91st Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 91-1549

# ORGANIZED CRIME CONTROL ACT OF 1970

September 30, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Rogers of Colorado, from the Committee on the Judiciary, submitted the following

## REPORT

together with

## ADDITIONAL, INDIVIDUAL, AND DISSENTING VIEWS

[To accompany S. 30]

The Committee on the Judiciary, to whom was referred the bill (S. 30) relating to the control of organized crime in the United States, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Organized Crime Control Act of 1970."

### 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

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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, the district court determines the business of the grand jury has not been completed, the court may 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 or enters an order for the discharge of such grand jury before such grand jury 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. 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) 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. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.

"(b) Whenever the district court determines that the volume of business of the special grand jury exceeds the capacity of the grand jury to discharge its obligations, the district court may order an additional special grand jury for that district to be impaneled.

### "§ 3333. Reports

"(a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report—

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

"(2) 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 (a) 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 and any reasonable number of witnesses in his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (2) 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 or be 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 or be subject to subpena or otherwise made public until the provisions of subsection (b) of this section are met. A special grand jury term may be extended by the district court 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 part analysis of part II, title 18, United States Code, is amended by adding immediately after

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

the following new item:

"216. 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 section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, 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 of Columbia Court of Appeals, the Superior Court of the District of Columbia, 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; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) 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 or a grand jury of the United States, 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 part.

"(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, the agency may, with the approval of the Attorney General, 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 part.

"(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.

**"§ 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 part.

"(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:

"V. Immunity of Witnesses ..... 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 directly or indirectly derived from such evidence,".

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 in-inserting after the first use of the term "testimony" the following language: ", or any evidence which is directly or indirectly derived from 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; 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. § 69r(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 directly or indirectly derived from such evidence,".

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. 221. 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, title 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 directly or indirectly derived from 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 directly or indirectly derived from 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. Section 7493 of the Internal Revenue Code of 1954 is repealed.

SEC. 233. The table of sections of part III of subchapter (E) of chapter 76 of the Internal Revenue Code of 1954 is amended by striking the item relating to section 7493.

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(l)), 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. 768; 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. Section 23–545 of the District of Columbia Code is repealed.

SEC. 253, Section 42 of the Act of October 9, 1940, 54 Stat. 1082 (D.C. Code, sec. 35–1346), is repealed.

SEC. 254. Section 2 of the Act of June 19, 1934, 48 Stat. 1176 (section 35–802, District of Columbia Code), is repealed.

SEC. 255. Section 29 of the Act of March 4, 1922, 42 Stat. 414 (section 35–1129, District of Columbia Code), is repealed.

SEC. 256. Section 9 of the Act of February 7, 1914, 38 Stat. 282, as amended (section 22–2721, District of Columbia Code), is repealed.

SEC. 257. Section 5 of the Act of February 7, 1914, 38 Stat. 281 (section 22–2717, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

SEC. 258. Section 8 of the Act of February 7, 1914, 38 Stat. 282 (section 22–2720, District of Columbia Code), is amended by striking out "2721" and inserting in lieu thereof "2720".

SEC. 259. 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 (adding by title II of this Act), is to that extent amended or repealed.

SEC. 260. The provisions of part V of title 18, United States Code, added by title II of this Act, and the amendments and repeals made by title II of this Act, shall take effect on the sixieth day following the date of the enactment of this Act. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day.

## 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—

"(1) the court proceeding, or

"(2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

"(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 if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty 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 service of, or contempt proceedings for alleged disobedience of, 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 an avoidance of service of process or 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 declaration 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 false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material 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, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

"(1) each declaration was material to the point in question, and

"(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

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 irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

"(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

"(e) 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, modify, or remodel 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. A motion by the Government to obtain an order under this section shall contain certification by the Attorney General or his designee that the legal proceeding is against a person who is believed to have participated in an organized criminal activity.

"(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. Whenever a deposition is taken at the instance of the Government, or whenever a deposition is taken at

the instance of a defendant who appears to be unable to 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, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. 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) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the witness refuses in the trial or hearing to testify concerning the subject of the deposition or part offered; or that the party offering the deposition has been unable to procure the attendance of the witness by subpena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

"(g) 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, United 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 claims that evidence offered in proceedings was obtained by the exploitation of unlawful acts, and is therefore inadmissible in evidence, (1) often cannot reliably be determined when such claims concern evidence of events occurring years after the allegedly unlawful act, and (2) 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—

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

"(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; 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 occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.

"(b) As used in this section 'unlawful act' means any act the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) 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 illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof.

### 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 conspire 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 conspiracy;

"(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

"(3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of 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 in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

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

"(2) 'gambling' includes but is not limited to 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 conducts, finances, manages, supervises, directs, or owns all or part of 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 in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

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

"(2) 'gambling' includes but is not limited to 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) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

"(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 vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proeceeds 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:

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 it 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 additional 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 plan),".

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 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 indicatable 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) if the act indictable under section 659 is felonious, 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 felonious 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 and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

"(6) 'unlawful debt' means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable 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 racketeering 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.

**"§ 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 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 jurisdiction 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.

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"(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) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover therefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

"(d) 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 proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas 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 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 may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

**"§ 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 materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding 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 assembled 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 to 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 custondian a petition for an order of such court modifying or setting aside such demand. The time allowed for compilance 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 shall 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, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender and his counsel.

"(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. 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. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States 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 an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony. 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 twenty-five 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. This section shall not be construed as creating any mandatory minimum penalty.

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

"(1) the defendant has previously been convicted in courts 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 two or more offenses committed on occasions different from one another and from such felony and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony, and less than five years have elapsed between the commission of such felony and either the defendant's release, on parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense punishable by death or imprisonment in excess of one year under applicable laws 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; 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 on direct or collateral review or at the hearing 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 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. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1602, as amended 80 Stat. 838), and as hereafter amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Act of 1954 (68A Stat. 17, as amended 83 Stat. 655), and as hereafter amended. For purposes of paragraph (2) of this subsection, special skill or expertise in criminal conduct includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment or criminal conduct, the enlistment of accomplices in such conduct, the escape from detection or apprehension for such conduct, or the disposition of the fruits and proceeds of such conduct. For purposes of paragraphs (2) and (3) of this subsection, criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

"(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 the imposition, correction, or reduction of a sentence after proceedings under section 3575 of this chapter, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction 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 of the sentence 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 of the sentence by the United States after the time has expired. A court extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire 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 made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence 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 of imposing an appropriate sentence.

**"§ 3578. Conviction records**

"(a) The Attorney General of the United States is authorized to establish in the Department of Justice a repository for records of convictions and determinations of the validity of such convictions.

"(b) Upon the conviction thereafter 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, or a judicial determination of the validity of such conviction on collateral review, the court shall cause a certified record of the convition or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe.

"(c) Records maintained in the repository shall not be public records. Certified 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, or a judicial determination of the validity of such conviction on collateral review, the court cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe; and

"(3) shall be prima facie evidence 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, that the convictions occurred and whether they have been judicially determined to be invalid on collateral review.

"(d) The Attorney General of the United States shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations under this section."

(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—REGULATION OF EXPLOSIVES

### PURPOSE

SEC. 1101. The Congress hereby declares that the purpose of this title is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

SEC. 1102. Title 18, United States Code, is amended by adding after chapter 39 the following chapter:

### "Chapter 40.—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

"Sec.
"841. Definitions.
"842. Unlawful acts.
"843. Licensing and user permits.
"844. Penalties.
"845. Exceptions; relief from disabilities.
"846. Additional powers of the Secretary.
"847. Rules and regulations.
"848. Effect on State law.

