prosecution and to the defense and says, "Gentlemen, let us start the trial on the merits," and they proceed to that task. If there is no conviction, Mr. President, the issue is dead and years of time are saved. If there is a conviction, the ruling of the trial judge as to the irrelevance of that transcript or that log then becomes one of the points on appeal to which the defense can resort if they choose. A decision is made by the appellate court on that point, together with any other points of appeal that the defense wants to raise.

That is a simple way of putting it. There are no constitutional questions or limitations which will bar the enactment

of title VII and permit it to be put into application. In that connection, I shall submit some reasons a bit later. But I think we ought to make clear what title VII does not do, Mr. President.

Title VII does not alter, negate, or weaken in any manner existing fourth amendment protection, nor does it in any way affect the use of the exclusionary rule as a tool to guarantee those protections. If the government has unlawfully obtained evidence which is reasonably connected with the issues at hand, a court remains obligated to preclude its admission.

Title VII, furthermore, does not overrule or modify a constitutional mandate of the Supreme Court. It is true that it does modify the procedural practices set forth in the Supreme Court's opinion in Alderman against the United States. However, the Alderman ruling was not predicated upon constitutional grounds, but upon the Court's supervisory powers. This fact is emphasized by language in that opinion indicating that the court viewed its ruling as a balanced exercise of judicial discretion, rather than the pronouncement of a constitutional mandate.

Mr. KENNEDY. Mr. President, will the Senator yield at that point?

Mr. HRUSKA. I am happy to yield.

Mr. KENNEDY. I, too, noticed, that the committee report at page 69 states as the distinguished Senator from Nebraska has pointed out that the Alderman decision was an exercise of the Supreme Court's jurisdiction over the lower Federal courts, and not a constitutional interpretation.

Is there any express language in the Alderman case that the distinguished Senator from Nebraska or the manager of the bill can find which would indicate that this is only supervisory, and does not reach the fundamental law of the land? It is my belief that when the Supreme Court acts under its supervisory power, as in the Mallory case, it expressly says so.

Mr. HRUSKA. The burden is the other way, Mr. President. The burden is for those who claim that the decision has a constitutional basis to point to language that says so in the opinion.

As Senator McCLELLAN pointed out last night, it is a well-established rule in the courts—and it is a rule that has been followed by the Supreme Court notwithstanding its many other variations, and perhaps what we might, for want of a better term at the moment, call transgressions—that they will avoid a pronouncement on a statute as to its constitutionality if they possibly can, and they will decide the issue on nonconstitutional grounds.

If it is a procedural question which is within their powers or basis of supervision, or anything else, as was the case in Alderman, they will not do so. If they find they cannot do that, and must resort to the Constitution to determine its constitutionality, then they do it; but then there is express language in the decision to indicate that, and to brand it as a constitutional interpretation.

So the burden is the other way. We have no burden to show that there is not constitutional language there. The burden is on the other side to show that there is, and that it is decided on constitutional grounds.

Mr. KENNEDY. Mr. President, just because this report states or the distinguished Senator from Nebraska says that this is a supervisory power decision does not establish that fact. As a matter of fact, I think the whole thrust of the Alderman case would indicate quite clearly the contrary.

Let me ask the distinguished Senator from Nebraska, does he feel that Alderman would have been a different decision had it been a State court case?

Mr. HRUSKA. I did not catch the Senator's question.

Mr. KENNEDY. Does the Senator believe that the Alderman case would have been decided as it was if these issues had been raised in a State court?

Mr. HRUSKA. Heavens, I would not want to undertake to engage in an exercise in metaphysics. We are confronted here with the Alderman case.

Mr. KENNEDY. That is right.

Mr. HRUSKA. If it is the Senator's purpose to engage in an abstract discussion of what might happen under a lot of conjectural situations in a lot of State courts, I do not think this is the place to engage in that.

Mr. KENNEDY. I think the Senator from Nebraska quite clearly overlooks the significance of that question, since if Alderman would have been decided the same way even if it were a State court case, then clearly the decision was a constitutional one.

I point out to my colleague that two of the companion cases to Alderman involved national security issues. Now it seems clear to me that if the Supreme Court required full disclosure in those cases, which it did, it obviously meant that full disclosure was constitutionally required in all cases. It is inconceivable to me that the Supreme Court would impose a more stringent disclosure requirement on a Federal court in a national security case than it would impose on a State court in a routine criminal case. It was for that reason that I was trying to elicit some kind of response from the Senator from Nebraska.

Mr. HRUSKA. Mr. President, it had not been my intention to discuss the constitutionality of this question and the nature of the Alderman case in my argument. However, in view of the fact that the Senator from Massachusetts has raised the point, I shall now engage in that little exercise.

Mr. President, let me report what Senator McCLELLAN said last night, that it is well within the power of Congress to enact proposed section 3504(a)(2) of title VII. Paragraph (2) would overrule the Supreme Court's decision in *Alderman* v. *United States*, 394 U.S. 165 (1969), which held that Government records of any illegal electronic surveillance which a criminal defendant has standing to challenge must be given to him without a preliminary judicial determination that they have possible relevance to his case.

The reason why Congress can reverse the rule laid down by the Alderman case is that that decision was not an interpretation of the Constitution, but an exercise of the Court's power to supervise the administration of Federal criminal justice.

That power was described by Mr. Justice Frankfurter for the Court in *McNabb* v. *United States*, 318 U.S. 332, 340 (1943), in these terms:

> [T]he scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence.

It is a basic rule of practice of the Supreme Court to place its decisions upon nonconstitutional grounds, such as statutory interpretation or the supervisory power, whenever doing so permits avoidance of a constitutional issue. See, for example, *Peters* v. *Hobby*, 349 U.S. 331 (1955). It must be presumed, therefore, that the Court followed this practice in the Alderman case unless the contrary can be affirmatively shown and that affirmative showing is not to be made by those who contend as this Senator does. It is to be made by those who seek to dispute the position we have taken.

In its statement of the holding of the case, the Court declared that "we conclude that surveillance records as to which any petitioner has standing to object should be turned over to him without being screened in camera by the trial judge." *Alderman* v. *United States*, *supra* at 182. Nowhere did the Court explicitly say that this practice was mandated by the fourth amendment. Instead, the Court merely ruled that this practice would "substantially reduce" the incidence of error by guarding against the "possibility that a trial judge acting in camera would be "unable to provide the scrutiny which the fourth amendment exclusionary rule demands." 394 U.S. at 184. In short, the fourth amendment guarantees freedom from unreasonable searches and seizures, and this freedom must be enforced by the suppression sanction, but the disclosure rule implementing that sanction is not constitutional doctrine, as it is well settled that the details of implementation of constitutional guarantees often lie below the threshold of constitutional concern. See *Ker* v. *California*, 374 U.S. 23, 34 (1963). The significance of the use of the word "should" in the Alderman holding is emphasized by the Court's later concession that its decision "is a matter of judgment" on which "[its] view" was that in camera inspection by the trial court is inadequate. 394 U.S. at 182. Indeed, the Court expressly based its decision in part upon its desire to "avoid an exorbitant expenditure of judicial time and energy," 394 U.S. at 184, a consideration most appropriate in the exercise of the supervisory jurisdiction. Thus, the Court's language indicates that the ruling was supervisory. Nothing in it may be used to make the necessary affirmative showing that the Court was reaching out needlessly to decide a constitutional issue.

A supervisory decision by the Supreme Court is subject to change or overruling by the Congress. Exactly such a course was followed when Congress enacted the Jencks Act, 18 U.S.C. § 3500 (1958), modifying the

Supreme Court's decision in *Jencks* v. *United States*, 353 U.S. 657 (1957). Thus Congress is equally free to enact title VIII of S. 30 despite the Supreme Court's supervisory decisions in the Alderman case.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. HRUSKA. Not at this point. I should like to complete my statement, and then, if the Senator has any further questions, I will be glad to oblige.

To continue my discussion of what title VII does not do:

Mr. President, I would like to attempt to clear up some of the misunderstanding concerning title VII of the proposed bill.

Title VII, put in its simplest terms, will do two things affecting hearings on the admissibility of evidence—first, it will free the courts from the burden of hearing certain baseless and stale claims which are customarily filed only for purposes of delay, and second, in other cases it will prevent unnecessary harm to the lives and reputations of third parties and to the interests of national security. It will accomplish the first of these by providing that if the event, evidence of which is offered, occurred more than 5 years after the alleged illegality, no consideration shall be given an allegation that such evidence was the fruit of the poisonous tree. It will accomplish the second of these by directing that before government files containing unlawfully obtained information are turned over to a defendant, the judge must determine that the information contained in those files "may be relevant" to the case and that disclosure "is in the interest of justice."

A careful study of these provisions should make clear what title VII does not do. Title VII does not alter, negate, or in any manner weaken existing fourth amendment protections. Nor does it in any way affect the use of the exclusionary rule as a tool to guarantee those protections. If the Government has unlawfully obtained primary evidence, a court remains obligated to preclude its admission.

Title VII does not overrule or modify a constitutional mandate of the Supreme Court. It is true that it does modify the procedural practices set forth by the Court in Alderman against United States. However, the Alderman ruling was not predicated upon constitutional grounds, but upon the Court's supervisory powers. This fact is emphasized by language in that opinion indicating that the Court viewed its ruling as a balanced exercise of judicial discretion rather than the pronouncement of a constitutional mandate.

The provision does not deny defendants the right to assure that unlawfully obtained evidence and the fruits thereof will not be used against them. Rather, it provides that in certain, carefully defined situations where there is no reasonable possibility that unlawfully obtained evidence, or its fruits, will be used against them, they will not be allowed to rummage through Government files looking for whatever might prove useful to them not only in the pending action but in any number of unrelated undertakings. That kind of rummaging around has been the source of a great deal of grievous trouble not only to the Government but also to innocent parties, and in connection with the disappearance of evidence and the obstruction of witnesses and the intimidation of witnesses and a host of other things.

In the past, claims concerning these situations have seldom resulted in a determination that the unlawfully-obtained information led to evidence of the later-committed offense. Such claims appear to be made only for purposes of delay. It makes no sense to require the courts to continue to permit protracted hearings on these stale, inevitably-fruitless allegations, when the criminal dockets are so severely crowded and other defendants are waiting for hearings on often-legitimate claims. And, in the absence of remedial legislation such as title VII, such baseless allegations can be expected to be raised even more often as a result of the pre-1965 electronic surveillances of organized crime figures by Federal agents at a time when no warrant procedure was available. Absent title VII, a Cosa Nostra member charged with murder in 1980 will be free to demand an extended hearing concerning the monitoring of his telephone conversation in 1960—all on the prepostrous premise that it was through the 1960 monitoring that the Government obtained the evidence of his 1980 crime. Title VII would not prevent such a defendant from successfully objecting to the use in evidence of the monitored conversation itself—but it would prevent him from obtaining hearings on fanciful allegations that such monitoring led the Government to the 1980 murder.

In short, the time limitation imposed by title VII will alleviate needless and fruitless wastes of judicial time and money without in any realistic way affecting the rights of the accused.

As to the other principal provision of title VII—the provision that the judge, before turning over to a defendant any Government files containing unlawfully obtained information, must first find that the information "may be relevant" to the case and that the disclosure is "in the interest of justice"—I believe that this provision reflects a reasoned balance between the conflicting interests and that it gives to the courts a set of flexible methods of accommodating these interests.

Under current case law, a defendant is automatically granted access to any unlawfully obtained Government information remotely concerning him regardless of whether it has anything to do with the case, regardless of whether it will endanger the lives or reputations of third parties, and regardless of whether it will endanger the security of the Nation. The only alternative to handing a defendant such information very often is for the Government to drop the case. In a minor prosecution, the case can easily be dropped rather than accede to the consequences of the alternative.

But, Mr. President, the bill is calculated to get after organized crime, the biggest business in the Nation, next to formal Government itself. It will not be easy, after spending a long time rounding up evidence from large geographical areas, evidence pertaining to a number of transactions by a lot of ruthless and power- and money-thirsty people who are engaged in that segment of crime—it will not be easy, if they are excluded, to try the alternative of dropping such a case in the event just described.

In a major organized crime prosecution the Government's responsibility to the public creates a severe dilemma. There is simply to much at stake for the Court to claim inconvenience as a basis for denying its duty to mitigate unnecessary damage to the legitimate interest of the Government and innocent third parties.

In a Utopian society, provisions such as title VII would be unnecessary. The Government could turn over its file and rely upon the good faith of the opposing party not to make known information which jeopardizes the national security, the lives of Government informers and potential witnesses, or the reputation of innocent citizens.

Unfortunately, recent history has made it abundantly clear that reliance on good faith—and even on protective orders of the court—is insufficient. For instance, on May 30, 1969, Life magazine published transcripts of Mafia conversations overheard in 1961 which made unflattering references to two Chicago aldermen, three unnamed judges, and two well-known entertainers. None of these individuals was involved in the conversations. None were necessarily involved in any wrongdoing. But, only 3 weeks after the transcripts had been disclosed in court under a protective order that they not be revealed, these individuals had become a common topic of household conversation. In another instance, national security information dealing with the gathering of foreign intelligence was published in a December 2, 1966, Washington Post newspaper article in spite of a protective order of the U.S. District Court for the District of Columbia.

A more recent incident involving a reputed New Jersey Mafia leader, Angelo DeCarlo, underlines the unnecessary damage which can be done by public disclosure of transcripts of conversations unlawfully monitored at a time when no warrant procedure was available. Dozens of individuals who are neither under indictment nor the subject of a criminal investigation were mentioned in the transcripts which became public knowledge as an indirect result of the requirement that eavesdropping evidence be made available to the defense. In the words of the New York Times editorial of January 8, 1970:

> Now that their names have come out as part of an unsworn record, with no warning and no opportunity for examination and reply, they are suddenly on the defensive and called upon to offer denials outside of court in response to illegally obtained conversations.

Unsubstantiated stories of the sex life of an uninvolved third party were thrown to the public winds in the Cassius Clay case. The district judge, finding that the protective order hindered a public hearing on the relevance of the transcripts, dissolved the order and opened the transcripts to public view. This occurred even

though the district judge later stated that he could reliably have made the relevant legal determination of relevancy by an in camera inspection of the transcripts.