#### "§ 841. Definitions

"As used in this chapter—

"(a) 'Person' means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

"(b) 'Interstate or foreign commerce' means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any

place outside of that State. 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not in cluding the Canal Zone).

"(c) 'Explosive materials' means explosives, blasting agents, and detonators.

"(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, 'explosives' means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, inititaing explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term 'explosive' is defined in subsection (j) of such section 844.

"(e) 'Blasting agent' means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

"(f) 'Detonator' means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

"(g) 'Importer' means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

"(h) 'Manufacturer' means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

"(i) 'Dealer' means any person engaged in the business of distributing explosive materials at wholesale or retail.

"(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.

"(k) 'Secretary' means the Secretary of the Treasury or his delegate.

"(l) 'Crime punishable by imprisonment for a term exceeding one year' shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (2) any State offense (other than one involving a firearm or expolsive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

"(m) 'Licensee' means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

"(n) 'Distribute' means sell, issue, give, transfer, or otherwise dispose of.

**"§ 842. Unlawful acts**

"(a) It shall be unlawful for any person—

"(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

"(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; *and*

"(3) other than a licensee or permittee knowingly—

"(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

"(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

"(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except –

"(1) a licensee;

"(2) a permittee; or

"(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.

"(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

"(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

"(1) is under twenty-one years of age;

"(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

"(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;

"(4) is a fugitive from justice;

"(5) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a) of the Internal Revenue Code of 1954); or

"(6) has been adjudicated a mental defective.

"(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

"(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number of taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

"(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

"(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

"(i) It shall be unlawful for any person—

"(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(2) who is a fugitive from justice;

"(3) who is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

"(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.

"(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standard of safety and security recognized in the explosives industry.

"(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

**"§ 843. Licenses and user permits**

"(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed $200 for each license or permit. Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

"(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

"(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

"(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

"(3) the applicant has in a State premises from which he conducts or intends to conduct business;

"(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and

"(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

"(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

"(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

"(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

"(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701–706 of title 5, United States Code.

"(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any

political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

"(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

**"§ 844. Penalties**

"(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) Any person who violates any other provision of section 842 of this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(c) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commece any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty, or to life imprisonment as provided in section 34 of this title.

"(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of an explosive shall be imprisoned for not more than five years or fined not more than $5,000, or both.

"(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

"(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building, shall be imprisoned for not more than one year, or fined not more than $1,000, or both.

"(h) Whoever—

"(1) uses an explosive to commit any felony which may be prosecuted in a court of the United States, or

"(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States,

shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

"(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

"(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term 'explosive' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

**"§ 845. Exceptions; relief from disabilities**

"(a) Except in the case of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

"(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof;

"(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

"(3) the transportation, shipment, receipts, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

"(4) small arms ammunition and components thereof;

"(5) black powder in quantities not to exceed five pounds; and

"(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

"(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.

**"§ 846. Additional powers of the Secretary**

"The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from accurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be contsrued as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to

violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsections (d), (e), (f), (g), (h), or (i) of section 844 of this title.

**"§ 847. Rules and regulations**

"The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

**"§ 848. Effect on State law**

"No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together."

(b) The title analysis of title 18, United States Code, is amended by inserting immediately below the item relating to chapter 39 the following:

"40. Importation, manufacture, distribution and storage of explosive materials-- 841".

SEC. 1103. Section 2516(1)(c) of title 18, United States Code, is amended by inserting after "section 224 (bribery in sporting contests)," the following: "subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives),".

SEC. 1104. Nothing in this title shall be construed as modifying or affecting any provision of—

(a) The National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

(b) Section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control;

(c) Section 1716 of title 18, United States Code, relating to nonmailable materials;

(d) Sections 831 through 836 of title 18, United States Code; or

(e) Chapter 44 of title 18, United States Code.

SEC. 1105. (a) Except as provided in subsection (b), the provisions of chapter 40 of title 18, United States Code, as enacted by sections 1102 of this title shall take effect one hundred and twenty days after the date of enactment of this Act.

(b) The following sections of chapter 40 of title 18, United States Code, as enacted by section 1102 of this title shall take effect on the date of the enactment of this Act: sections 841, 844 (d), (e), (f), (g), (h), (i), and (j), 845, 846, 847, 848, and 849.

"(c) Any person (as defined in section 841(a) of title 18, United States Code) engaging in a business or operation requiring a license or permit under the provisions of chapter 40 of such title 18 who was engaged in such business or operation on the date of enactment of this Act and who has filed an application for a license or permit under the provisions of section 843 of such chapter 40 prior to the effective date of such section 843 may continue such business or operation pending final action on his application. All provisions of such chapter 40 shall apply to such applicant in the same manner and to the same extent as if he were a holder of a license or permit under such chapter 40.

SEC. 1106. (a) The Federal Explosives Act of October 6, 1917 (40 Stat. 385, as amended; 50 U.S.C. 121–143), and as extended by Act of July 1, 1948 (40 Stat. 671; 50 U.S.C. 144), and all regulations adopted thereunder are hereby repealed.

(b)(1) Section 837 of title 18 of the United States Code is repealed.

(2) The item relating to such section 837 in the chapter analysis of chapter 39 of such title 18 is repealed.

SEC. 1107. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

## TITLE XII—NATIONTAL COMMISSION ON INDIVIDUAL RIGHTS

SEC. 1201. There is hereby established the National Commission on Individual Rights (hereinafter in this title referred to as the "Commission").

SEC. 1202. 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;

(2) four appointed by the Speaker of the House of Representatives from Members of the House of Representatives; and

(3) seven appointed by the President of the United States from all segments of life in the United States, including but not limited to lawyers, jurists, and policemen, none of whom shall be officers of the executive branch of the Government.

SEC. 1203. 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.

SEC. 1204. It shall be the duty of the Commission to conduct a comprehensive study and review of Federal laws and practices relating to special grand juries authorized under chapter 216 of title 18, United States Code, dangerous special offender sentencing under section 3575 of title 18, United States Code, wiretapping and electronic surveillance, bail reform and preventive detention, no-knock search warrants, and the accumulation of data on individuals by Federal agencies as authorized by law or acquired by executive action. The Commission may also consider other Federal laws and practices which in its opinion may infringe upon the individual rights of the people of the United States. The Commission shall determine which laws and practices are needed, which are effective, and whether they infringe upon the individual rights of the people of the United States.

SEC. 1205. (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 subsection (a) of this section, the Chairman shall include among his appointment individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

SEC. 1206. (a) A member of the Commission who is who is a Member of Congress shall serve without additional 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 from private life 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.

SEC. 1207. 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, 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 such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

SEC. 1208. The Commission shall make interim reports and recommendations as it deems advisable, but at least every two years, and it shall make a final report of its findings and recommendations to the President of the United States and to the Congress at the end of six years following the effective date of this section. Sixty days after the submission of the final report, the Commission shall cease to exist.

SEC. 1209. (a) Except as provided in subsection (b) of this section, any member of the Commission is exempted, with respect to his appointment, from the operation of sections 203, 205, 207, and 209 of title 18, United States Code.

(b) The exemption granted by subsection (a) of this section shall not extend—

(1) to the receipt of payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

(2) during the period of such appointment, to the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

SEC. 1210. The foregoing provisions of this title shall take effect on January 1, 1972.

SEC. 1211. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

SEC. 1212. Section 804 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351; 18 U.S.C. 2510 note) is repealed.

TITLE XIII—GENERAL PROVISIONS

SEC. 1301. 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.

## EXPLANATION OF AMENDMENT

S. 30, as amended, embodies the same 11 titles contained in the measure as approved by the Senate. Each such title has been amended in an effort to strengthen and clarify its provisions. The committee's principal aim has been to eliminate provisions vulnerable to constitutional objections and to revise sections deemed to be unworkable so that the legislation will withstand future court challenge. In addition, the measure contains two new titles: Title XI—Regulation of Explosives; and Title XII—National Commission on Individual Rights.

The main features of S. 30, as amended, are as follows:

### TITLE I—SPECIAL GRAND JURY

This title establishes special grand juries to sit in major population centers or in other areas at the designation of the Attorney General. As amended by the committee, the bill would require such grand juries to be subject to the control of the district courts and be authorized to sit for extended periods (up to 36 months). Under title I, as amended, such grand juries are authorized to issue reports (1) concerning misconduct involving organized criminal activity of appointed governmental officials, and (2) regarding organized crime conditions in the district. When such reports are critical of identified individuals procedures are established for notice, opportunity to present evidence, and judicial review prior to publication.

### TITLE II—GENERAL IMMUNITY

Title II is a general Federal immunity statute that will afford "use" immunity rather than "transaction" immunity when a witness before a court, grand jury, Federal agency, either House of Congress, or a congressional committee or subcommittee, asserts his privilege against self-incrimination. It is contemplated that the title will enable effective displacement of the privilege against self-incrimination by granting protection coextensive with the privilege; that is, protection against

the use of compelled testimony directly or indirectly against the witness, in a criminal proceeding.

Title II has been revised so as to add the District of Columbia Court of Appeals and the Superior Court of the District of Columbia to the definition of "court of the United States"; to require the approval of the Attorney General for the issuance of immunity orders by U.S. agencies; to effectuate a number of additional repeals and amendments made necessary by the recent enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91–358), and to make a number of technical amendments.

A more detailed report on the immunity problem is contained in this committee's report to accompany H.R. 11157 (H. Rept. 91–1188, dated June 15, 1970).

### TITLE III—RECALCITRANT WITNESSES

Title III is intended to codify present civil contempt practice with respect to recalcitrant witnesses in Federal grand jury and court proceedings. As amended by the committee, the title authorizes a maximum civil contempt commitment of 18 months, and also establishes a standard of discretionary bail during appeal of a civil contempt order which is consistent with the Federal Rules of Criminal Procedure.

Title III also subjects witnesses to Federal sanctions who flee State criminal investigative commissions to avoid giving testimony.

### TITLE IV—FALSE DECLARATIONS

Ths title is intended to facilitate Federal perjury prosecutions and establishes a new false declaration provision applicable in Federal grand jury and court proceedings. It abandons the so-called two-witness and direct evidence rule in such prosecutions and authorizes a conviction based on irreconcilably inconsistent declarations under oath. As amended, title IV also permits recantation to be a bar to prosecution if the declaration has not substantially affected the proceeding or it has not become manifest that the declaration's falsity has been or will be exposed.

### TITLE V—PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

This title authorizes the Attorney General to protect and maintain Federal or State organized crime witnesses and their families. State witnesses may be protected on a reimbursable basis.

### TITLE VI—DEPOSITIONS

This title authorizes the Government to preserve testimony by the use of a deposition in a criminal proceeding, a right which now exists only for the defendant under the Federal Rules of Criminal Procedure (rule 15).

As amended by the committee, the Government's right to obtain a deposition would depend on certification by the Attorney General or his designee that the legal proceeding is against one who is believed

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to have participated in organized criminal activity. In addition, the title has been amended to make clear that the Government's right of access to depositions shall not infringe a defendant's rights under the fifth amendment. Also, it is provided that the scope of examination and cross-examination shall be the same as would be allowed in the trial itself.

### TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

Title VII intends to limit disclosure of information illegally obtained by the Government to defendants who seek to challenge the admissibility of evidence because it is either the primary or indirect production of such an illegal act. The title also prohibits any challenge to the admissibility of evidence based on its being the fruit of an unlawful governmental act, if such act occurred 5 years or more before the event sought to be proved. As amended by the committee, the application of title VII is limited to Federal judicial and administrative proceedings, and to electronic or mechanical surveillance which occurred prior to June 19, 1968, the date of enactment of the Federal wiretapping and electronic surveillance law (chapter 119, title 18, United States Code).

### TITLE VIII—SYNDICATED GAMBLING

This title is divided into five parts:

Part A contains special findings dealing with the effect of syndicated gambling on interstate commerce.

Part B, as amended, makes it unlawful to engage in a conspiracy to obstruct the enforcement of State law to facilitate an "illegal gambling business," defined as (1) violating State law; (2) involving five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business, and (3) operating in excess of 30 days or having a gross revenue of $2,000 in any single day. Nonprofit, tax-exempt games of chance are excluded. A fine of $20,000 or imprisonment for not more than 5 years is provided.

Part C, as amended, makes it unlawful to engage in the operation of the "illegal gambling business" itself, defined as above. A special "probable cause" finding is made. It provides that where five or more persons operate an illegal gambling business for two or more successive days gross revenue of $2,000 per day has been inferentially established for purposes of obtaining warrants for arrest, interceptions or searches and seizures. Any property used in violation of the provision may be seized and civilly forfeited to the United States. A fine of $20,000 or imprisonment for not more than 5 years is provided.

Part D establishes, effective in 2 years, a Presidential Commission to conduct a comprehensive review of present Federal and State gambling law enforcement policies and their alternatives. Interim reports may be made as advisable; the final report is to be made within 4 years of the Commission's establishment.

Part E makes possible the enforcement of the provisions of parts B and C by court order electronic surveillance and makes clear that State law is not preempted by them.

## TITLE IX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

This title creates a new chapter in title 18, entitled "Racketeer Influenced and Corrupt Organizations," which contains a threefold standard (1) making unlawful the receipt or use of income from "racketeering activity" or its proceeds by a principal in commission of the activity to acquire an interest in or establish an enterprise engaged in interstate commerce; (2) prohibiting the acquisition of any enterprise engaged in interstate commerce through a "pattern" of "racketeering activity," and (3) proscribing the operation of any enterprise engaged in interstate commerce through a "pattern" or "racketeering activity."

"Racketeering activity" is defined in terms of specific State and Federal criminal statutes.

As amended by the committee, "pattern" is defined to require at least two "racketeering acts," one of which occurred after the effective date of the statute, and the last of which occurred within 10 years (excluding any period of imprisonment) after the commission of a prior "racketeering act."

A fine of $25,000 or imprisonment for not more than 20 years is provided for a violation. In addition, provision is made for the criminal forfeiture of the convicted person's interest in the enterprise engaged in interstate commerce. The title, as amended, also authorizes civil treble damage suits on the part of private parties who are injured.

District courts are authorized to prevent and restrain by civil process violations of the above standard by, among other things, the issurance of (1) orders of divestment; (2) prohibitions of business activity, and (3) orders of dissolution or reorganization.

Provision is made for nationwide venue and service of process, the expedition of actions, civil investigative demands, and the use of court order electronic surveillance and its product.

## TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

Title X authorizes extended sentences of up to 25 years for dangerous adult special offenders defined to include (1) a three-time felony offender who has been previously incarcerated; (2) an offender whose felony offense was committed as a part of a pattern of criminal conduct, and (3) an offender whose felony offense was committed in furtherance of a conspiracy of three or more other persons to engage in a pattern of criminal conduct.

The imposition of the extended term based upon a charge by the prosecuting attorney and a hearing before the sentencing court following conviction. The title provides for the assistance of counsel, compulsory process and cross-examination of witnesses. Appellate review of the extended sentence is provided for both the Government and the defendant, but the Government must exercise the option to seek review at least 5 days before the expiration of the time for review by the defendant.

Title X also authorizes the Attorney General to establish in the Department of Justice a central repository for records of convictions.

Records maintained in this repository are made admissible in evidence in the Federal courts.

### TITLE XI.—REGULATION OF EXPLOSIVES

This title, added by the committee, establishes Federal controls over the interstate and foreign commerce of explosives and is designed to assist the States to more effectively regulate the sale, transfer and other disposition of explosives within their borders. The title establishes a system of Federal licenses and permits; licenses are required of all explosives manufacturers, importers, and dealers; and permits are required of all users who depend on interstate commerce on obtain explosives. The title prohibits the distribution of explosives to persons under 21 years of age, drug addicts, mental defectives, fugitives from justice, and persons indicted for or convicted of certain crimes. Licensing authority is vested in the Secretary of the Treasury who is also authorized to regulate the storage of explosives. The title also makes it a Federal offense to falsify records, or make false statements to obtain explosives, to sell explosives in violation of State law and to traffic in stolen explosives.

In addition to the Federal regulatory scheme, title XI strengthens the Federal criminal law with respect to the illegal use, transportation or possession of explosives. Under this part of the title the definition of explosives is broadened to include incendiary devices such as "Molotov cocktails." In addition to increasing present penalties for the illegal use of explosives, title XI expands the scope of Federal law to cover malicious damage or destruction by explosives to Federal premises and other Federal property as well as to the premises and property of institutions or organizations receiving Federal financial assistance.

The title also specifically proscribes malicious damage or destruction by explosives of real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce. Existing penalties are increased and the death penalty is extended to new offenses added by the title. The new criminal offenses become effective upon enactment of the legislation; the licensing provisions become effective in 120 days.

### TITLE XII.—NATIONAL COMMISSION ON INDIVIDUAL RIGHTS

This title, added by the committee, establishes, effective in 2 years, a National Commission on Individual Rights which is to conduct a comprehensive study and review of Federal laws and practices relating to special grand juries and to special offender sentencing authorized under this act, wiretapping and electronic surveillance, bail reform, and preventive detention, no-knock search warrants, and the accumulation of data on individuals by Federal agencies as authorized by law or acquired by executive action.

The Commission is authorized to make interim reports as it deems advisable and shall make its final report to the President and the Congress within 6 years of its establishment.

TITLE XIII.—GENERAL PROVISIONS

This title contains a severability clause.

## History of the Legislation

The following tabulation reflects the principal stages in the legislative consideration of S. 30, the measure reported herein.

*January 15, 1969.*—S. 30 (the proposed Organized Crime Control Act) was introduced.

*March 18, 19, 25, 26; June 3, 4, 1969.*—Senate hearings on S. 30 ("Measures Relating to Organized Crime," Hearings before Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, U.S. Senate, 91st Congress, first session, hereinafter referred to as Senate hearings).

*December 18, 1969.*—S. 30 reported favorably, with an amendment in the nature of a substitute, by the Senate Judiciary Committee (Senate Report No. 91–617).

*January 23, 1970.*—S. 30 passed the Senate, amended.

*January 26, 1970.*—S. 30 referred to the House Committee on the Judiciary.

*February 20, 1970.*—Reports requested from the Judicial Conference of the United States.

*April 7, 20, 1970.*—Reports received from the Judicial Conference of the United States.

*May 20, 21, 27; June 10, 11, 17; July 23; August 5, 1970.*—A House Judiciary Subcommittee held hearings on S. 30 and related measures ("Organized Crime Control," Hearings before Subcommittee No. 5, House Committee on the Judiciary, 91st Congress, second session, serial No. 27).

[During the pendency of hearings on S. 30, House Judiciary Subcommittee No. 5 also conducted hearings on July 15, 16, 22, 29 and 30, 1970, on a number of measures designed to curb the use and distribution of explosives ("Explosives Controls," Hearings before Subcommittee No. 5, House Committee on the Judiciary, 91st Congress, second session, serial No. 29).]

*September 21, 1970.*—House Judiciary Subcommittee, after 5 days of executive sessions, favorably reported S. 30, with amendments.

*September 23, 1970.*—The full Committee on the Judiciary, after deliberating in two executive sessions, ordered S. 30 favorably reported, with an amendment in the nature of a substitute.

*Explosives control*

Bombings and the threat of bombings have become an ugly, recurrent incident of life in cities and on campuses throughout our Nation. The absence of any effective State or local controls clearly attest to the urgent need to enact strengthened Federal regulation of explosives.

Title XI, added by the committee to S. 30, responds to a widespread national concern that existing Federal and State sanctions and prohibitions over the use, possession, and transportation of explosives are inadequate. The provisions of title XI are derived from legislative proposals submitted by the administration (H.R. 16699, intro-

duced March 26, 1970; H.R. 18573, introduced July 21, 1970) and by the chairman of this committee (H.R. 17154, introduced April 23, 1970). These and related measures were the subject of 5 days of public hearings on July 15, 16, 22, 29, and 30, 1970 ("Explosives Control Act," Hearings before Subcommittee No. 5, House Committee on the Judiciary, 91st Congress, second session, serial No. 29). In the course of these hearings testimony was received from representatives of the Department of Jusice, the Department of the Treasury, the Department of the Interior, Members of Congress, industry representatives and representatives of various organizations concerned with firearms regulation.

Among other matters, the hearing record discloses that between January 1, 1969, and April 15, 1970 (approximately 15½ months) law enforcement officials reported a total of 4,330 bombings, 1,475 attempted bombings, and 35,129 threatened bombings. The Department of the Treasury spokesman indicated that in this period such bombing outrages were responsible for the death of 40 persons and approximately $22 million of property damage.

The hearing record further discloses that approximately 35 States have little or no regulation over the sale or distribution of dynamite and other explosive substances. Moreover, the Federal Explosives Act, December 26, 1941 (55 Stat. 863), becomes operative only in times of war or national emergency and is inadequate in light of present technology and should be repealed.

Title XI combines the regulatory approach to the distribution and storage of explosives with strengthened and expanded criminal prohibitions that apply to the intentional misuse of explosives. Its purpose is to protect interstate and foreign commerce against interference and interruption by reducing the hazards to persons and property arising from explosives misuse and unsafe or insecure storage. It is also intended to assist the States effectively to regulate explosives distribution within their borders. It is not the purpose of this provision to place any undue or unnecessary restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage or use of explosives for legitimate industrial, mining or agricultural purposes.

During its study of this legislation the committee carefully considered whether to confer licensing authority on the Secretary of the Interior or on the Secretary of the Treasury. The record discloses that at pesent the Department of the Treasury has seven regional offices and a staff of approximately 1,250 in the Alcohol, Tobacco, and Firearms Division who enforce the provisions of the Gun Control Act of 1968 upon whose provisions title XI is patterned. Furthermore, Treasury personnel have participated in the investigation of all recent bombings—whereas, the Department of the Interior does not. In the circumstances, the committee concluded that the most economical, practical and efficient method of administering explosives controls would be to vest regulatory authority in the Secretary of the Treasury.