Editorial stands by the New York Times on January 8, 1970, and the Wall Street Journal on January 14, 1970, indicate the strong public resentment for the present plight of innocent individuals caught in the webs spun through efforts to comply with the procedures established in Alderman. It is time for legislative action.

It should be clearly understood that the Government's interest in behalf of its witnesses, innocent third parties, and the national security exists in all disclosure situations. However, the protective provisions of title VII will come into play only when there is no realistic danger of infringing upon the rights of an accused. The provisions reflect the fact that in this country the public interest must not be used to abridge the fundamental requirements of our system of criminal justice—and they have been far too often, and they will continue to be, unless title VII is enacted. We must accept the fact that on occasion innocent persons may suffer; we must accept the fact that on occasion national security may be compromised; we must accept the fact that on occasion the lives of Government informers and witnesses may be endangered—all in order to insure a defendant's constitutional rights. But there is no Member of this Senate who could reasonably ask that all these interests should be routinely sacrificed, even when there is no chance of compromising the constitutional rights of the accused. Title VII would prevent this from happening.

I urge that we take immediate favorable action on this much-needed legislation.

For anyone to undertake to defend a position that will enable the continuance of a type of operation that was presented by those years of delay in the Jimmy Hoffa case, even after there was a trial on the merits, is a position that is most difficult to understand—most difficult, when there is rhetoric, there is literature, there is thinking, and there is conviction the Nation over that we are grappling to find the right procedures in our battle for survival in the fight against crime.

This is a tool which is badly needed. It is a tool which the public needs. It is a tool which the prosecution needs. It is a tool that those in favor of fair prosecution in the war against crime are entitled to have. We should have it.

The amendment should be turned down by a resounding majority because it is not good. It is not good from any of the considerations which I have mentioned.

Mr. President, I yield the floor.

Mr. HART. The Senator stressed the point that no Member of the Senate would want to compromise away any constitutional rights of a defendant, no matter how offensive the character of the defendant, but he wants to insure that defendants do not abuse procedural devices.

He cites the long delay in the Hoffa case. I am sure he can cite——

Mr. HRUSKA. There are many. There are several score of them. It is now almost a daily routine.

Mr. HART. There would not be any need for that delay if the Government would stop illegal use of taps. That is the hard truth about that.

The delay arose from efforts on the part of defendants against illegal conduct by the Government. If the Government would stop engaging in illegal conduct we would not have that problem. If they do not stop, I suppose, popular or unpopular, the defendant has the right to seek redress of grievances.

But, what right have we to fix a 5-year statute of limitations on the fourth amendment? That is exactly what the 5-year business does, as I read it.

The Senator says no Member wants to impinge or trim back on anyone's constitutional rights, but this title says if something occurred 5 years ago or more that is illegal under the fourth amendment, forget it.

Mr. HRUSKA. Well, Mr. President, the Senator from Michigan is a tried and experienced man in the field——

Mr. HART. Am I right or wrong about that?

Mr. HRUSKA. He has been district attorney in his district for the United States of America and he is one of the better members, including myself, on the Judiciary Committee, and he knows jurisprudence well and procedures well; but he is completely wrong when he says——

Mr. HART. How am I wrong? I am not very smart so perhaps the Senator would explain to me——

Mr. HRUSKA. I shall be glad to do so, if the Senator would not interrupt me and give me a few moments to explain the statement. [Laughter.]

The PRESIDING OFFICER (Mr. YOUNG of Ohio in the chair). The Senate will be in order. The Chair would remind visitors in the galleries that they are guests of the Senate and must remain silent.

The Senator from Nebraska may proceed.

Mr. HRUSKA. As I understand the position of the Senator from Michigan on this 5-year limitation under the fourth amendment, there is no such thing. Electronic surveillance that is engaged in by the Government, in that situation, can be attacked to show primary illegality any time there is a failure to comply with the provisions of the electronics surveillance statute which Congress wisely enacted a couple of years ago. When there is a failure to comply with it, that failure can be attacked, if it is successfully established as being a failure. When the whole thing goes out—it all goes out. So there is no question about any suspension or denial of the fourth amendment after 5 years. It is not involved at all.

There are many instances where we may make rules of evidence under our supervision over rules of evidence. They are on the statute books now. But, for some strange reason which I cannot fathom, efforts are being made when there is an attempt to enable the administration of justice to proceed effectively and well, to say, "Oh, but we are violating the fourth amendment. We must protect these 'poor people' from being constitutionally deprived of their rights."

Mr. President, there is no such element in this law at all. There is no suspension of the fourth amendment after 5 years—or any abrogation thereof.

Mr. HART. What does it mean, then, when title VII says that no claim shall be considered? What kind of claim?

Title VII says:

> No claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by an unlawful act if such event occurred more than 5 years after such alleged unlawful act.

Mr. HRUSKA. That is on the basis of the fact that anything which predates a 5-year period is presumed to have no connection and the denial of the right to scan it has no relevance to the issue at hand, and cannot have.

Mr. HART. Why does the passage of 5 years make it irrelevant, when the fourth amendment assures me of protection when I am young, middle aged, or old?

Mr. HRUSKA. Let us take a simple case. Seven years ago, there was an electronic surveillance made. A log transcript was made thereof, which shows that Joe Blow will steal a car. They go into the ramifications of what they will do with the car, and so forth. In 1970, 7 years later, Joe Blow is accused of stealing a car. It is a car which was made only 18 months before that. It has his fingerprints on it. He has no right to the car. They proceed to try to prove that he tried to steal that car.

What relevance have the fingerprints on that car, which was not even in existence until more than 5 years after the electronic surveillance occurred, to the surveillance?

What relevance have they got and why should the defendant in a case like this, go back 7 years, long before the car was manufactured, and long after he had had time to cool off and change his plans?

At the expense of the administration of justice what right does he have to pull out of the archives something 7 years old that can no more have any relevance to the charges against him than if it was a transcript which had to do with a long-distance telephone call from the moon?

That is the issue that is presented. And all it does is furnish an occasion for delay, obstruction, cost and expense; and expenditure of judicial manpower and prosecutorial manpower for those who do not want those people tried for some reason or another, because they continue to bring up the fourth amendment.

They say, "Let us look at the fourth amendment. Let us not do this. Here is the fourth amendment."

That is a very extreme position.

Mr. HART. Mr. President, does not the Senator from Nebraska agree that sometimes illegal evidence 7 years old might be relevant?

Mr. HRUSKA. I agree.

Mr. HART. But title VII says that nothing should be considered if it occurred more than 5 years before the crime.

Mr. HRUSKA. That is correct. And there can be no real relevance.

Mr. HART. Anything older than 5 years is presumed to be irrelevant.

Mr. HRUSKA. The Senator is right.

Mr. HART. Under what clause of the fourth amendment can that presumption be based?

Mr. HRUSKA. The fourth amendment is not directly concerned here.

Mr. HART. I still have difficulty understanding.

Mr. HRUSKA. I am sure that is right. But in the cases that I cited a little while ago, they would have had difficulty on that basis. And I think that we ought to proceed in that light.

Mr. COOPER. Mr. President, I remember very well the debate in the Senate on the crime bill 2 years ago. There were provisions in that measure providing for the legalization of the use of electronic devices and surveillance.

It has been some time ago but I remember arguing against those provisions of the bill. I voted against the bill although it had valuable sections, because I thought it opened up without proper protections, unreasonable and possibly unconstitutional invasion of a person's privacy by bugging, wiretapping, and other means of electronic surveillance.

This is a very difficult section we are discussing, at least for me on short study.

I should like to ask the Senator from Nebraska: Is it correct that before a defendant or party who had standing, who had a claim under the Alderman decision to full disclosure of the evidence obtained by the Government, the court would have to rule that the action of the Government in obtaining the evidence was illegal? Stated in another way, any right the Government has to use evidence obtained by electronic surveillance against a defendant—whoever he is—would be lost if the Government acted unlawfully in obtaining this evidence by means of electronic surveillance.

Mr. HRUSKA. He would have to allege illegality.

Mr. COOPER. We start on that premise.

Mr. HRUSKA. The Senator is correct.

Mr. COOPER. We start on the further premise that the evidence has been secured illegally.

Mr. HRUSKA. That is the basis of his further proceedings.

Mr. COOPER. At that point, the defendant claims, according to the amendment, the right to look at all of the information that has been secured illegally.

Mr. HRUSKA. The Senator is correct.

Mr. COOPER. The Alderman case upheld that right. Section VII of the bill would limit the right. It would leave to the court to determine what part of the illegal evidence should be disclosed to the defendant, according to its relevancy to the point at issue.

And section VII provides that in the event more than 5 years had passed between the alleged illegality and the event, there would be an absolute bar against any disclosure.

Mr. HRUSKA. The Senator is correct.

Mr. COOPER. I have read the report of this section, and I have heard the Senator's very clear discussion. He argues, and I am sure correctly, that the Alderman case is used by individuals, particularly parties engaged in organized crime, who having no effective grounds for a plea of innocence seek to postpone and delay and drag out their case.

Assuming that under the crime bill passed 2 years ago—which required certain procedures to be followed by Federal enforcement officials, and State enforcements officials—legal procedures to secure the right of electronic surveillance, assume that they follow the correct procedure, why is it a great burden on the Government if it acts according to the law if its evidence is properly and legally secured?

Mr. HRUSKA. That is required if the log or the transcript is 12 or 15 years old.

Mr. COOPER. The point is that it might be illegal.

Mr. HRUSKA. The Senator is correct.

Mr. COOPER. At some point in the past, if the Government acted illegally in its use of electronic devices, why should not the record be disclosed?

The Senator looks at it prospectively. He does not expect that situation to arise as often, in the future. But the Senator is concerned that, because of the Government's illegal action in the past, it will either have to dismiss cases or subject itself to a disclosure of the illegal evidence.

Mr. HRUSKA. Mr. President, let us project ourselves into the future. Let us suppose that this is 1983 and that in 1970 a transcript was made. A man is charged, and he can dig through the dusty archives of the Government. He can force the Government to go through all the expense of using its judicial manpower to prove the legality of an electronic surveillance that had nothing to do with the case.

I think it would serve a very useful purpose. There is reason to believe the man is guilty. He escapes trial on the merits for years until this is decided. He could have an appeal to the circuit court on a writ of certiorari. We would have to start all over again.

That is the vice of the thing. There has to be a legal limitation. It was suggested that 5 years would be an ample time—that is the time from the surveillance until the event the evidence of which is to provide the basis for the criminal charge.

Mr. McCLELLAN. That is also the general Federal statute of limitations on the basic question of guilt.

Mr. HRUSKA. The Senator is correct.

Mr. COOPER. The statute of the limitations usually runs in favor of the defendant.

Mr. HRUSKA. The citizens have constitutional rights, too. And there is a case to be made for a statute of limitations in favor of U.S. citizens and their safety on the street from the depredations of crime. Maybe they have a right to a statute of limitations, too.

Mr. COOPER. If one raises a question about a constitutional problem or an individual right, it is with risk of criticism that he is more interested in securing the right of an individual than in combating crime. I do not believe that is a correct argument. We are all terribly interested and concerned about crime. I think there are many ways of reaching a solution.

We are increasing the number of judges, district attorneys, and police. But crime is here and it is going to be with us, in my opinion, for some time because, while legislation is important, its solution is not wholly connected with legislation.

Our legislation should not deprive individuals of constitutional rights.

As the Senator knows, I have tremendous respect for him. I know he is a good lawyer and that he knows the principles on which the law is based. However, I do not think we can cast away these questions of constitutional rights. Our system of government is based on this principle, and our country has fought for it in many ways.

Mr. HRUSKA. Mr. President, I agree with the Senator from Kentucky completely. But there is no effort here to discard the constitutional protections to those people. When the rights of the public are mentioned, it is in the context that we want to secure some balance between the rights that are accorded individuals accused of violations and the public. Where there is something of substance, we want to accord every full intendment to every defendant so that his safeguards should remain inviolate; but we do not want that consideration to be driven to such an extent that the price will be a heavy burden on the law-abiding people of the country.

Therefore, those of us who composed title VII believe that the balance is achieved and, if anything, there is more than the usual amount of consideration given to the defendant and the accused when remedial statutes such as this are considered.

Mr. CASE. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. CASE. Mr. President, I wish to join the Senator from Kentucky in expressing appreciation to the Senator from Nebraska and other Senators, and the chairman of the committee who devoted such a tremendous amount of work in this field and to these problems.

I would like to carry one step further the line of inquiry the Senator from Kentucky was pursuing. It is my general understanding that this whole body of law represents an effort by the Supreme Court to enforce constitutional provisions, not because they like individuals who raise these questions, but because in some sense there does not seem to be any other way of enforcing the constitutional provision that no man should be subjected to unreasonable searches and seizures, for example.

Mr. HRUSKA. Is the Senator referring to the Alderman case?

Mr. CASE. Yes.

Mr. HRUSKA. The case law.

Mr. CASE. Yes; by which the court suppressed evidence which has been found to be obtained illegally, or by unconstitutional action.

Would the Senator tell me from his knowledge, and I would like to know this, what means the individual whose wires are tapped has for bringing the State to account other than reliance on the doctrine of the court? Is there any way

they could be punished? Can the FBI agent and the person who directs him, the Attorney General, be called on to account criminally, if the Senator will, for violation of any laws that now exist? Is there an adequate remedy?

Mr. HRUSKA. The defendant or the one charged with crime has this opportunity. He can challenge the legality of the procedures whereby the electronic surveillance was ordered by the court, the fashion in which it was executed by the law enforcement officer, and the way in which it was taken and returned to the court under court procedures.

Mr. CASE. Does the Senator mean by a motion to suppress?

Mr. HRUSKA. By a motion to suppress and to challenge the legality of the proceedings.

Mr. CASE. How could he know this happened?

Mr. HRUSKA. He gets a personal notice, and then he has a right to inspect all court pleadings, the showings made by the prosecuting attorney, the motion made, the considerations by the judge, the conditions of the order of surveillance, the time limitation, and so forth. He has a chance to inspect all those things. In this country we do things in that way.

Mr. CASE. Under the Criminal Act.

Mr. HRUSKA. Yes, of 1968.

Mr. CASE. We set out a procedure by which these matters will always be matters of record.

Mr. HRUSKA. The Senator is correct.