In addition, in view of the growing and widespread number of bombing outrages, the committee has recommended expanded Federal investigative and prosecutive authority. For example, a new penalty provision proscribes malicious damage or destruction by means of explosives of any property owned, possessed or used by or leased to the United States (proposed sec. 844(f)). This section also protects

real and personal property belonging to institutions and organizations receiving Federal financial assistance such as universities, hospitals, and police stations. These provisions are designed to enable the Federal Government to participate more directly in the investigation and prosecution of such offenses. However, it is not the intention of the proposed statute that the Federal Government substitute for the enforcement activities of State and local authorities. Express provision is made that this statute shall not be construed as preempting State law or depriving State or local law enforcement of its responsibilities for investigating and prosecuting crimes involving the use of explosives.

## SECTION ANALYSIS

### TITLE I

*Section 101.*—The section adds a new chapter, 216, "Special Grand Jury," to title 18, United States Code. Section numbers that follow refer to sections as they appear in chapter 216 of title 18, United States Code.

Section 3331(a) requires, in addition to regular grand juries, the summoning of special grand juries. It also regulates the term of service of each such grand jury.

Special grand juries are required to be summoned at least once every 18 months in judicial districts containing more than 4 million inhabitants. In addition, the Attorney General is given discretion to have special grand juries summoned in other districts where warranted in his judgment by organized crime conditions.

The special grand jury will serve for 18 months, unless an order for its discharge is entered earlier by the court upon a determination of the special grand jury by a majority vote that its business has been completed. If at the end of the term, or an extension thereof, the district court determines that the business of the special grand jury has not been completed, the court may order the term extended for an additional 6 months. No extended special grand jury term may exceed 36 months, except as provided in section 3333(e) below.

The purpose of these provisions is to make available a sufficient number of grand juries in each judicial district to accommodate the general needs of the district and the special needs of the typically lengthy organized crime case. They are in accord with a recommendation of the President's Commission on Law Enforcement and Administration of Justice which recommended that at least one investigative grand jury should be impaneled annually in each jurisdiction that has major organized crime activity. (Report, "The Challenge of Crime in a Free Society," p. 200.)

Section 3331(b) provides that if a district court fails to extend the term of a special grand jury upon its application for an extension, or orders the discharge of a special grand jury before the completion of its business, the special grand jury, upon the affirmative vote of the majority of its members, may apply to the chief judge of the circuit for an order for the continuance of the term. The term of the special grand jury will continue while the appeal is pending. No special grand jury term extended by order of the chief judge of the circuit may exceed 36 months, except as provided in section 3333(e) below.

Section 3332 pertains to the powers and duties of the special grand juries.

Section 3332(a) makes it the duty of a special grand jury impaneled within any judicial district to inquire into Federal offenses alleged to have been committed within the district. As amended by the committee, alleged offenses may be brought to the attention of the special grand jury by the court of by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney who receives information of an alleged offense from any person must, if requested by the person, inform the grand jury of the alleged offense, the identity of the person who conveyed the information, and his own action or recommendation.

Section 3332(b) as amended, provides that whenever the district court determines that the volume of business of the special grand jury exceeds its capacity to discharge its obligations, it may order an additional special grand jury for the district to be impaneled.

Section 3333 provides for reports by special grand juries concerning organized criminal activities.

Section 3333(a) as amended, provides express authorization for a special grand jury impaneled by any district court, with the concurrence of a majority of its members, upon the completion of its term, or extensions thereof, to submit a report: (1) concerning misconduct or malfeasance or misfeasance in office by an appointed public officer or employee, which misconduct or malfeasance or misfeasance is not in itself criminal but which is related to organized criminal activity, as the basis for a recommendation of removal or disciplinary action; or (2) regarding organized crime conditions in the district. These provisions implement a proposal of the President's Commission on Law Enforcement and Administration of Justice (1967) which recommended that when a grand jury terminates, it should be permitted by law to file public reports regarding organized crime conditions in the community. (Report, The Challenge of Crime in a Free Society, page 200.)

Section 3333(b) in paragraphs (1) and (2) provides for review by the district court of special grand jury reports prior to the acceptance of such reports for filing as public records. The court must be satisfied after examining the report and the minutes of the special grand jury that it complies with the provision of subsection (a), that it is based upon facts revealed in the course of an investigation authorized by section 3332(a), and that it is supported by the proponderance of the evidence. When the report is submitted pursuant to subsection (a)(1), it will be accepted and filed as a public record only if the court is also satisfied that each person named in the report and any reasonable number of witnesses designated by him to the foreman of the special grand jury have been afforded an opportunity to testify before the special grand jury prior to the filing of the report. When the report is submitted pursuant to subsection (a)(2), the court must ascertain that it is not critical of an identified person.

Section 3333(c) provides a procedure for the acceptance and filing of special grand jury reports.

Paragraph (1) provides that reports under section 3333(a)(1) are not to be made public in any event until 31 days after service has been

made upon each person named in the report, and an answer has been filed or time for filing an answer has expired. (See paragraph (2) of this subsection below.) If an appeal is taken, publication is also to be withheld pending the expiration of all rights of review of the public officer or employee or the issuance of a court order accepting the report. Moreover, a report naming public officers or employees with not be filed until 30 days after the report has been delivered to the administrative officer or body having jurisdiction, responsibility or authority over the public officer or employee. (See paragraph (3) of this subsection below.) The court may issue appropriate orders to prevent unauthorized publication of a report, and unauthorized publication may be punished as contempt of court.

Paragraph (2) provides that an answer may be filed by a public officer or employee named in a special grand jury report within 20 days after service of the report upon him, subject to extension by the court upon a showing of good cause. Provision is made for such limited publication of the report as is necessary to permit the officer or employee to prepare an answer. Subject to the court's power to pare irrelevant, prejudicial, or scandalous material, the answer will be published as an appendix to the report.

Paragraph (3) provides for the delivery of the report for appropriate action to officials having jurisdiction, responsibility, or authority over each public officer named in a report upon the expiration of the perior during which the report must remain sealed pursuant to paragraph (1) above. The report will not be made public for an additional 30 days thereafter.

Section 3333(d) allows the court to delay making any report public if fair consideration of a pending criminal matter would be prejudiced. This gives additional protection to criminal defendants against prejudice, even where the report is publishable.

Section 3333(e) provides that if the court is not satisfied that the prerequisites of subsection (b) of section 3333 as to accuracy and opportunity to testify are met, it may seal the report subject to subsequent compliance with the requirements of subsection (b). The court may direct the taking of additional testimony where needed. The maximum term of the special grand jury may be extended by the district court for this limited purpose.

Section 3333(f) defines "public officer or employee" as an 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 thereof.

Section 3334 provides that regular grand jury provisions will apply to special grand juries to the extent that they are not inconsistent with sections 3331, 3332, and 3333 above. Thus, special grand juries will be, except as noted above, selected and otherwise regulated by the same rules and case law as regular grand juries.

*Section 102.*—Section 102(a)(d) amends section 3500, chapter 223, title 18, United States Code, the so-called Jencks Act, which regulates the pretrial disclosure of "statements" of Government witnesses. See *Jancks* v. *United States*, 353 U.S. 657 (1957). Section 3500 as amended, would include grand jury minutes within the definition of "statement."

## TITLE II

*Section 201.*—This section amends title 18, United States Code, by adding a new part V, entitled "Immunity of Witnesses." Section numbers that follow refer to sections as they appear in part V of title 18, United States Code.

Section 6001 contains definitions.

Subsection (1) defines "agency of the United States" to mean any executive department or military department and certain independent agencies. The agencies enumerated are those having immunity granting power under present law. Delegation of the immunity power within the agency is intended to follow present practice within the agency for the delegation of comparable powers.

Subsection (2) defines "other information" to include books, papers, and other materials. The phrase is used in contradistinction to oral testimony. It would include, for example, electronically stored information on computer tapes. Its scope is intended to be comprehensive, including all information given as testimony, but not orally. The phrase is also used in other sections of the proposed act. See title IV, proposed 1623(a). The meaning is intended to be the same throughout.

Subsection (3) defines "proceeding before an agency of the United States" to include proceedings characterized by compulsory process designed to elicit testimony or other information.

Subsection (4) defines "court of the United States" in all embracing terms.

Section 6002 contains the basic immunity from self-incrimination granting authorization. Proceedings before or ancillary to grand juries, courts, agencies of the United States, or before either House of Congress, joint committees, committees or subcommittees thereof are covered. A pretrial deposition hearing for example, would be ancillary to a court proceeding. (See Senate hearings at pp. 409, 411.) The witness must claim his privilege to receive immunity. The proposed provision is not an immunity bath. See *United States* v. *Monia*, 317 U.S. 424 (1943). Refusal to testify following communication of the immunity order warrants contempt proceedings. No oral testimony or other information secured from a witness can be used against him in a criminal proceeding. This statutory immunity is intended to be as broad as, but no broader than, the privilege against self-incrimination (See Senate hearings at p. 326.) It is designed to reflect the use-restriction immunity concept of *Murphy* v. *Waterfront Commission*, 378 U.S. 52 (1964) rather the transaction immunity concept of *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892). The witness is also protected against the use of evidence derivatively obtained. The statutory language is phrased in the terms of present law. See *Wong Sun* v. *United States*, 371 471, 488 (1963). The exception for perjury, false statements or other failure to comply with the order is probably unnecessary. See *United States* v. *Monia*, 317 U.S. 424 (1943). It is included out of caution to insure that such immunity is not given. See *United States* v. *Orta*, 253 F. 2d 312 (5th Cir.), *cert. denied*, 357 U.S. 905 (1958).

Section 6003 sets out the procedure to be followed in court and grand jury proceedings. Immunity orders may be obtained prospec-

tively. This sets aside the result that obtained in *In re McElrath*, 248 F. 2d 612 (D.C. Cir. 1957). The court's role in granting the order is merely to find the facts on which the order is predicated. The statutory language is "shall." Review that second judges prosecutive discretion is not authorized. Compare *In re Bart*, 304 F. 2d 631 (D.C. Cir. 1962). With the approval of the Attorney General, Deputy Attorney General, or an assistant attorney general who is designated by the Attorney General, the U.S. attorney may seek a court order. He must be satisfied that the testimony is needed in the public interest and the witness must have refused or be likely to refuse to testify, claiming self-incrimination.

Section 6004 sets out the procedure to be followed in administrative hearings. Unlike S. 30 as it passed the Senate, the Attorney General is given a veto power. The agencies' discretion to confer immunity is subject to the same test applicable to the Attorney General, noted above, that is, the testimony must be found necessary to the public interest and the individual must have refused or be likely to refuse to testify, pleading his privilege. The amended section eliminates the requirement of 10 days' notice to the Attorney General. It makes issuance of an immunity order depend upon the Attorney General's approval.

It is anticipated that, upon enactment of the bill, the Attorney General will take such steps as are necessary to insure that appropriate procedures are followed by each agency to designate who may issue immunity orders and in what circumstances they may be issued. It is assumed that the Attorney General will take such other steps as are necessary to insure that his office is familiar with the immunity-granting procedures of each agency, in order that issuance of such orders might be expedited and no orders will be issued without authorization.

Section 6005 sets out the procedure to be followed in congressional proceedings. A court order must be obtained based on an affirmative vote of a majority of members present in a proceeding before either House or a two-thirds vote of the members of the full committee in a proceeding before a committee. Ten days' notice must be given to the Attorney General prior to seeking the order. The court must defer issuance up to 20 days at the Attorney General's request. However, the Attorney General is not given veto power. Nor is the court given any power to withhold the order if the factual prerequisites are met.

*Section 202.*—This section makes a technical amendment to the Commodity Exchange Act.

*Section 203.*—This section repeals the immunity provision of the U.S. Grain Standards Act.

*Section 204.*—This section makes a conforming amendment to the act of June 25, 1947. It makes the language of the act reflect the use-restriction immunity concept, noted above. See proposed § 6005, above.

*Section 205.*—This section repeals the immunity provision of the Perishable Commodities Act.

*Section 206.*—This section repeals the immunity provision of the Cotton Research and Promotion Act.

*Section 207.*—This section makes a conforming amendment to the Bankruptcy Act of July 1, 1898.

*Section 208.*—This section repeals the immunity provision of the Federal Deposit Insurance Act.

*Section 209.*—This section makes a conforming amendment to the act of February 25, 1903.

*Section 210.*—This section repeals the immunity provision of the act of June 30, 1906.

*Section 211.*—This section repeals the immunity provision of the Federal Trade Commission Act. Repeal of this provision of the Federal Trade Commission Act accomplishes repeal of the immunity provisions of other acts that include this provision by incorporation by reference. *See e.g.*, 49 Stat. 649, 7 U.S.C. § 222; 48 Stat. 37, 7 U.S.C. § 610(h); 49 Stat. 977, 27 U.S.C. § 202(c). The same result is accomplished in other sections. *See, e.g.*, section 213 below, and 49 Stat. 33, 15 U.S.C. § 715(h).

*Section 212.*—This section repeals the immunity provision of the Securities Exchange Act of 1934.

*Section 213.*—This section repeals the immunity provision of the Securities Act of 1933.

*Section 214.*—This section repeals the immunity provision of the Public Utility Holding Company Act of 1935.

*Section 215.*—This section repeals the immunity provision of the Investment Company Act of 1940.

*Section 216.*—This section repeals the immunity provision of the Investment Advisers Act of 1940.

*Section 217.*—This section repeals the immunity provision of the China Trade Act.

*Section 218.*—This section repeals the immunity provision of the Natural Gas Act.

*Section 219.*—This section makes a conforming amendment to the act of July 12, 1960.

*Section 220.*—This section repeals the immunity provision of the Interstate Land Sales Full Disclosure Act.

*Section 221.*—This section repeals the immunity provision of the Federal Power Act.

*Section 222.*—This section repeals the immunity provision contained in 18 U.S.C. § 835.

*Section 223.*—This section repeals the immunity provision contained in 18 U.S.C. § 895.

*Section 224.*—The section repeals the immunity provision contained in 18 U.S.C. § 1406.

*Section 225.*—This section repeals the immunity provision contained in 18 U.S.C. § 1954.

*Section 226.*—This section makes a conforming amendment to 18 U.S.C. § 2424.

*Section 227.*—This section repeals 18 U.S.C. § 2514 4 years after the effective date of this act. (See Senate hearings at pp. 403–04.)

*Section 228.*—This section repeals 18 U.S.C. § 3486.

*Section 229.*—This section repeals the immunity provision of the Tariff Act of 1930.

*Section 230.*—This section makes a conforming amendment to the Federal Food, Drug and Cosmetic Act of 1938.