Mr. CASE. Questions may be raised as to whether the statute authorizing these procedures is constitutional and whether the statute has been followed by the law-enforcement agency or the judge. But a record will be available to the defendant in any particular case from which he can know the surveillance has taken place. There is no question about that. So if there is illegality in the future in the use of wiretraps, it will be something that will be possible for a defendant to find out about without this kind of broad search of all public records.

Mr. HRUSKA. By all means.

Mr. CASE. That is a matter of importance because, in one sense, we are dealing with practical questions and not questions we are interested in because of principles only, but principles as applied in particular cases and to individuals.

Mr. ERVIN. Mr. President, will the Senator yield, so that I may clarify my understanding of title VII?

Mr. HRUSKA. I yield.

Mr. ERVIN. Under holdings of the court, where evidence is unlawfully obtained, for example, by an involuntary confession, two types of evidence are listed. One is the confession itself.

The PRESIDING OFFICER (Mr. YOUNG of Ohio in the chair). Those persons who are not Members of the Senate will take seats at the rear of the Chamber. The Sergeant at Arms will keep the halls clear throughout this legislative day.

The Senator may proceed.

Mr. ERVIN. The other type evidence is the fruit of the forbidden tree. In other words, as a result of the confession there is found a murder weapon. At the present time they exclude the confession and they exclude the murder weapon, do they not, under some decisions?

Mr. HRUSKA. By use of this additional information?

Mr. ERVIN. Yes.

Mr. HRUSKA. Yes.

Mr. ERVIN. Am I correct in construing the 5-year clause of title VII to relate only to what is called the fruit of the forbidden tree?

Mr. HRUSKA. The Senator is correct.

Mr. ERVIN. And it does not impair at any time the power to question the inadmissibility of the illegal testimony itself?

Mr. HRUSKA. The Senator is correct.

Mr. ERVIN. In other words, is this the way in which it would operate? A murder is committed. A party is arrested for the murder and he makes an involuntary confession. But as a result of the involuntary confession, the lead given by the involuntary confession, the officers go out and find the murder weapon. This would make the murder weapon the fruit of the involuntary confession. It would prevent raising questions of admissibility of the finding of the weapon, identified as the weapon, by other sources, as the weapon of the accused; but it would not affect the possibility of the accused raising the question that the confession itself is involuntary even after the lapse of 5 years.

Mr. HRUSKA. I would think that would hold true. I do not know that there is any differing opinion held by the Senator from Arkansas. I think that would follow.

Mr. McCLELLAN. I am advised by counsel that that would be true only if the weapon was hidden and found 5 years later.

Mr. HRUSKA. More than 5 years after that.

Mr. McCLELLAN. Yes.

Mr. ERVIN. In other words, during the 5 years and thereafter, as far as title VII is concerned, the accused would have the right to contest the admission of the primary evidence on the ground of its having been illegally obtained either by involuntary confession or by illegal search and seizure, and he could also contest the admissibility of the secondary evidence, that is, proof of the fruits hidden and discovered during the 5-year period, but he could not contest the admissibility of the evidence hidden, and discovered as a result of the primary illegal evidence, after the lapse of 5 years.

Mr. HRUSKA. That is what I understood the interpretation to be.

Mr. McCLELLAN. This title proceeds on the assumption that if he had not hidden it within 5 years, it was not discovered as a result of the alleged illegal activity, confession, or conversation, whatever it was, made more than 5 years previously.

Mr. ERVIN. It is even more narrowly drawn than I had considered. In other words, the bar is on challenging the admissibility of evidence of an event occurring after the lapse of 5 years.

Mr. McCLELLAN. After 5 years.

Mr. ERVIN. But if the event occurs and it is discovered within 5 years, it can still be challenged.

Mr. PASTORE. Mr. President, if the Senator will yield, are we not getting a little mixed up? The only time the validity of a confession can be challenged is at a trial. Therefore, if a trial is ruled out and the person is found innocent of that, even if the evidence were discovered 5 years later, it would be double jeopardy.

Mr. ERVIN. As I construe it, that is true only where the trial was after 5 years.

Mr. PASTORE. In other words, they would keep the involuntary confession on ice for 5 years before they brought the confession out in court? Am I to understand that is what is suggested? What are we talking about? The confession is made at the time of apprehension. Therefore, under our Constitution, a defendant is entitled to a speedy trial. They cannot withhold the confession for 5 years and then go into court to see whether it was an involuntary confession.

Mr. McCLELLAN. Here is what is at issue: The one who is charged says, "6 or 7 years ago they put an illegal wiretap on my home."

Mr. PASTORE. I see it with respect to a wiretap, but I cannot see it with respect to a confession. I can see it on a wiretap.

Mr. McCLELLAN. In other words, a defendant could drag it out forever.

Mr. PASTORE. I can see it on a wiretap.

Mr. McCLELLAN. Yes.

Mr. PASTORE. I am for it, but I do not go along with the example of the involuntary confession.

Mr. ERVIN. For example, in Charlotte, N.C., a man committed a rape and a murder in a cemetery. He made what the Supreme Court, after a lapse of about 7 years, held was an involuntary confession, although the Supreme Court was in disagreement with the trial courts, both the State court that tried the man originally and the Federal court which took jurisdiction under habeas corpus. In the confession he told where he had hidden some of the apparel of the woman he had raped and murdered and where he had hidden his own clothes. They discovered some of his clothes and the apparel of the women hidden in a hedge. So it would have application to both involuntary confession and wiretap.

Mr. HART. With respect to the 5-year limitation, may I conclude by confessing that I am still unpersuaded, and my lack of acceptance of the explanation is that I find no statute of limitations in the fourth amendment with respect either to illegal search and seizure and the products produced by the illegal search and seizure, or the illegal fruits from the illegal search and seizure, whether it be by wiretap or going into one's home without a warrant.

As I understand the explanation with respect to the illegal fruits after 5 years, my rights under the fourth amendment have tolled. How? By properly amending the Constitution? No. In order to fight crime, Congress itself is amending the Constitution.

If we adopt this provision, I know the Court will eventually resolve the question, but may I ask the Senator from Arkansas a question? As the Senator from Nebraska described, in a proceeding where

the defendant seeks to obtain the log of a wiretap, or full disclosure in any case where he alleges illegal conduct on the part of the prosecuting authorities, when he seeks to make his case and is confronted by title VII, who decides whether the information that he seeks to obtain may be relevant to the pending case?

Specifically, are we going back to the Department's original position in the Alderman case—that the Department of Justice shall make that decision—or the court?

Mr. McCLELLAN. It would still be a court proceeding. The court would make the decision. That is the purpose of this language—to put it in the hands of the court.

Mr. HART. That is very good. I am glad to get that explanation.

Mr. McCLELLAN. Another thing: If the court is permitted to examine it, the defendant can appeal from that decision. The appellate court can see the whole case, just as the court in camera did. The Supreme Court can see the whole file. If there is any injustice involved, as a matter of judgment, they can say they examined the case and, as a matter of judgment, then can throw it out.

So a man is not precluded from his every right. We are trying to prevent what is employed to delay and obstruct justice, and we are dealing with the worst in the country, understand.

Mr. HART. Do I understand that all of the logs of all of the tapes must be turned over to the court?

Mr. McCLELLAN. To the judge. He sees it all. We are trying to prevent that disclosure which does nothing to serve justice.

Mr. PASTORE. Fishing expeditions.

Mr. McCLELLAN. That is the point of it. One can think of almost anything by which he can delay and appeal and carry the matter out and bring out hearsay evidence and bring in something said about people who are innocent, which has no relationship to the case, and expose the whole thing. We are trying to prevent that.

Mr. President, I have a brief statement to make, but I do not want to take the Senator's time at this time.

Mr. HART. Mr. President, that clarification is useful.

That material shall be turned over to the court?

Mr. McCLELLAN. All of it.

Mr. HART. But if the judge happens to see something that happened more than 5 years ago and which might cause some trouble in the minds of defense counsel, as to whether it led to the ultimate prosecution, there is nothing he can do about that?

Mr. McCLELLAN. Under this provision, no. There has to be some limitation.

Mr. HART. I merely asked if something could be done by the judge.

Mr. McCLELLAN. I think that the 5-year limitation would apply.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. McCLELLAN. Mr. President, in the first place, let me show what the amendment does.

The bill from which title VII was taken was introduced last May, in the middle of hearings, because of testimony heard at that time. I refer also to the decision in the Alderman case. On May 29, I introduced a bill, S. 2292 cosponsored by the Senator from Nebraska (Mr. HRUSKA), to try to correct the situation. So we have had it in committee all of this time. Both sponsors of the amendment are members of the subcommittee and the full committee, and yet the question raised by this amendment was not raised until Monday of this week, the 19th. That makes it very difficult for committees to operate.

Let me show what would be done by this hasty action.

If this amendment were adopted, any time the evidence was once made available for the purposes of determining its legality, or for the purposes of determining its admissibility, it would thereafter be—in terms of the literal language of the amendment—forever sterilized and immunized from use. Listen to this amendment. They could not use it even to prove guilt. Let me show the Senator what this kind of hasty action does:

> DISCLOSURE OF EVIDENCE.—Any evidence or material disclosed to a party solely for the purpose of permitting a determination as to the admissibility at trial of that or other evidence and material shall not be disclosed by any party or by the court except to the extent that the placing of such evidence or material in the court record is required for the purposes of court rulings.

It could never be exposed for anything else, or used for anything else. It simply kills the testimony.

I do not think the proposer of the amendment would want to do that. But this shows what hasty action does. The amendment was not considered by the committee, nor was the proposal suggested there, and now we are confronted with an amendment which, in my opinion, simply nullifies or rules out all use of all testimony, once it is made available to determine whether it is admissible against a given defendant.

Mr. HART. Mr. President, could I ask the Senator one question? I think we might reach an agreement with respect to the purposes of this added language.

Mr. McCLELLAN. Yes.

Mr. HART. We are clearly not in agreement as to the basic proposal in the pending amendment to strike title VII.

The reason for the addition of this language was to attempt to prevent the release to the press of a whole series of things, perhaps even by way of a subpena. What we are attempting to establish here, and perhaps the Senator from Arkansas would agree, is that if materials are made available to the defendant as probably relevant, they shall not be given to the public unless, in the course of subsequent litigation, they or a portion of them—and only so much as is in fact introduced into the record—become a part of the record.

In other words, all of us, I think, share the desire that these tapes of illegal taps, shall not be released to the public except as the interest of justice, specifically in the case of the defendant himself, requires it.

This was the purpose of the added language. Does the Senator share the objective?

Mr. McCLELLAN. We undertake to do that, and do it, in title VII. Evidence that goes to the defendant need not in the interest of justice be given by the court to the public. But the Senator's language here would prevent all subsequent use of it. Take, for example, the *Alderman* case, where they held it was not illegal to use it as against one defendant, but that it could be used against the others. It could not have been disclosed again, or used, under the Senator's amendment. I do not think that is the intent, but that is what the Senator has done.

Mr. HART. Mr. President, if we can obtain from the manager of the bill this clarification concerning public disclosure, there would be no reason to retain the added language, and I would ask that it be removed.

Mr. McCLELLAN. I am just showing the Senator what he is doing with this kind of legislation, or by attempting to legislate in this fashion.

Mr. HART. We are attempting to show the manager of the bill what he is doing with title VII, and why we want to strike it.

The only point we had with respect to this additional language is an attempt to insure, that after the defendant has obtained material which may be relevant to a claim the evidence is inadmissible, we will not thereafter be able to read in the newspapers of a whole list of irrelevant conversational exchanges that may have occurred over a 4- or 5-year period.

Mr. McCLELLAN. Such judicial publication is exactly what we are trying to prevent with title VII.

Mr. HART. Does the Senator believe title VII does that?

Mr. McCLELLAN. That is the purpose of it, and it does that. That is our objective, and I think we have accomplished it.

Mr. HART. Mr. President, I then modify the pending amendment to remove the added language, so that the amendment is clearly and simply to strike title VII.

The PRESIDING OFFICER. The Chair advises the Senator that the yeas and nays have been ordered. Therefore, it would require unanimous consent to modify his amendment.

Mr. McCLELLAN. Why not let us vote on the original amendment?

Mr. HART. Have the yeas and nays been ordered?

Mr. McCLELLAN. Yes, they have been ordered.

Mr. HART. I ask unanimous consent that we may remove the substitute language, based on the assurance given us by the manager of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. ERVIN. Reserving the right to object, I am sure that the distinguished Senator from Michigan and his cosponsor did not intend any such result.

Mr. McCLELLAN. Of course he did not.

Mr. ERVIN. But as I understand this, if any evidence is produced and disclosed to a party solely for the purpose of permitting a determination of admissibility

at his trial of that or other evidence, the prosecution would be precluded from even offering that evidence before the jury in case the judge ruled it was admissible.

Mr. McCLELLAN. Yes, even to establish guilt. You could not use it.

But I raise this issue, Mr. President, to show the Senate that, where we have the committee process, and have the committee, and an opportunity to bring a matter up and have it discussed there, if we bring an amendment up on the floor at the last minute in this manner, we can easily fail to realize the full consequences of what we are doing, and we can achieve results wholly unintended.

The PRESIDING OFFICER. Does the Chair correctly understand that there is no objection to the request of the Senator from Michigan?

Mr. McCLELLAN. I am not going to object, if he wants to modify it. It would just mean another vote. We could vote on the amendment as it is, and he could then offer the other. Therefore, I am not going to object, but I wish the Senator would withdraw his amendment and let us get on, here. If he will not, let us vote on it.

Mr. HART. Mr. President, let me see if I understand the offer kindly made by the Senator from Arkansas, that there would be no objection to modifying the amendment that is pending, on which the yeas and nays have been ordered.

Mr. McCLELLAN. I object to the amendment in any form.

Mr. HART. I understand that. The Senator will oppose the striking of title VII, but does he object to modifying the amendment so that it proposes only to strike title VII, and eliminating the other language?

Mr. McCLELLAN. I have just said I am not going to object, in the interest of time. We could vote on the amendment in this form, but I do not think the Senator from Michigan now would want to vote for it himself, with the interpretation we have brought out here this afternoon.

Mr. HART. That is correct, if your interpretation is proper.

Mr. McCLELLAN. But if we vote on it in its present form, he could then come right back and offer the amendment by which he now proposes to modify the pending amendment, to achieve the same result. So why delay? I am not going to object.

Mr. PASTORE. There is no objection, Mr. President.