*Section 231.*—This section repeals the immunity provision in § 4824 of the Internal Revenue Act of 1954.

*Section 232.*—This section repeals the immunity provision in § 7493 of the Internal Revenue Code of 1954.

*Section 233.*—This section amends the table of sections by striking the item relating to § 7493 of the Internal Revenue Code of 1954.

*Section 234.*—This section repeals the immunity provision of the Labor Management Relations Act of 1947.

*Section 235.*—This section repeals the immunity provision of the act of August 21, 1935.

*Section 236.*—This section repeals the immunity provision of the Social Security Act.

*Section 237.*—This section repeals the immunity provision of the Atomic Energy Act of 1954.

*Section 238.*—This section repeals the immunity provision contained in the Railway Labor Act.

*Section 239.*—This section repeals the immunity provision of the Railroad Unemployment Insurance Act.

*Section 240.*—This section repeals the immunity provision of the Shipping Act of 1916.

*Section 241.*—This section repeals the immunity provision of the Merchant Marine Act of 1936.

*Section 242.*—This section repeals the immunity provision of the Communications Act of 1934.

*Section 243.*—This section repeals the immunity provisions of the Interstate Commerce Act.

*Section 244.*—This section repeals the immunity provision of the act of February 19, 1903.

*Section 245.*—This section repeals the immunity provision of the act of February 11, 1893.

*Section 246.*—This section repeals the immunity provision of the Federal Aviation Act of 1958.

*Section 247.*—This section repeals the immunity provision of the Internal Security Act of 1950.

*Section 248.*—This section repeals the immunity provision of the Second War Powers Act of 1942.

*Section 249.*—This section repeals the immunity provision of the act of June 28, 1940.

*Section 250.*—This section repeals the immunity provision of the Export Control Act of 1949.

*Section 251.*—This section repeals the immunity provision of the Tariff Act of 1930.

*Section 252.*—This section repeals the immunity provision found in § 23–545 of the District of Columbia Code.

*Section 253.*—This section repeals the immunity provision found in § 35–1346 of the District of Columbia Code.

*Section 254.*—This section repeals the immunity provision found in § 35–802 of the District of Columbia Code.

*Section 255.*—This section repeals the immunity provision found in § 35–1129 of the District of Columbia Code.

*Section 256.*—This section repeals the immunity provision found in § 22–2721 of the District of Columbia Code.

*Section 257.*—This section strikes out a reference to repealed § 22–2721 in § 22–2717 of the District of Columbia Code.

*Section 258.*—This section strikes out a reference to repealed § 22–2721 in § 22–2720 of the District of Columbia Code.

*Section 259.*—This section is a residuary repealer. All provisions of law dealing with granting of immunity inconsistent with the provisions of title II are repealed to that extent. Registration statutes which confer immunity from use of information furnished are not inconsistent with title II. Consequently, they are not disturbed by this section.

TITLE III

*Section 301.*—This section amends chapter 119, title 28, United States Code, by adding a new section, section 1826, entitled "Recalcitrant Witnesses."

Section 1826(a) becomes applicable to any proceeding before or ancillary to any court or grand jury in which a witness unjustifiably refuses to testify or produce other information. A proceeding "ancillary to" would include a pretrial deposition hearing. "Other information" is explicitly made to include books, papers, documents, records, recordings, and other materials. See title II, proposed section 6001(2) above. When such failure takes place before the court, or when such failure takes place before a grand jury and is then brought to the court's attention, the court is authorized summarily to confine the witness at a suitable place until the witness is willing to give such testimony or provide such information. The procedure is designed to codify present practice. See *Giancana* v. *United States*, 352 F. 2d 921 (7th Cir.), cert. denied, 382 U.S. 959 (1965). The confinement is civil, not criminal; its purpose is to secure the testimony through a sanction, not to punish the witness by imprisonment. As amended by the committee confinement is, therefore, limited to the life of the court proceeding or the term (including extensions) of the grand jury before which such refusal to comply with the court order occurred, but in no event shall confinement exceed 18 months.

Section 1826(b) as amended, provides that bail shall not be granted pending the determination of an appeal taken from an order of confinement, if it appears that the appeal is frivolous or taken for delay. Granting bail under such circumstances would undermine the purpose of civil confinement. This provision is designed to codify the present practice and to conform to the standard set forth in the Federal Rules of Criminal Procedure (rule 46(a)(2)). Disposition of the appeal is mandated as soon as practicable, but not more than 30 days from the filing.

*Section 302.*—This section would amend 18 U.S.C. § 1073, the Unlawful Flight Act.

The existing statute now provides a jurisdictional basis for Federal law enforcement personnel to deal with individuals who flee State jurisdictions in order to avoid criminal process or the duty to testify in criminal proceedings. As amended, the statute would extend to witnesses who flee in order to avoid testifying before State agencies authorized under State law to investigate criminal activities independently of criminal proceedings. Flight to avoid service of process or contempt proceedings for disobedience of process would be included. Under the section venue for a violation would lie in the district in which the avoidance of service or process or a contempt was committed.

## TITLE IV

*Section 401.*—This section amends chapter 79, title 18, United States Code, by adding a new section, section 16231 entitled "False declarations before grand jury or court."

Section 1623(a), as amended, provides that whoever knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, or recording, knowing that it contains any false material declaration, while under oath in any proceeding before or ancillary to any court or grand jury in the United States, will be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Section 1623(b) makes the provision applicable whether the conduct occurred within or without the United States. (See 18 U.S.C. 1621.)

Section 1623(c), as amended, provides that an indictment or information for violation of the section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them was necessarily false, need not specify which declaration was false if the indictment alleges that (1) each declaration was material to the point in question, and (2) each declaration was made within the period of the statute of limitations for the offense charged under the section. The subsection also provides that in a prosecution for violation of the section, the falsity of a declaration may be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in a proceeding before or ancillary to a court or grand jury. It will be an affirmative defense to an indictment made pursuant to this subsection that the defendant at the time he made each declaration believed the declaration to be true.

This subsection, as amended by the committee, therefore, provides specifically for the prosecution of a false declaration in the case of irreconcilable contradictory statements without the necessity of specifying which of the declarations is false. It requires that each declaration upon which the prosecution is based was material to a point in question in the proceeding in which it was made, and was made within the period of the statute of limitations for the offense charged. The latter restriction assures that the declarant cannot be indirectly punished for a false statement for which prosecution has been barred by lapse of time. It should be noted that the subsection relates solely to the establishment of the element of falsity in the offense which is delineated in subsection (a). Knowledge, falsity, and materiality are distinct elements of the offense which must be proved whether a prosecution under the section is based upon a single false statement or upon logically inconsistent statements.

Section 1623(d), as amended, provides that when in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits that it is false, the admission will bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that the falsity will be exposed. This re-

cantation or retraction provision is modeled upon a New York penal statute. (N.Y. Penal Law 210.25.) It serves as an inducement to the witness to give truthful testimony by permitting him voluntarily to correct a false statement without incurring the risk prosecution by doing so.

Section 1623(e) makes proof beyond a reasonable doubt under this section sufficient for conviction. It is specified that proof need not be made by any particular number of witnesses or by documentary or other particular type of evidence. This provision permits proof of the false declaration offense to be made by the same beyond a reasonable doubt standard required for conviction in prosecutions for all other criminal offenses.

## Title V

*Section 501.*—This section authorizes the Attorney General to provide security for government witnesses and potential government witnesses (and their families) in organized crime proceedings. The proceedings themselves need not be criminal. See title IX, proposed section 1964, below. It is necessary only that legal proceedings be involved and that the underlying factual situation embrace organized criminal activity.