Mr. HART. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLELLAN. A rollcall has been ordered; the clerk should call the roll.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

Mr. PASTORE. The amendment as modified, is that correct?

The PRESIDING OFFICER. The Senator is correct. The question is on agreeing to the amendment, as modified, of the Senator from Michigan (Mr. HART), offered for himself and Mr. KENNEDY. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. McCARTHY), the Senator from South Dakota (Mr. McGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PELL), the Senator from Maryland (Mr. TYDINGS), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL) would vote "nay."

Mr. SCOTT. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. JORDAN), the Senator from New York (Mr. GOODELL), the Senator from Kansas (Mr. PEARSON), and the Senator from Illinois (Mr. SMITH) are necessarily absent.

The Senator from Florida (Mr. GURNEY), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from South Dakota (Mr. MUNDT), the Senator from Utah (Mr. BENNETT), the the Senator from Illinois (Mr. PERCY), the Senator from Idaho (Mr. JORDAN), and the Senator from Oklahoma (Mr. BELLMON) would each vote "nay."

On this vote, the Senator from Maryland (Mr. MATHIAS) is paired with the Senator from Florida (Mr. GURNEY). If present and voting, the Senator from Maryland would vote "yea," and the Senator from Florida would vote "nay."

On this vote, the Senator from New York (Mr. GOODELL) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from New York would vote "yea," and the Senator from Illinois would vote "nay."

The result was announced—yeas 20, nays 53, as follows:

[No. 7 Leg.]

YEAS—20

Brooke	Hughes	Nelson
Case	Kennedy	Packwood
Cooper	Magnuson	Ribicoff
Cranston	McGee	Stevens
Fong	Metcalf	Williams, N.J.
Hart	Mondale	Young, Ohio
Hatfield	Muskie	

NAYS—53

Allen	Cannon	Ervin
Allott	Cotton	Fannin
Anderson	Curtis	Fulbright
Baker	Dodd	Goldwater
Bible	Dole	Gore
Boggs	Dominick	Hansen
Burdick	Eagleton	Hartke
Byrd, Va.	Eastland	Holland
Byrd, W. Va.	Ellender	Hruska
Jackson	Pastore	Spong
Jordan, N.C.	Proxmire	Stennis
Long	Randolph	Symington
Mansfield	Russell	Talmadge
McClellan	Saxbe	Thurmond
McIntyre	Schweiker	Tower
Miller	Scott	Williams, Del.
Montoya	Smith, Maine	Young, N. Dak.
Murphy	Sparkman	

NOT VOTING—27

Aiken	Gurney	Moss
Bayh	Harris	Mundt
Bellmon	Hollings	Pearson
Bennett	Inouye	Pell
Church	Javits	Percy
Cook	Jordan, Idaho	Prouty
Goodell	Mathias	Smith, Ill.
Gravel	McCarthy	Tydings
Griffin	McGovern	Yarborough

So Mr. HART's amendment, as modified, was rejected.

Mr. HRUSKA. Mr. President, I move that the vote by which the amendment was rejected be reconsidered.

Mr. McCLELLAN. Mr. President, I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

Mr. MURPHY. Mr. President, I support S. 30, the Organized Crime Control Act. In his April 23 message to the Congress on organized crime, President Nixon served notice that "organized crime cannot be ignored or tolerated any longer." That President Nixon and this administration mean business can be illustrated by the fact that this administration is not only proposing and strongly supporting new tools, as provided in S. 30, but also, unlike the previous administration, using the tools that Congress gave when it enacted the Omnibus Crime Control Act of 1968. I am referring to the use of court-ordered electronic surveillance devices. As a result of the use of these devices, a major narcotics ring in the Nation's Capital has been broken up and a nationwide gambling ring has been smashed in New Jersey. Further, I have strongly supported the administration's request which they have received for the doubling of last year's appropriations in this vital field. In addition, the Justice Department has more than doubled its manpower in this area.

Mr. President, organized crime permeates all spheres of our society. Octopus like, organized crime is a complex and highly organized menace to society. The poor people in our slum areas are tragically often the primary victims of organized crime.

It is the children of the slums who often become victims of the narcotic pusher. In my testimony before the Subcommittee on Alcoholism and Narcotics of the Labor and Public Welfare Committee, when it was in Los Angeles on September 27, 1969, I referred to an article published in the New York Times, reporting that addict-victims were turning vigilante in an effort to halt the narcotics problem. This indicates the desperateness of the situation. The New York Times article went on to estimate that there are 100,000 heroin users in New York and further estimated that addicts might be stealing as much as $2.6 billion a year to support their habit. Further, the article pointed out that the U.S. Post Office had to pay some $360,000 in overtime pay just to provide additional postmen for safety reasons in the heavy drug areas. It

seemed that these additional postmen were needed twice a month when welfare checks were mailed since the narcotic addicts have come to regard these checks as a potential source of money in which to buy heroin.

Narcotic traffic is only one phase of organized crime's illegal activities, but it does indicate that the stakes, both in terms of human suffering and financially, are high. It is generally agreed that organized crime's greatest source of revenue is derived from gambling activities. President Nixon has labeled gambling as oranized crime's "lifeline." This gambling activity includes lotteries, dice games, and illegal casinos. While no one has an accurate figure on organized crimes intake from its gambling activities, it has been estimated to range from $7 to $50 billion. The second largest revenue for organized crime is so-called "loansharking." This is the practice of lending money at exorbitant interest rates. The President's Task Force on Organized Crime estimated that interest rates varied from 1 to 150 percent a week. While there are no estimates of the gross revenue from this practice it is believed that multibillions are involved.

A particular offensive consequence of organized crime is the corruption of local officials. For the President's Crime Commission found corruption common where organized crime exists and noted that the available information indicated that—

> Organized crime flourishes only where it has corrupted local officials.

Such corruption undermines our local governments and reduces our ctiizens confidence in our governing institutions. With so much cynicism abounding in the country today with respect to our governing institutions, it is particularly harmful to our national health and well being.

Organized crime's actvities are not confined to the illegal; indeed, legal activities often are fronts for their illegal efforts. Senator McCLELLAN in his very articulate and able opening remarks on this measure said that Internal Revenue sources indicated:

> Of this country's 113 major organized crime figures, 98 are involved in 159 businesses. In like manner, the President's crime commission in 1967 reported that racketeers control nationwide manufacuring and service industries with known and respected brand names.

In addition, the Senator from Arkansas (Mr. McCLELLAN) placed in the CONGRESSIONAL RECORD a partial listing of business activities in which organized crime has been active. It was a long and very diversified listing of business activities.

S. 30, the Organized Crime Control Act, before the Senate today not only declares "war" against organized crime but also provides law enforcement officers and our courts with the tools and machinery necessary to do battle. The bill is the result of all the great effort and attention by the President and his administration and the Judiciary Subcommittee on Criminal Laws and Procedures, under the leadership of Senator McCLELLAN, its chairman, and the ranking minority member, the Senator from Nebraska (Mr. HRUSKA).

The bill has 10 titles designed to improve our evidence-gathering procedures and processes in the investigation of organized crime, to strengthen Federal jurisdiction over syndicated gambling where interstate commerce is involved, to prohibit infiltration of legitimate organizations by racketeers or proceeds of racketeering activities, and to provide for the imposition of increased punishment—up to 30 years—for three types of particularly dangerous special offenders; namely, recidivists, professional offenders, and organized crime's leaders.

While areas for improvement obviously may exist, I believe that this measure is a sound and badly needed one. It attempts to balance the public interest as well as the individual rights of the accused. I strongly support the bill and am hopeful that it will bring about a retreat of organized crime and the ferreting out and prosecution of its leaders. If such is the case, it will be most welcomed by the victims of organized crime and the overburdened taxpayers of this country.

Mr. President, I ask unanimous consent that the committee's summary of the bill's provisions be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE BILL

TITLE I—GRAND JURY

Sets up a special grand jury to sit for extended terms, insulated from improper judicial influence and authorized, subject to careful safeguards, to issue grand jury reports.

TITLE II—IMMUNITY

Authorizes the grant of legislative, administrative and judicial immunity to obtain testimony over objections of self-incrimination.

TITLE III—RECALCITRANT WITNESSES

Provides for civil contempt proceedings to deal with recalcitrant witnesses.

TITLE IV—FALSE DECLARATIONS

Eliminates outmoded evidentiary and pleading restrictions (two-witness, direct evidence and contradictory statements rules) in prosecutions of those who give false testimony in grand jury or court proceedings.

TITLE V—WITNESS FACILITIES

Extends to organized crime witnesses and families physical facilities in which they may be protected.

TITLE VI—DEPOSITIONS

Makes possible, subject to constitutional protection, deposition from witnesses in danger of reprisal by organized crime.

TITLE VII—REGULATION OF LITIGATION CONCERNING SOURCES OF EVIDENCE

Sets aside Supreme Court's decision in *Alderman* v. *United States*, giving criminal defendants direct access to government files. Establishes instead court procedure. Provides for "statute of limitations" on suits alleging unlawful governmental conduct.

TITLE VIII—SYNDICATED GAMBLING

Makes bribery in connection with illegal gambling business affecting interstate commerce unlawful. In addition, prohibits the illegal gambling business affecting interstate commerce itself.

TITLE IX—CORRUPT ORGANIZATIONS

Prohibits infiltration of legitimate organizations by racketeers or proceeds of racketering activities where interstate commerce is affected. Authorizes civil remedies comparable to anti-trust to prevent violation of law by divestiture, dissolution or reorganization.

TITLE X—SPECIAL OFFENDER SENTENCING

Provides for imposition of increased punishment (up to 30 years) for convicted "habitual" criminals, "professional" criminals and "organized crime" leaders.

Mr. HART. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

> On page 93, line 15, strike the word "information" each time it appears and substitute the word "evidence."

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a time limitation of one-half hour on this amendment, with the time to be equally divided between the sponsor of the amendment and the Senator in charge of the bill.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. HART. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. HART. Mr. President, this amendment relates to title X where a new and, I think, probably worthwhile concept has been developed relating to dangerous special offender sentencing. It provides that in the event a defendant in a Federal criminal prosecution is in one of three categories and is convicted, notwithstanding the sentence limitation fixed for the offense for which he has just been convicted, he may then be sentenced after a hearing for a term of 30 years as a dangerous special offender.

The objection I suggested is that in the hearing, all that is required is that it appear, by a preponderance of the information, that the defendant is a dangerous special offender.

Mind you, Mr. President, in the case at bar on which he was tried and convicted, it was required, as in any criminal proceeding, that it be by proof beyond a reasonable doubt. So, this fellow has been put to trial and the Government has been required to prove beyond a reasonable doubt that he violated a particular law.

But to establish that he qualifies for the 30-year sentencing as a dangerous special offender requires only a preponderance of the information.

Why not, as the amendment probably should provide, require the same burden of proof when, in fact, we are considering putting him away for 30 years, that is required for a conviction under a specific statute that would put him away for a term substantially less than 30 years.

Mr. McCLELLAN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. FULBRIGHT in the chair). My colleague from Arkansas is recognized for 5 minutes.

Mr. McCLELLAN. Mr. President, this is another unexpected amendment. It

would overrule two Supreme Court decisions and change the whole pattern of present practice with reference to the use of information in regard to sentencing.

Title X deals with an already convicted felon—after he has already been found guilty beyond a reasonable doubt. It is a question of what information the court may consider when he goes to impose sentence. Title X deals with the professional criminal, the organized crime or Cosa Nostra people, and those who have a long string of convictions against them.

This amendment would place a limitation on the information concerning a convict's background, character, and conduct which a Federal court could consider in selecting an appropriate sentence.

The bill as now drafted preserves the traditional rule approved by the Supreme Court in Williams against New York, decided in 1949, that sentencing proceedings are exempt from the rules of evidence constitutionally required at a trial. Williams was reaffirmed in 1967 in the case of Specht against Patterson. And Mr. Justice Douglas wrote the opinion of the Court in the case of Specht against Patterson. The Court reaffirmed that a sentencing court, usually the trial court, could consider allegations not tested for reliability by the constitutional procedures of confrontation and cross-examination.

Mr. Justice Black, in the opinion of the Court in the Williams case, spelled out in these terms the policies that underlie enlightened sentencing practices and preclude any other rule.

Here is what the Court said:

> Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information—
>
> Not evidence—
>
> possible concerning the defendant's life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by the requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial. . . . The due process clause should not be treated as a device for freezing the evidential procedure of sentencing in the mold of trial procedure. (*Williams* v. *New York*, 337 U.S. 241, 246–47, 251 (1949).)

That is the language of the Supreme Court. I hope that the Senate will not overrule that position.

Mr. HART. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. HART. Mr. President, it is not solely a question of determining the sentence. It is a question of how this man is proven to be in fact in one of the three categories which makes him a dangerous special offender. For example, it is the point at which we determine whether the defendant committed a felony as part of a pattern which is criminal, which contributed the substantial source of his income, and in which he manifested special skill and expertise.

Why should not that be required to be established by proof beyond a reasonable doubt, not just by a preponderance of information?

This is the point at which the determination must be made for example as to whether the individual who has been found to have engaged in a conspiracy was a leader or that he agreed to initiate and to finance all or part of the conspiracy.

Why should not that be required to be established by proof beyond a reasonable doubt, and not just by a preponderance of information? It is far more than a determination of whether 30 or less years should be applied. It is a hearing at which we have to find for example whether this man does have a substantial source of his income flowing from the offensive act. A substantial portion of income is not particularly precise, but requires proof of some kind.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. I yield 2 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 2 minutes.

Mr. HRUSKA. Mr. President, the Senator from Arkansas has well outlined the situation involved.

This is the situation of a man standing before the court convicted, and he has been proved beyond a reasonable doubt to be guilty. The question is what kind of sentence to pass on him. And when that point is reached, it has long been the rule that all kinds of information can be used by the judge to determine what sentence he will undergo.

There were two recent decisions, cited by the Senator, that have held to that effect. And section 3577, found on page 97 of the bill, also codifies that law by saying:

> No limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

Under those two cases and under this section, the judge will have the discretion to use and to employ such information as he can obtain and use within the bounds of his judicial experience and conscience to apply to the situation at hand. That discretion should not be limited.

I hope the amendment is defeated.

Mr. HOLLAND. Mr. President, will the Senator yield for a question?

Mr. McCLELLAN. I yield for a question.

Mr. HOLLAND. Mr. President, is not this same information used by every trial judge in connection with whether he will give a minimum or a maximum sentence or whether he should put him on probation? All of these same things are considered by every judge called upon to sentence a man.

Mr. McCLELLAN. The Senator is correct. I want to add that the position of this amendment is contrary to the position that has been taken by the Model Sentencing Act, the Model Penal Code, the American Bar Association, and the decisions of the Supreme Court.

I do not think we want to sweepingly change that practice.

Mr. CASE. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. CASE. Is not this a half-way-house situation really? It does partake of the nature of the consideration of the penalty by a judge. But does it not also have a kind of substantive effect in that it increases the maximum penalty which a judge may impose under certain circumstances?

Mr. HRUSKA. It can increase the sentence, but it is merely an aggravation of the offense.

The defendant here also is given the right of appearing to contest it in limited cross-examination. But it certainly does not bar the court from taking any information into account.

Mr. CASE. But there is provision for cross-examination.

Mr. McCLELLAN. That is correct, limited cross-examination and even appeal.

Mr. CASE. And all of that cross-examination has to be proved in open court. And the only change is the nature of the evidence, in effect.

Mr. McCLELLAN. That is right. He can appeal from the decision. We think the defendant's rights are protected.

Mr. HART. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 2 minutes.

Mr. HART. Mr. President, I think we can visualize, and the Senator from New Jersey suggested, a hearing at which the court is required to determine and evaluate an appropriate sentence.

This is not that kind of animal at all. This is a hearing to determine after an earlier conviction whether the individual does in fact fall into one of three categories.

The individual says, "Look, I didn't initiate a conspiracy. I didn't have a substantial source of my income from this offense. I want to be heard on that. I demand proof. This is an adversary proceeding, and I want to prove that I am not in such a category."

What rules of evidence would apply? Even more basic, What is the requirement of proof? The bill states, "If it appears by a preponderance of information." What does that mean? It is not even by a preponderance of the evidence, but rather by a preponderance of information. A man could be sent away for 30 years. Should it not require proof beyond reasonable doubt?

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, I yield back the remainder of my time.

Mr. HART. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Michigan (Mr. HART). On

this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PELL), the Senator from Maryland (Mr. TYDINGS), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

I further announce that, if present and voting the Senator from Rhode Island (Mr. PELL) would vote "yea."

Mr. SCOTT. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. JORDAN), the Senator from Kansas (Mr. PEARSON), and the Senator from Illinois (Mr. SMITH) are necessarily absent.

The Senator from Florida (Mr. GURNEY), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GURNEY), the Senator from Idaho (Mr. JORDAN), the Senator from Illinois (Mr. PERCY), the Senator from South Dakota (Mr. MUNDT), the Senator from Utah (Mr. BENNETT), the Senator from Oklahoma (Mr. BELLMON), and the Senator from Illinois (Mr. SMITH) would each vote "nay."

The result was announced—yeas 11, nays 63, as follows:

[No. 8 Leg.]

YEAS—11

Goodell	McGee	Nelson
Hart	Metcalf	Ribicoff
Hughes	Mondale	Young, Ohio
Kennedy	Muskie	

NAYS—63

Allen	Ellender	Murphy
Allott	Ervin	Packwood
Anderson	Fannin	Pastore
Baker	Fong	Proxmire
Bible	Fulbright	Randolph
Boggs	Goldwater	Russell
Brooke	Gore	Saxbe
Burdick	Hansen	Schweiker
Byrd, Va.	Hartke	Scott
Byrd, W. Va.	Hatfield	Smith, Maine
Cannon	Holland	Sparkman
Case	Hruska	Spong
Cooper	Jackson	Stennis
Cotton	Jordan, N.C.	Stevens
Cranston	Long	Symington
Curtis	Magnuson	Talmadge
Dodd	Mansfield	Thurmond
Dole	McClellan	Tower
Dominick	McIntyre	Williams, N.J.
Eagleton	Miller	Williams, Del.
Eastland	Montoya	Young, N. Dak.

NOT VOTING—26

Aiken	Harris	Mundt
Bayh	Hollings	Pearson
Bellmon	Inouye	Pell
Bennett	Javits	Percy
Church	Jordan, Idaho	Prouty
Cook	Mathias	Smith, Ill.
Gravel	McCarthy	Tydings
Griffin	McGovern	Yarborough
Gurney	Moss	

So Mr. HART's amendment was rejected.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GOODELL. Mr. President, I send amendments to the desk which I ask to be stated.

The PRESIDING OFFICER. The amendments will be stated.

The bill clerk read the amendments, as follows:

On page 32, strike out lines 8 through 16.

On page 32, line 17, redesignate paragraph "(3)" as paragraph "(1)".

On page 32, line 20, redesignate paragraph "(4)" as paragraph "(2)".

On page 32, line 21, strike out the period after district, insert a comma and insert the following: *"Provided, however,* That specific individuals shall not be named or identified in connection with criminal or noncriminal misconduct or malfeasance by such individuals.".

On page 33, strike out lines 7 through 24.

The PRESIDING OFFICER. Does the Senator ask unanimous consent that the amendments be considered en bloc?

Mr. GOODELL. I do.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. GOODELL. I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a 1-hour limitation on the amendment, the time to be divided equally between the sponsor of the amendment and the manager of the bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GOODELL. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time, and how much time is yielded?

Mr. GOODELL. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. GOODELL. Mr. President, section 3333 of S. 30 would empower Federal grand juries to issue reports and presentments based on information obtained during the course of an investigation into alleged violations of the Federal criminal law.

The most significant authority to be given to grand juries in this area would involve reports "concerning non-criminal misconduct, malfeasance, or misfeasance in office by a public officer or employee as a basis for a recommendation of removal or disciplinary action." My amendment would strike this provision—section 3333 (a) (1)—from the bill. It would not affect the proposed granting of authority to return presentments in two specific areas in the bill as follows:

First, "proposing recommendations for legislative, executive, or administration action in the public interest based upon stated findings; or

Second, "regarding organized crime conditions in the District, provided however, that specific individuals shall not be named or identified in connection with alleged criminal or noncriminal misconduct or malfeasance by such individuals."

Section 3333(a)(1) if enacted would authorize presentments against named individuals. A presentment is a public charge of misconduct—not involving an accusation of criminal conduct—which carries the importance of a judicial document, but lacks its principal attribute—the right to answer.

It is frequently confused with an indictment, and the distinction between the two is usually lost on the public at large.

When released to the public it inflicts irremedial injury upon the reputation of the accused. It effectively denies him due process of law because he does not have a proper forum to respond to the charges.

Admittedly, section 3333, now before the Senate, makes an attempt to meet this problem by providing for the appearance of the accused before the grand jury. It also permits him to file a report in reply and to appeal if necessary. Yet, there is substantial doubt as to the practical effectiveness of these "protections."

The proceedings would still not be adversarial and there seems to be no dispute that the accused official apparently would have no right to counsel before the grand jury, no right to call witnesses on his own behalf, and no right to cross-examine his accusers. Thus, only one side of the story would be effectively presented—that of the Government.

The proceedings before a grand jury are secret. Grand jurors are immune from suit for libel. The protection afforded an accused is primarily that if the grand jury decides that there is not sufficient evidence to indict, they return a no-bill, and the accusations are basically dismissed and the accused is cleared.

If the grand jury decides there is sufficient evidence to charge him with a crime, the accused then has all his constitutional rights in a trial with counsel; including the right to present witnesses, to cross-examine, and to clear his name if he is innocent.

A presentment, as authorized in this bill, is really a report by the grand jury. The grand jury has heard and considered the evidence. It does not find sufficient evidence of criminal misconduct to return an indictment, but under this bill it would be authorized to render a report indicating a finding of noncriminal misconduct, malfeasance, or misfeasance by a State or local official.

The only right that official has is to

appear before the grand jury in this inquisitorial context. If he appears and testifies, he presumably would waive his right under the fifth amendment against self-incrimination. He would not have his attorney there. He would be subject to the cross examination of the prosecutor and of the grand jury. He does not know in advance what witnesses have testified. He does not know the nature of the evidence that has led them to call him in. All he knows is the general charge made by the prosecutor, the district attorney, and a general description of the nature of his involvement, and he must come in and make statements to try to clear his name under those circumstances.

Mr. President, I wish to make it clear that I am not here, by this amendment, objecting to the right of a grand jury to make a report to the public with reference to the activities of organized crime in a community. I am not objecting to their making these findings available to local law enforcement agencies, as is now provided for under court decisions. I am not objecting to their making general recommendations for changes in the administrative, executive, or legislative branches. All of those are critical questions that could be raised. But the one thing that I object to and would strike by my amendment is the right of a grand jury, with complete immunity, to make a report without sufficient evidence upon which to predicate an indictment naming individuals, and thereby implicating them.

What are the rights guaranteed? I know that the very distinguished and eloquent chairman of the subcommittee is going to throw back to me the fact that this particular provision is based upon a New York State law, a law passed in 1964 and fashioned almost directly on it.

That does not make it right. In the first place, there is one basic distinction. New York State law with reference to grand jury activities applies to State and local officials. Today we are dealing with the problem of a Federal grand jury, with no jurisdiction over State and local officials unless they have committed a Federal crime, making a report recommending removal, perhaps, or recommending other administrative punishments of such officials.

It is perfectly proper for them to refer the matter to the State or local law enforcement officials, but certainly it is not proper for them to make a public disclosure and public accusation, when the individual involved has not had a proper opportunity to present his side of the case.

Mr. President, the provisions of the bill before us do guarantee that individuals who are going to be named in a grand jury presentment will have the right to appear and, if their names are to be used, they have the right to appeal prior to the filing of the grand jury presentment. They also have a right, if the presentment names them, simultaneously with the filing of the presentment to file their answer, so that they both come out at the same time. Of course, the great difference is that the grand jury presentment has the quality of official sanction, and any answer given at the same time will be interpreted as an automatic, simple denial. There is really no opportunity to influence what has gone on behind the scenes in the secret session, or to bring in witnesses to that secret session. The minimum that should be provided is that where an individual is to be named, or they plan to name him, he be given an opportunity to call in other witnesses. The grand jury has heard only one side of the case.

This is a matter of great philosophical and practical importance. I think it is important that we move more effectively against crime. I think it is important that we recognize that individuals who have been involved in criminal activity be guaranteed their rights, but that the Government not be encumbered unnecessarily in prosecuting by being required to present the case in open court.

Mr. President, there will be one other answer made here.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GOODELL. I yield myself 2 additional minutes.

There will be one other answer made here:

That the President's task force on law enforcement recommended that grand juries have the right to make presentments.

They did. But they did not recommend the provision in this bill. Their recommendation was that grand juries should have the right to make recommendations to the executive or legislative or law enforcement officials in the local communities, but they did not say that grand juries should have the right to name those individuals in a presentment where they had found insufficient evidence to return an indictment.

Mr. President, there are many conflicting cases on this question. If you want to talk about the traditional grand jury, you go back to the days of Henry II, when a grand jury was really there to expand the power of the king.

The grand jury has undergone evolution over the years. It finally came to a point where it was a buffer and a protection for the accused, so that it had to be composed of independent private citizens.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GOODELL. I yield 1 additional minute.

Private citizens, independent from the authorities, would make that judgment before an indictment was returned. But, in the words of Justice Jackson, from an important Supreme Court case, Stack against Boyle:

> Since the grand jury is a secret body, ordinarily hearing no evidence but the prosecution, attended by no Counsel except the prosecuting attorney, it is obvious that it is not in a position to make an impartial recommendation. Its subject may indicate that those who have heard the evidence for the prosecution regard it as strongly indicative that the accused may be guilty of the crime charged. It could not be more than that without hearing the defense, and it adds nothing to the inference from the fact of indictment. Such recommendations are better left unmade and, if made, be given no weight.

If made, they certainly should not be made by naming individuals that the evidence indicates have not committed criminal misconduct sufficient to return an indictment. But a grand jury, hearing one side of the case, decides that it will name these individuals and make recommendations to State and local authorities as to action to be taken in punishment of these individuals.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. McCLELLAN. I yield 5 minutes to the distinguished Senator from Nebraska.

Mr. HRUSKA. Mr. President, the grand jury, of course, is an institution some several centuries old, and a great many practices and a great many very happy circumstances arise from its existence and from its functioning during all this time.

Under this bill, they are authorized to report under a couple of aspects, and they are good reports, and they will serve a very good purpose.

With the passage of time, we find circumstances that are a little different from what they used to be in the functioning and in the impact of criminals. As a consequence of the organized crime we have in this country, involving at is does wholesale envelopment not only of officialdom but also of the creators and the makers of opinion and influential people within given communities where the investigation holds forth, it was thought well to supplement and enlarge somewhat the traditional, conventional powers of the grand jury.

This provision is not without safeguards that are considered ample for the purpose at hand. It is one thing to try to raise the specter of the absence of a right to cross-examine and a regular trial procedure where the guilt of a man is considered, that is, whether he should be convicted or not and sentenced pursuant to law. It is another thing, in the type of society we have, to disclose, on an official basis, facts to which the public is entitled and should have, without saying that we cannot repeat these facts unless a jury of 12 men and women have found the facts under the meticulous, very involved rules of evidence and procedure availing in trials.

Before the report that is authorized by this bill can be issued, certain standards and conditions have to be met. The report must be fashioned on facts revealed in an authorized investigation of the criminal activity. The report must be based on a preponderance of the evidence. The subject must have been offered an opportunity to testify. The subject must have been offered time to prepare an answer, which must be attached to the report. That means the answer is prepared by the man or woman who may be the subject of comment in this report. The time for appeal of the court's decision to allow publication must have expired.

May I note at this point that if during all these procedures there is an abuse of discretion, if there is anything that goes beyond good sense and good judgment, the subject offended, or who thinks

himself offended, may appeal through the regular appellate procedures of the Federal judicial system. That means removing it from the immediate locale of the grand jury's area of investigation and taking it to the circuit court of appeals where every assurance is given that the matter will be taken care of properly.

The committee report (S. Rept. 91-617 at 143) points out that failure to allow witnesses of the subject to testify may be prejudicial to publication and the judge may order more testimony where it is appropriate. The committee believes that this title will serve a useful purpose. It has ample safeguards. It does not put the subject to the rigors, to the formalities, and to the time-consuming activities that would occur if we were going to try a case on those points. But it will serve a good purpose, and it should be done.

This matter has been considered by the President's Crime Commission, and the fair intent of their report and their recommendation is that there must be something of this kind to get maximum benefit out of the special grand juries that operate in organized crime situations. The Department of Justice supports it. We believe that it should be tried, and that it will undoubtedly result in benefits that will be very happily received in a very grave situation.

It is for that reason that I urge that the amendment be rejected.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. McCLELLAN. I yield myself 5 minutes.

Mr. President, a few days ago, I inserted in the RECORD grand jury reports from New York, New Jersey, and Pennsylvania. All three of these contain the names of individuals.

May I say at this point that this section, this provision of the bill, is patterned after the New York statute. It is almost identical in language. I should like to read the New York statute, section 253(a) of the Code of Criminal Procedure of New York, which was passed in 1964:

253(a). Grand jury reports. The grand jury, upon concurrence of 12 or more of its members, may submit to the court for which it is impaneled, a report:

I ask Senators to refer to page 32 of the bill and look at 1 and 2 of subsection (a) of section 3333, reports. I ask to follow that language as I read the New York statute which was passed in 1964. On what can they report?

(a) Concerning non-criminal misconduct, nonfeasance or neglect in office by a public officer or employee as the basis for a recommendation of removal or disciplinary action; or

The next is subsection (b), and it states:

Stating that after investigation of a public officer or employee it finds no misconduct, nonfeasance or neglect in office by him, provided that such public officer or employee has requested the submission of such report.

From the page in the pending bill to which I referred, I read the comparable sections of this bill:

(1) concerning noncriminal misconduct, malfeasance or misfeasance in office by a public officer or employee as the basis for a recommendation of removal or disciplinary action; or

(2) stating that after investigation of a public officer or employee it finds no misconduct, malfeasance or misfeasance, or neglect in office by him, provided that such public officer or employee has requested the submission of such report; or

Mr. President, I submit that if it is pretty good for New York, it ought to be pretty good for the Federal Government in a similar category of activity and responsibility.

Before this report can be filed, naming an officer or charging him with misconduct, it must be served on him and he is given the opportunity to come before a grand jury and present his side of the case. It cannot just be handled promiscuously and without due regard for his rights.

In dealing with the character of the people with whom we are undertaking to deal in this bill, although the bill goes into other areas of crime it deals with the hardcore element of crime in this country, those predatory committers of crime and their cohorts who the State of New York, as well as the States of Florida and Pennsylvania, deemed advisable to be the subjects of reports.

I say to you, Mr. President, with the problems we are having today, that we can safely do this and should do it because, very often, there is strong evidence of misconduct and corruption on the part of officials, whether or not it has reached the point of a crime. In addition to the States of New Jersey and Pennsylvania whose reports were inserted in the RECORD, a most recent report of a grand jury from the Senator's home State has been inserted.

The State of Florida permits such reports. The Supreme Court of Florida, in 1955, contemplated the question of reports on individuals and they stated:

We specifically held in the last case cited that if employees or officers are incompetent or lax in the performance of the duty imposed upon them, if they are lacking in the common courtesy attached to the duty vested in them, whatever the delinquency may be the grand jury has the right to investigate and make a fair report of its findings. *Ryon* v. *Shaw*, 77 S. 2d 455 (1955).

In another case, the Florida Supreme Court found:

Another observation is that democratic government emanates from the people, it is theirs to administer with all the checks and balances that they see fit to throw around it. There is no greater deterrent to evil, incompetent and corrupt government than publicity. In its last analysis we are confronted here with a means to that end and as long as accomplished within reasonable bounds, the courts are without power to interfere with the means provided. *Ibid.*

We not only provide reasonable bounds here, Mr. President, we also require that if the subject answers and files a reply, or a rebuttal to the grand jury report, his answer must be released and published as a part of the report.

We have gone further than many States in this respect. In doing this, Mr. President, as I have pointed out on several occasions, title I of S. 30 is based on New York's experience, as was last year's Electronic Surveillance Act. I think it a tribute to the State of New York, that once again we are calling upon the New York experience in support of this legislation to combat the forces of organized crime.

Title I of S. 30 is modeled upon a bill which bears the signature of Nelson Rockefeller.

It is also a comment on the bipartisan nature of the legislation that Republican Governor, Thomas Dewey, duly vetoed an earlier attempt to do away with grand jury reports in New York, stating that grand jury report power is "one of the most valued and treasured restraints upon tyranny and corruption in public office."

Mr. President, I have said over and over again that it is imperative, it is compelling upon Congress, to provide every legal weapon within the framework of the Constitution for law enforcement officials to use in prosecuting the war against crime.

I therefore hope that the pending amendment will be rejected.

Mr. GOODELL. Mr. President, first of all, on the philosophical point made by my distinguished colleague and friend from Arkansas, I must tell him that I disagree with the philosophy of the New York State law as well. But the New York State officials who favor the New York State presentment have very grave doubts about the provisions of this bill. The distinction here is that it is one thing for a State grand jury, under State law, to make general recommendations and reports with reference to State and local officials, but it is another thing for a Federal grand jury, having found no Federal crime committed, to make recommendations to State and local officials as to punishment, administrative or otherwise, against those State and local officials.

This is the very critical matter of separation of powers. It is prefectly proper for a Federal grand jury to make its findings available to the proper law enforcement officials at the State and local level. That is done. But it is not proper for a Federal grand jury just to issue a report, accusing State and local officials of misconduct or of criminality, when those State and local officials have had nothing but the opportunity to come in and testify in the inquisitorial atmosphere of a grand jury. They have not been able to bring witnesses. They have not been able to bring counsel. They have not, really, known the extent of the testimony against them, or the witnesses who have given the evidence to that grand jury.

This is a matter of great importance. We have a number of cases on this and they are conflicting. One of the most important ones involves a Federal grand jury which reported on a noncriminal conduct of a State official in a case entitled, "In re Petition for Disclosure of Evidence," before an October 1959 grand jury. The grand jury in that case was told only to indict or ignore the individuals to investigate. Instead, the grand

jury pointed out that it did not have enough evidence to indict. The evidence they did have on names of State and local officials, which was requested to be sent to the city mayor and the State Governor, the court on a motion to expunge said, "although the grand jury felt mostly compelled to bring the serious issue to the attention of the authorities, it stated only that the evidence be turned over to local officials," without saying more.

The courts felt, one, that the tenor, the purport, should not have been made known since it violated the secrecy of a grand jury proceeding and, two, that it was an infringement upon the province of State and local government.

It is noted here that the city wanted the evidence for administrative disciplinary action only, while the State wanted the evidence for criminal prosecution purposes.

Mr. President, in the light of the facts of that case, the court expunged everything except the recommendation that the evidence be forwarded.

I believe that we should recognize here that title I of the bill changes the traditional role of the Federal Government—at least the traditional role of the Government in recent years—and that we must change it with great care.

Now, Mr. President, I yield 2 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 2 minutes.

Mr. COOPER. Mr. President, my inquiry concerns itself not only with questions raised about the purpose of the amendment but also for possible interpretation by the courts. Jurisdictions differ in fixing the duties of grand juries. In my State, a grand jury may make recommendations arising from the conduct of an official but usually when such conduct constitutes malfeasance or misfeasance, or for the basis of making recommendations to the official, as to carrying out his duties more effectively.

To secure a conviction of a crime in court, there must be proof beyond a reasonable doubt. The grand jury however must simply find that there is reasonable cause to believe that a crime has been committed.

The language of this section does not even require reasonable cause. It provides that even though there has been no criminal misconduct, no criminal misfeasance, and no criminal malfeasance yet the names of individuals may be included in this report.

I would like to find out if there has been no criminal misconduct, no criminal misfeasance, and no criminal malfeasance found by the grand juries, why should individuals be included in a report.

It would appear to me, unless there is a better explanation, that this is something like the denunciation of individuals which occurs in some countries which are not democracies.

We oppose such denunciation, and rightfully, when there is no justifiable cause or basis.

I would like to know for what purpose we should denounce individuals when, at the same time, we say specifically that they committed no crime. Why should we denounce them?

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, I was wondering if someone wanted to answer the question that the Senator from Kentucky has asked.

Mr. GOODELL. I was wondering the same thing. I yield 2 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 2 minutes.

Mr. HART. Mr. President, I support the amendment proposed by the able Senator from New York. I think he has outlined the questions that cause us all concern. The Senator from Kentucky has raised a question to which there has been no answer. It just compounds the kind of concern that led to the introduction of the amendment.

It is my understanding, Mr. President, from a press report that the U.S. Judicial Conference opposes the adoption of title I.

I would offer for the RECORD—unless there are those in a direct position to give a more direct statement as to the attitude of the Judicial Conference—a column which appeared on November 4, 1969, under the byline of John P. MacKenzie in the Washington Post.

This story reports that the U.S. Judicial Conference has voted to oppose the grand jury title in its entirety.

Admittedly the Federal courts and their judges have a point of view that might not be on all fours with the responsibility of those of us in Congress. However, in addition to all the reasons recited by the Senator from New York, I think if in fact it is true that the Judicial Conference does oppose the adoption of this title in its entirety, it might persuade more of us here to support the amendment of the Senator from New York.

I hope that support is forthcoming.

I think his proposal, which narrows the reach of title I but does not go to the extent of the Judicial Conference and eliminate it entirely, is a sound suggestion.

Mr. GOODELL. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 2 minutes.

Mr. GOODELL. Mr. President, I thank the Senator from Michigan for his very important support and for his enlightening statement. I also wish to thank the Senator from Kentucky. I think the question asked by the Senator from Kentucky should be answered. It is critical.

There are two essential points. First is the philosophical one. In title I, we are expanding the power of the grand jury over what it presently is. We would give them the power to not only determine whether a man has committed a crime. If a grand jury thinks there is enough evidence, they return an indictment. If not, they return a not true bill. The power we are talking about is the power to issue a report and name individuals in that report and charge them publicly. And of course the right is given to that individual, if he wants to, to come in and raise his right against self-incrimination. If he wants to come into this inquisitorial hearing without his attorney and without being able to bring any witnesses he can do so.

This is an important amendment. This is an important infringement on the rights of local and State officials. How many of us would like to be a local or State official and be told, "We have some secret information in this grand jury. So and so caled you up. You were involved." And a person would have no right to come into the grand jury without his attorney and deny it.

And after the grand jury issues its public accusations, without saying that one has committed a crime, because there is not enough evidence, a person can make a public denial at the same time.

What kind of right is that? What could be and would be done under my amendment is that if a Federal grand jury develops evidence that they think shows misconduct on the part of local and State officials, that evidence could be presented to the proper local or State officials, and not publicly disclosed and thus destroy a person's career. We cannot catch up with that kind of thing.

The report of the grand jury has the color of official sanction. The public never understands that they are rumors that have been heard and that the other side has not been heard.

This amendment would not in any way hamper the proper activities of the Federal grand jury to make a generalized report recommending certain changes in a community. They should not characterize a citizen in that community with reference to organized crime.

My amendment only goes to protect the right of individuals not to be charged without having the right to present their side of the case.

I think those two points sum up the matter. First, the philosophical one, that individuals should be given this right, and that a secret grand jury should not be able to impugn their good name until after they have had an opportunity to present their evidence.

Second, a Federal grand jury has no business making recommendations of this nature with reference to State or local officials. Its proper function is to refer the matter to State or local officials for whatever proper action should be taken.

Mr. McCLELLAN. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 1 minute.

Mr. McCLELLAN. Mr. President, with reference to the Judicial Conference, the bill as originally drafted provided for a special grand jury all across the Nation. And the Judicial Conference did oppose that special grand jury. But this applies primarily to only the 13 districts of the United States, on a population basis, where organized crime has its foothold. That is what we are dealing with.

If a Federal grand jury finds something wrong, they are citizens of that community, and they have a proper in-

terest. If they find that laws ought to be amended or if conditions there favor crime, it seems quite proper to do something. It cannot be made public until the man involved has an opportunity to come in and make his answer.

Mr. President, as far as I am concerned, I am ready to yield back the remainder of my time.

Mr. HART. Mr. President, will the Senator yield for 1 minute?

Mr. GOODELL. I yield 1 minute to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 1 minute.

Mr. HART. Mr. President, this measure would authorize a grand jury to report concerning noncriminal misconduct or misfeasance. What is noncriminal misconduct?

Mr. McCLELLAN. This language is almost word for word the language of the New York statute under which they have been operating for years. I do not wish to single out one State, but that is where we have the most organized crime. They found this language most helpful, and they reenacted the statute in 1964. We are using their exact language. If they can use it as a State statute, I do not know why we could not use it as a Federal statute.

Mr. HART. I was not inquiring as to what States have it. I am wondering if New York has a definition. What are we authorizing when there is reference to "noncriminal misconduct and noncriminal misfeasance"?

Mr. McCLELLAN. Mr. President, I yield back the remainder of my time.

Mr. HART. I take it New York does not define that portion of the statute.

Mr. GOODELL. No.

Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 minute.

Mr. GOODELL. Mr. President, I think the point raised by the Senator from Michigan is extremely important. I respect very much the Senator from Arkansas and I think overall the committee did an excellent job to bring forth a bill to strengthen law enforcement in this country. The Senator referred to organized crime and a report on organized crime in a community. The provision I am attacking is not limited to organized crime. The grand jury could make a presentment with respect to noncriminal misconduct, whether it was related to organized crime or not, anything they might feel deserves the attention of the public and that they feel fits the term noncriminal misconduct.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. GOODELL. I yield.

Mr. McCLELLAN. Mr. President, this would be a special grand jury convened for the very purpose of investigating organized crime. This power is conferred on that special grand jury and not a regular grand jury. It is hand and glove with this program we are talking about.

Mr. GOODELL. The language of the bill does not state that, but it does refer to any noncriminal misconduct. It states any noncriminal misconduct that this grand jury mentions in its presentment. It does not state it should be related to organized crime.

Mr. McCLELLAN. I do not know how one can separate them, but the whole purpose of the title in the bill and everything pertaining thereto is to deal with organized crime. That does not mean that a grand jury, if it found something else, could not return an indictment or make a report.

We are dealing with a specific problem, a grave problem in this country. There is a statute in New York to deal with the local situation there.

The PRESIDING OFFICER. All time of the Senator from New York has expired.

Mr. McCLELLAN. Mr. President, I yield back the remainder of my time. Let us vote.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment (No. 444) of the Senator from New York (Mr. GOODELL). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. McCARTHY), the Senator from South Dakota (Mr. McGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Maryland (Mr. TYDINGS), the Senator from Texas, (Mr. YARBOROUGH), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

Mr. SCOTT. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. JORDAN), the Senator from Kansas (Mr. PEARSON), and the Senator from Illinois (Mr. SMITH) are necessarily absent.

The Senator from Florida (Mr. GURNEY), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GURNEY), the Senator from Idaho (Mr. JORDAN), the Senator from South Dakota (Mr. MUNDT), the Senator from Illinois (Mr. PERCY), and the Senator from Illinois (Mr. SMITH) would each vote "nay."

The result was announced—yeas 13, nays 59, as follows:

[No. 9 Leg.]

YEAS—13

Brooke	Hart	Ribicoff
Cooper	Hatfield	Stevens
Dominick	Kennedy	Young, Ohio
Fong	Metcalf	
Goodell	Mondale	

NAYS—59

Allen	Fulbright	Pastore
Allott	Goldwater	Pell
Anderson	Gore	Proxmire
Baker	Hansen	Randolph
Bible	Hartke	Russell
Boggs	Holland	Saxbe
Burdick	Hruska	Schweiker
Byrd, Va.	Hughes	Scott
Byrd, W. Va.	Jackson	Smith, Maine
Cannon	Jordan, N.C.	Sparkman
Case	Magnuson	Spong
Cotton	Mansfield	Stennis
Cranston	McClellan	Symington
Curtis	McGee	Talmadge
Dodd	McIntyre	Thurmond
Dole	Miller	Tower
Eagleton	Montoya	Williams, N.J.
Ellender	Murphy	Williams, Del.
Ervin	Muskie	Young, N. Dak.
Fannin	Nelson	

NOT VOTING—28

Aiken	Harris	Mundt
Bayh	Hollings	Packwood
Bellmon	Inouye	Pearson
Bennett	Javits	Percy
Church	Jordan, Idaho	Prouty
Cook	Long	Smith, Ill.
Eastland	Mathias	Tydings
Gravel	McCarthy	Yarborough
Griffin	McGovern	
Gurney	Moss	

So Mr. GOODELL's amendment was rejected.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HRUSKA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, on passage of the bill, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. GOODELL. Mr. President, I send another amendment to the desk and ask that it be read.

The PRESIDING OFFICER. The amendment of the Senator from New York will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 33, line 9, strike the word "was" and insert in lieu thereof the word "were."

On page 33, line 9 after the word "therein" insert the phrase "and any reasonable number of witnesses in his behalf as designated by him to the foreman of the Grand Jury."

Mr. McCLELLAN. Mr. President, may I ask how much time the Senator thinks he will take and if he is willing to agree to a limitation of debate on the amendment?

Mr. GOODELL. Mr. President, I would ask that the Senator not seek a limitation of time, because it will not take that long. I would like to speak on this amendment very briefly, the Senator from Arkansas can then answer, and then we can vote on it as far as I am concerned.

The PRESIDING OFFICER (Mr. SAXBE in the chair). The Senator may proceed.

Mr. GOODELL. Mr. President, the previous amendment I offered would have

limited the power of a Federal grand jury simply to issue a report, naming names of people they found were not guilty of criminal conduct, but were guilty of "noncriminal misconduct." There is no definition of that term and it is not limited to involvement in organized crime.

If a grand jury, under the bill as it stands, decides that it wants to name names of individuals who are not going to be indicted who the grand jurors think have been involved in some misconduct, the bill provides they have to allow such individuals to come before the grand jury and state their side of the case. It does not provide that such individuals can have an attorney; it does not provide that they can present any witnesses whatsoever; and, of course, the individual who comes before the grand jury is essentially waiving his rights under the fifth amendment, testifying under oath in an inquisitorial context, with the cross examination of the district attorney and of the grand jury. This amendment provides that such an individual can present a reasonable number of witnesses in his behalf before the grand jury.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. GOODELL. I am happy to yield.

Mr. McCLELLAN. I am for the Senator's amendment. I am very glad to accept it.

Mr. GOODELL. I thank the Senator. When I have won a case, I know enough to say no more.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

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, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. COOPER. Mr. President, I shall take only a few minutes, but I told the Senator from Nebraska (Mr. HRUSKA) that I wanted to ask him general questions about titles II and III for purposes of interpretation.

The first question relates to the section on immunity.

Mr. PASTORE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. COOPER. I refer first to title II on the immunity of witnesses. Is it correct that the power to grant immunity, according to this bill, would be vested not only in the courts, and in committees of Congress and also be given to administrative agencies? I ask the Senator, is the power at present provided to the administrative agencies?

Mr. HRUSKA. It is my understanding that it is.

Mr. COOPER. Is it correct that under present law, if immunity is granted, while it will not prevent the prosecution of a witness, it would prevent the use of any evidence that he gave, or any exploitation of that evidence against him?

Mr. HRUSKA. It would prevent the use of it. Under the bill, it is my understanding that such disclosure cannot be used at a later time.

Mr. COOPER. No evidence that he gave, or any information obtained by reason of such evidence, can be used against him in a future prosecution?

Mr. HRUSKA. That is my understanding.

Mr. COOPER. Then I ask the Senator, in what way does this provision extend or enlarge the present rule?

Mr. HRUSKA. The present rule is blanket immunity from prosecution as to anything having to do with that particular subject. This bill grants immunity only from the use of such testimony or evidence or anything derived therefrom. But if there is some evidence or some testimony that can be obtained from other sources than that, there is no immunity.

Mr. COOPER. Independent sources?

Mr. HRUSKA. Independent, disassociated sources.

Mr. COOPER. I take the Senator's interpretation to be, then, that this evidence, obtained from him—in a way by coercion—shall not be used against him?

Mr. HRUSKA. That is correct.

Mr. COOPER. My second question concerns the matter of recalcitrant witnesses—Title III.

This title, as I read it, would provide that the court, if a witness refuses to testify or to produce books, papers, affects information which ordinarily would be subject to a proper search warrant, can confine the witness in jail until he agrees to testify or to produce all books, documents, and so forth, that are asked for?

Mr. HRUSKA. That is right.

Mr. COOPER. Suppose, as the witness claims his protection under the fifth amendment. Before the imprisonment provision under title III can be used, does it mean that immunity would have to be granted him?

Mr. HRUSKA. If he had pled the fifth amendment?

Mr. COOPER. Yes.

Mr. HRUSKA. That is right. Then he would fall under the provisions of title II.

Mr. COOPER. Then title II would come into play?

Mr. HRUSKA. That is right.

Mr. COOPER. Before he could be confined?

Mr. HRUSKA. That is right.

Mr. COOPER. Is this process of confinement discretionary with the court, or is Congress attempting to provide mandatorily that the court must place such a person in confinement.

Mr. HRUSKA. It is discretionary. The language is "may summarily confine him."

Mr. COOPER. Then I ask, in what way does this title differ from the powers that a court has now to invoke civil contempt or criminal contempt?

Mr. HRUSKA. It does not differ. It is a codification of present law. But it has the added advantage that when the fifth amendment is asserted, then title II on immunity is brought into play.

Mr. COOPER. I thank the Senator.

Mr. BIBLE. Mr. President, certainly one important segment of the American people who will applaud loudly the efforts of this Congress to deal more effectively with the growing crime menace across this land will be our 5½ million small businessmen and businesswomen.

Hearings I conducted last year as chairman of the Senate Small Business Committee showed that the majority of all crime was committed against the American businessman. Statistics this year show crime is costing our Nation $31 billion annually.

The American small businessman, those with receipts of less than $1 million a year, suffer by far the greatest share of all business losses.

Burglary losses cost $958 million annually with the small business absorbing 71 percent of the losses.

Shoplifting, costing $504 million annually, with the small businessman taking 77 percent of the loss. Vandalism, costing $813 million annually, with the small businessman taking 58 percent. Employee theft, costing $381 million annually, with the small businessman taking 60 percent. Bad checks, costing $316 million annually, with the small businessman taking 77 percent. Robbery, costing $77 million annually, with the small businessman taking 68 percent.

These figures do not include losses from organized crime, and we know that such a large percentage of all burglary, highjacking, and cargo theft is disposed of through "fence" operations controlled by organized criminal syndicates.

Mr. President, the Senate Small Business Committee plans during the coming year to continue its work in exploring methods to assist the small businessman in dealing with crime, methods such as protective device systems, managerial measures to help the businessman protect himself, building security code procedures, architectural steps as a protective measure, insurance recommendations, burglar-proof devices, and so forth. Some of these recommendations were made in a report filed by the committee.

Organized crime, as our committee pointed out in its loan-shark hearings of 1968, infiltrates legitimate small business by lending at usurious rates of interest. We believe that the truth-in-lending bill gets at a part of this menace. During this session, the Small Business Committee will continue its examination into efforts to aid small business in its fight against the criminal. We wish to review the role of the fence in burglary, highjacking, and cargo theft operations. We also hope to examine credit-card and bad-check frauds which are estimated to cost the small businessman $500 million per year. One of the country's largest retail chains has revealed that credit-card bad-check frauds cost this firm $24 million per year.

The tentacles of crime are widespread, but we must hack away at them; and I believe the Senate in passing the pending bill will take a long step in that direction.

Over the years, it has been my privilege to work and consult with my distinguished friend and colleague, the Senator from Arkansas, in the development of anticrime legislation. He is without question the Senate's outstanding expert in

the legislative war on crime. I congratulate and commend him for his characteristic leadership in bringing forth this vitally important bill.

In the course of this debate, organized crime in the United States has been characterized as one of the most pervasive problems facing the Nation—as a cancerous growth eating away at the heart and substance of our society—as a parasite feeding on the poor and reaping huge profits from illegal gambling, the drug traffic, loan sharking, and the corruption of legitimate business enterprises. Its methods range from hoodlum intimidations to armed violence and murder.

I agree with all that has been said. Organized crime is all of this—and more.

I think, however, that the blackest aspect of this whole sordid business has been the ability of organized crime—and I speak particularly of its leaders, the bosses and the upper echelons of the Cosa Nostra—to flout the best efforts of our law enforcement and judicial authorities. The President's Crime Commission report of 1967 and thousands of words of testimony before our investigating committees have given the Nation a truly amazing amount of information and knowledge concerning the inner structure, methods, and misdeeds of organized crime.

Yet, with all our knowledge we have had entirely too little success in stamping out the organized criminal.

Clearly, we need new weapons to wage an all-out and more effective war on the organized criminal.

The speical merit of the bill now before the Senate is that it will give us such weapons.

Its provisions: for special grand juries; for grants of immunity to overcome claims of self-incrimination; for dealing with recalcitrant witness; for dealing with false declarations before grand juries and the courts; for the protection of witnesses and those dealing with syndicated gambling, the corruption of legitimate organizations, and special penalties for habitual offenders.

All of this is vitally needed to overcome deficiencies in our present arsenal of weapons usable in combating organized crime.

These proposed improvements are the result of diligent study and preparation by the dedicated members of the Subcommittee on Criminal Laws and Procedures and its very able staff.

I understand the Department of Justice supports each and every title of the bill as reported by the committee.

No greater challenge faces the Senate than to continue its past record of moving vigorously to combat crime and strengthen the hand of justice throughout the land.

This legislation is our opportunity to strike an effective legislative blow, and I join the distinguished Senator from Arkansas in urging that this critically important measure be given the Senate's unanimous approval.

Mr. WILLIAMS of New Jersey. Mr. President, one clear lesson of history is that a nation can be destroyed by its own corruption, degeneracy, and chaos. This enemy within can conquer a people just as decisively as can an outside aggressor. The best-known examples are the Greek and Roman Empires and the Third Reich. But 26 centuries ago the prophet Ezekiel saw the death of his own beloved country as a divine judgment upon its moral decay, in words that have a direct meaning for us today:

> Because the land is full of bloody crimes and the city is full of violence, . . . I will put an end to their proud might, and their holy places shall be profaned. When anguish comes, they will seek peace, but there shall be none. . . . (T)he law perishes from the priest, and counsel from the elders(.) . . . and the hands of the people of the land are palsied by terror. (Ezekiel 7: 23-27.)

Crime has become a cancer threatening the life of the body politic of the United States. The Uniform Crime Reports for January–September 1969, issued by the Federal Bureau of Investigation, summarize the continuing sharp rise in violent crimes:

> The Crime Index recorded an 11 percent increase nationally during the first nine months of 1969 over the same period in 1968. As a group the violent crimes increased 12 percent, led by forcible rape up 17 percent, robbery 15 percent, and aggravated assault and murder 9 percent respectively. The voluminous property crimes witnessed an overall 10 percent rise, with larceny $50 and over up 20 percent, auto theft 11 percent, and burglary 4 percent. Firearms were used to commit 65 percent of all murders during the first nine months of 1969 and 23 percent of the aggravated assaults. Serious assaults with a firearm rose 11 percent in 1969 over 1968.

It should be noted that these percentages are based on statistics of "offenses known to the police." While we are, therefore, dealing with "raw" information that requires further analysis, we should also be guided by the judgment of the President's Commission on Law Enforcement and Administration of Justice in its 1967 report that "for the Nation as a whole there is far more crime than ever is reported." (The Challenge of Crime in a Free Society, p. v; see also pp. 20–22.) Moreover, percentages are sterile. We should recognize, for example, that we are talking about human lives violated or destroyed. In 1968, there were 141 victims of aggravated assault and almost seven persons murdered, for every 100,000 people in the United States. Property losses exceeded $1 billion.

Shall there be peace in America? Or must we succumb to anguish and terror? Will law continue to evolve in securing equal protection for all, or must it perish through inadequate enforcement?

With the enactment of the Omnibus Crime Control and Safe Streets Act of 1968, Congress directed the Federal Government to launch an all-out attack on violent crimes and offenses against property. Recognizing that the police power is basically reserved to States and local jurisdiction, this Federal effort has focused on law enforcement assistance. In particular, planning and action grants, under title I, were to be distributed to the States by the Law Enforcement Assistance Administration—LEAA—of the Department of Justice. In fiscal 1969 the LEAA provided $19 million in planning grants to the States, and later disbursed $29 million in action grants. Under a formula in the act developed by the Senate, the States were to make 40 percent of the planning funds and 75 percent of the action grants available to local governments.

However, in his excellent address to the Senate on November 21, 1969, Senator VANCE HARTKE took note of several in-depth studies highly critical of the administration of the State bloc grant programs administered by LEAA's Office of Law Enforcement Programs. Senator HARTKE concluded that funds are not being channeled to communities which have the highest incidence of crimes. Rather, funds are being spread out across the States to a newly generated layer of government known as regional planning boards, which have shown a limited sensitivity to the problems of local governments. And all too often, State plans give the appearance of police equipment "shopping lists," instead of comprehensive programs that seek improvements also in the courts and in correctional systems.

As an original cosponsor of Senator HARTKE's bill, S. 3171, to amend section 306 of title I of the Omnibus Crime Control and Safe Streets Act, I strongly support these proposed correctives which would give the States a strong incentive to propose comprehensive plans that deal adequately with the special problems of major urban areas and other areas of high crime incidence, and to insure that the States bear their fair share of the non-Federal costs of this program. Another amendment would guarantee the essential long-term commitment by the Federal Government to title I law enforcement assistance programs, through establishing a 3-year authorization.

I am seriously concerned that the effectiveness of the law enforcement assistance programs be substantially improved, with particular emphasis placed upon their comprehensive nature as originally dictated by Congress. One dimension of this comprehensive approach must be an expansion of advanced education in law enforcement disciplines, techniques, and associated community problems. Such an effort would be significantly enhanced under the Comprehensive Community College Act, S. 1033, which I have introduced.

Decisive Federal action is immediately required to deal with the threat to society posed by organized crime.

Organized crime in America operates to frustrate the statutes and procedures of Criminal law, and it is profoundly injurious to the public welfare. Establishing its own "government" and tightly knit but almost invisible "society" of some 26 crime syndicate families, it is attempting to nullify State and local governments and is tearing the moral fabric of our society.

Therefore, to the forces of organized crime let the message be absolutely clear: In enacting the Organized Crime Control Act, the Congress of the United States is declaring war on your criminal schemes. You are the enemy within, and you will be brought to justice.

An attack upon organized crime requires the total efforts of Federal, State, and local governments working closely

together. The Organized Crime Control Act will greatly facilitate the war on organized crime by bringing this covert society out into the glare of the public spotlight and by preventing its sophisticated techniques to delay or thwart our criminal justice procedures. By improving the means by which witnesses, testimony, and other materials are secured, the links in the chain of evidence will be more readily forged, leading to the conviction of the leaders of organized crime, who have so long avoided even prosecution. It is essential that these revisions in our criminal justice procedures be directed explicitly at organized crime activities. It is essential that adequate protection of constitutional rights be provided. And it is mandatory that the open contempt for law by the crime syndicate be faced down at once, or our system of criminal justice will lose the essential respect of our citizens.

For too long have Government and the citizenry of the United States been guilty of the crime of omission, seeing organized crime as a limited problem, or not being disturbed because the operations of the crime syndicate did not appear to cause us personal injury. But now we recognize that the public welfare is directly threatened, as these 26 families operate in wholesale narcotics distribution, gambling, loan sharking, and more recently in the takeover of legitimate businesses. The tentacles of organized crime have grasped hold of public institutions and economic sectors throughout the Nation, threatening to strangle the life of a decent society.

While certain provisions of the Organized Crime Control Act may raise serious constitutional issues, I expect that proper and reasoned administration of the law by the Department of Justice and the courts will protect our basic rights. I am concerned that political factors may have prevented the inclusion of certain provisions to insure that this act would operate with greater effectiveness. I have particular reference to the need to establish an Organized Crime Division in the Department of Justice under a new Assistant Attorney General. I believe this is essential for waging a sustained war on organized crime, not subject to the ebb and flow of personal interests of high officials, and for marshaling the necessary manpower and resources. Therefore, I joined Senator TYDINGS in sponsoring the amendment to the Organized Crime Control Act to establish this new Division, in the belief that an antiorganized crime program requires this high-level commitment subject to annual scrutiny by Congress. I regret that this amendment was not agreed to.

It is my intention to do all in my power to prosecute this war on organized crime. In an effort to strike at one of the most lucrative markets for the crime syndicate, the drug addict, I have introduced S. 1816, the Drug Abuse Prevention and Rehabilitation Act. I am encouraged by significant steps being taken in New Jersey to combat crime through its State Law Enforcement Planning Agency and State Investigations Commission, and will endeavor to give such efforts every possible assistance. I am also in correspondence with police officials in the State, obtaining their viewpoints on proposals for improvements in law enforcement education. I was pleased to have the opportunity to support the nomination before the Senate Judiciary Committee of Frederick B. Lacey as U.S. attorney for New Jersey, expecting that he would prove to be an effective chief law enforcement officer in the State.

Mr. President, an all-out war must be waged on organized crime now. Therefore, I support the Organized Crime Control Act.

Mr. MANSFIELD. Mr. President, sometimes I wish I were a lawyer. At other times I am very glad that I never entered that profession.

We have now spent 3 days on this bill, with the lawyers, by and large, arguing over the fine points of the proposed legislation which has been a year in the making.

Undoubtedly there are bugs in this bill, as there are in almost any bill which the Senate passes. But I think the issue is so important that, insofar as the bugs are concerned, we might well consider resolving our doubts in favor of the legislation, so that we can attack a menace which is becoming more and more difficult to cope with in this city and in this Nation.

Therefore, I hope that the Senate will go on record today with a solid vote of support for this legislation, so that we can indicate that we are ready to cope with the growing criminality which is becoming so prevelant and so hard to control throughout the Nation, and do it with a big bang today.

Mr. PASTORE. Amen.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry. I know it is late, but for the information of the Senate, we are going to be in at 10 o'clock tomorrow morning. So I withdraw my parliamentary inquiry.

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Maryland (Mr. TYDINGS), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH) is absent on official business.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Maryland (Mr. TYDINGS), and the Senator from Texas (Mr. YARBOROUGH), would each vote "yea."

Mr. SCOTT. I announce that the Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. JORDAN), the Senator from Kansas (Mr. PEARSON), and the Senator from Illinois (Mr. SMITH) are necessarily absent.

The Senator from Florida (Mr. GURNEY), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Oregon. (Mr. PACKWOOD, and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Vermont (Mr. AIKEN), the Senator from Oklahoma (Mr. BELLMON), the Senator from Utah (Mr. BENNETT), the Senator from Kentucky (Mr. COOK), the Senator from Michigan (Mr. GRIFFIN), the Senator from Florida (Mr. GURNEY), the Senator from Idaho (Mr. JORDAN), the Senator from Maryland (Mr. MATHIAS), the Senator from South Dakota (Mr. MUNDT), the Senator from Kansas (Mr. PEARSON), and the Senators from Illinois (Mr. PERCY and Mr. SMITH) would each vote "yea."

The result was announced—yeas 73, nays 1, as follows:

[No. 10 Leg.]

YEAS—73

Allen	Fulbright	Nelson
Allott	Goldwater	Pastore
Anderson	Goodell	Pell
Baker	Gore	Proxmire
Bible	Hansen	Randolph
Boggs	Hart	Ribicoff
Brooke	Hartke	Russell
Burdick	Hatfield	Saxbe
Byrd, Va.	Holland	Schweiker
Byrd, W. Va.	Hruska	Scott
Cannon	Hughes	Smith, Maine
Case	Jackson	Sparkman
Cooper	Jordan, N.C.	Spong
Cotton	Kennedy	Stennis
Cranston	Long	Stevens
Curtis	Magnuson	Symington
Dodd	Mansfield	Talmadge
Dole	McClellan	Thurmond
Dominick	McGee	Tower
Eagleton	McIntyre	Williams, N.J.
Eastland	Miller	Williams, Del.
Ellender	Mondale	Young, N. Dak.
Ervin	Montoya	Young, Ohio
Fannin	Murphy	
Fong	Muskie	

NAYS—1

Metcalf

NOT VOTING—26

Aiken	Harris	Mundt
Bayh	Hollings	Packwood
Bellmon	Inouye	Pearson
Bennett	Javits	Percy
Church	Jordan, Idaho	Prouty
Cook	Mathias	Smith, Ill.
Gravel	McCarthy	Tydings
Griffin	McGovern	Yarborough
Gurney	Moss	

So the bill (S. 30) was passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MCCLELLAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, may I be the first to take my hat off to the senior Senator from Arkansas (Mr. McCLELLAN) for the outstanding service he has performed to this body and to the Nation as a whole. His leadership on this bill, S. 30, the Organized Crime Control Act of 1970 was absolutely outstanding.

This measure is designed to augment the fight against crime. I am not an expert in crime control. I am not even a lawyer, but I understand that this proposal complements very well the Omnibus Crime Control and Safe Streets Act of 1968. In this regard, it is designed to cut down on the activities of those engaged in organized crime. It gives our enforcement officials some vital assistance. It certainly is my hope and the hope of every Member of this body, that it will meet with the greatest success.

I would urge the other body to act expeditiously in considering this matter. I believe it represents a constructive effort and a cooperative effort. Certainly there was the cooperation by Members on both sides of the aisle. Cooperation certainly existed between Congress and the administration.

The important factor is that the crime problem is being faced. It is a problem of great concern. In the past year alone crime has risen dramatically in many of the cities of this country. In the weeks and months ahead it will be our task to attempt in every way possible to stem and reverse this trend.

The measure just adopted by the Senate will aid immensely in this effort. Senator McCLELLAN deserves the gratitude of this entire body for his outstanding leadership. The Senate is grateful as well for the efforts of the senior Senator from Massachusetts (Mr. KENNEDY) who offered his own strong and sincere views on this measure. Senator KENNEDY along with the senior Senator from Michigan (Mr. HART) and the Senator from New York (Mr. GOODELL) are to be commended for their contributions to the discussion.

I think the entire Senate may be proud of this effort, of this great achievement. It was obtained expeditiously and with full regard for the views of every Member.

ORDER FOR ADJOURNMENT TO 10. A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 609, S. 3246.

The PRESIDING OFFICER. The bill will be stated by title.

The BILL CLERK. A bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DODD obtained the floor.

Mr. MANSFIELD. Mr. President, may I suggest the absence of a quorum, without the Senator from Connecticut losing his right to the floor?

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLOTT. Mr. President, will the Senator from Connecticut yield, so that I may ask a question of the Senator from Montana?

Mr. DODD. I yield.

Mr. ALLOTT. Did the Senator make a request for the Senate to convene at 10 o'clock tomorrow morning?

Mr. MANSFIELD. Yes.

Mr. ALLOTT. Will the pending bill be the legislation tomorrow morning?

Mr. MANSFIELD. Yes; the Controlled Dangerous Substances Act of 1969.

Mr. ALLOTT. I appreciate the courtesy of the distinguished Senator from Connecticut and I thank the Senator from Montana.

Mr. HUGHES. Mr. President, will the Senator from Connecticut yield?

Mr. DODD. I am happy to yield to the Senator from Iowa.

Mr. HUGHES. Mr. President, it had been by intention to ask for a referral of the bill now before the Senate to the Committee on Labor and Public Welfare.

In discussing this with the Senator from Connecticut, who chaired the subcommittee that conducted the hearings on this bill, I believe that we have arrived at a conclusion that, though not entirely satisfactory to either of us, will help us mount a total approach to the problem of narcotics addiction and drug abuse in the country.

I appreciate and share the determination of the administration and of my colleagues of both parties to expedite legislation to meet one of America's most terrifying problem areas.

I would have you know, Mr. President, that I would not have considered the motion I intended to make if I did not believe with all of my heart that this is a matter of life or death to our shared objective of taking decisive action to meet the drug problem in the United States.

Let me explain the reasons I feel this way.

This bill, S. 3246, was introduced by the Senator from Connecticut (Mr. DODD), for himself and the Senator from Nebraska (Mr. HRUSKA) on December 16, 1969. On that same day it was read twice, referred to the Judiciary Committee, and reported by the Senator from Connecticut without amendment. The bill is in fact an outgrowth of Senator DODD's earlier bill, S. 1895, and the administration bill originally introduced by the late Senator from Illinois (Mr. Dirksen) and the Senator from Nebraska (Mr. HRUSKA) as S. 2637.

Both of these earlier bills had been referred to the Committee on the Judiciary. Hearings were held before its Subcommittee To Investigate Juvenile Delinquency beginning on September 15 and concluding on October 20, 1969.

The reference of these measures to the Committee on Judiciary was apparently on the basis of its jurisdiction over "revision and codification of the statutes of the United States" under rule XXV of the Standing Rules of the Senate. In fact, these bills, and the original bill reported by the committee, are not a "revision and codification" as those terms are normally understood. The bills make extensive changes in the present laws relating to narcotics, marihuana, and drugs now subject to the Drug Abuse Control Amendments of 1965 to the Food, Drug, and Cosmetic Act.

The report of the Committee on the Judiciary on S. 3246—Report No. 91-613—begins with the assertion, quite accurately, that it has had "under consideration legislation to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws," and the bill itself is denominated "a bill to protect the public health."

I believed, therefore, that before action is taken by the Senate on this legislation, it should be referred to its Committee on Labor and Public Welfare, pursuant to that committee's jurisdiction over legislation relating to the public health. Such referral would have been entirely consistent with the traditional procedures of the committee system in the Senate when dual jurisdiction occurs.

In the executive branch, the responsibility for drafting this legislation was given to the Department of Justice. It was felt necessary to collect in a single statute the laws relating to narcotics, marihuana, and other so-called dangerous drugs as a further step in the 1968 reorganization plan which transferred to a new bureau in the Department of Justice the drug law enforcement functions formerly assigned to the Bureau of Narcotics in the Treasury Department and the Bureau of Drug Abuse Control of the Food and Drug Administration.

I do not question that the collection in one place of these scattered laws—passed over a period of many years and not wholly consistent in their provisions—is probably desirable. Neither do I question that the sweeping revisions of criminal penalties, procedures for the issuance of search warrants, and authorizations for search without either warrants of notice, should not be undertaken without the Senate having had the benefit of the recommendations of its Committee on the Judiciary.

However, there are extensive provisions in this bill which relate not to law enforcement but to matters of public health; and it seemed to me that these are areas on which the Senate should not act without the benefit of the recommendations of its Committee on Labor and Public Welfare.

Let us consider the extent to which this bill involves matters of medical