*Section 502.*—This section gives the Attorney General broad authority to determine the particular facilities to be afforded and the length of time the facilities should be available. The section, as amended, authorizes the Attorney General to rent, purchase, modify, or remodel protected housing facilities and otherwise to provide for the health, safety, and welfare of witnesses, their families, and members of their households. Use of such facilities may continue as long as necessary for protection, and the grant of authority is sufficiently broad to allow for relocation. There is no requirement that anyone accept such an offer by the Attorney General.

*Section 503.*—This section defines government to include not only Federal but also State and local departments and agencies. It provides, in addition, that the Attorney General may condition his offer of facilities for the protection of State witnesses upon reimbursement by the State or local agency involved to the United States of the costs, in whole or in part, of maintaining and protecting the witnesses. The type of reimbursement contemplated is for out-of-pocket expenses of the Department of Justice. Should the facilities of military bases be used for protection, for example, reimbursement would be necessary only to the extent that identifiable separate costs were incurred in the care and maintenance of the witness or others. In instances where the State is able to provide guards or to make arrangements for medical care, the Attorney General could require the State to bear this portion of expenditures or provide personnel and make direct arrangements, whichever is the more practical course.

*Section 504.*—This section authorizes the appropriation from time to time of such funds as are necessary to carry out the provisions of this title.

*Section 601.*—This section amends chapter 223, title 18, United States Code, by adding a new section, section 3503, entitled "Depositions To Preserve Testimony." It will modify, in some respects, pres-

ent rule 15 of the Federal Rules of Criminal Procedure. Except where the contrary is indicated, however, the new provision is intended to reflect present practice under rule 15. Existing rules relating to appellate practice are, for example, retained. See *In re United States*, 348 F. 2d 624 (1st Cir. 1965); *Madison-Lewis Inc.* v. *MacMahon*, 299 F. 2d 256 (2d Cir. 1962). The section is applicable only to criminal proceedings; i.e., after an indictment or information has been filed.

While rule 15 of the Federal Rules of Criminal Procedure authorizes the taking of a deposition only upon motion of a defendant and of a witness committed for failure to give bail to appear to testify at a trial or hearing, section 3503(a) authorizes a court-ordered deposition at the behest, not only of the defendant or of a committed witness, but also of the Government. However, since the need for the deposing of Government witnesses appears to be most acute in cases involving organized criminal activity, the committee amended the section to provide that the Government may move for the taking of a deposition only if the Attorney General or his designee certifies that the legal proceeding is against a person who is believed to have participated in an organized criminal activity. The deposition may cover testimony, and the witness may be ordered to produce at the time for the taking of the deposition any designated book, paper, document, record, recording, or other material.

Except as to a witness committed for failure to give bail to insure his presence at a trial or hearing, the deposition may be taken only to preserve testimony of the movant's own witness. Discovery is not authorized and depositions should not be taken routinely. The phrase "Due to exceptional circumstances it is in the interest of justice" is intended to include every ground for authorizing a rule 15 deposition for a defendant now recognized.

Section 3503(b) requires the moving party to give reasonable written notice to every other party of the time and place for taking the deposition and the name and address of each person to be examined. The court is permitted for cause shown to change the time or place of the taking of the deposition. The section also requires that any defendant in custody be produced at the examination of the witness.

The failure of a defendant, absent good cause shown, to attend the taking of a deposition on notice and tender of expenses is a waiver of all rights to attend or to make objections based on his absence. The test of waiver is intended to be the same as for waiver of presence at trial. Voluntary absence from trial constitutes such waiver.

Section 3503(c) provides for the appointment of counsel for a defendant when necessary. As amended by the committee, payment of travel expenses of defendant and counsel is authorized whenever a deposition is taken at the instance of the Government or whenever a deposition is taken at the instance of a defendant who appears to be unable to bear the expense. The committee did not specifically authorize payment of expenses to indigent defendants when a deposition is taken upon motion of a material witness or a codefendant, since it understands that the court may defray such costs under the Criminal Justice Act.

Section 3503(d) provides that depositions shall be taken and filed as in civil actions. The right of cross-examination is guaranteed; see Federal Regulations Civil Procedure 30(c). Use of written interroga-

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tories must be based upon the request or other waiver of the defendant. As amended, the section makes clear that the Government's right to obtain a deposition shall not infringe the defendant's rights under the fifth amendment. The section also provides that the scope of examination and cross-examination shall be the same as would be allowed in the trial itself.

Section 3503(e) requires that the Government furnish the defendant, for his examination and use at the taking of the deposition, any statement of the witness in the possession of the Government which would have to be furnished the defendant if the witness were testifying at trial. The conditions of production would be the same in both instances. (See 18 U.S.C. § 3500.)

Section 3505(f) enunciates the circumstances under which a deposition may be used at a trial or hearing. The standards governing the taking of a deposition are not the same as the standards for using such deposition at trial. A lawfully obtained deposition may not, for example, be substituted, without more, for the testimony of a witness otherwise present, able and willing to testify as to the same matters at trial. Section 3503(f) provides for the use of a deposition, in whole or part, so far as otherwise admissible under the rules of evidence, when it appears that the witness is dead, outside of the United States (unless the absence was procured by the party offering the deposition), or disabled by sickness or infirmity, or where the party offering the deposition has been unable to procure the witness's attendance by subpena, or where the witness refuses at the trial or hearing to testify concerning subject matter covered by the deposition. Use of the deposition for impeachment purposes is also authorized. Section 3503(f) further provides that if one party offers only a part of a deposition in evidence, an adverse party may require other relevant parts to be offered and any party may offer other parts.

Section 3503(g) provides that objections to receiving a deposition or part thereof in evidence may be made as provided in civil actions.

## Title VII

### PART A

*Section 701.*—This section contains a special finding relating, as do the following sections of the title, to certain evidentiary problems created by electronic surveillance conducted by the Government prior to the enactment of Public Law 90–351 on June 19, 1968, which provided statutory authority for obtaining surveillance warrants in certain types of criminal investigations (18 U.S.C. 2516). In this section, the Congress finds that claims that evidence is inadmissible because obtained by the exploitation of unlawful acts (1) often cannot be reliably determined when such claims concern evidence of events occurring years after the allegedly unlawful act, and that (2) when the allegedly unlawful act has occurred more than 5 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

*Section 702.*—This section amends chapter 223, title 18, United States Code, by adding a new section, section 3504, entitled, "Litigation concerning sources of evidence."

Section 3504(a) establishes procedures for the disposition of claims based upon allegations that evidence is the primary product of an unlawful act or has been derived from the "exploitation" of an unlawful act. See *Wong Sun* v. *United States*, 371 U.S. 471 (1963). The term "unlawful act," as used in the section, is defined to mean the use of any electronic, mechanical, or other device as defined in section 2510(5) of title 18, United States Code (see section 3504(b)) in violation of the Constitution or laws of the United States as amended. This section applies only to trials and other proceedings conducted under authority of the United States.

Paragraph (1) provides that upon a claim by an aggrieved party that evidence is inadmissible because it is the primary product of an unlawful act, or because it was obtained by the exploitation of an unlawful act, the opponent of the claim must affirm or deny the occurrence of the alleged unlawful act. Under this provision, upon a charge by the defendant with standing to challenge the alleged unlawful conduct, the Government would be required to affirm or deny that an unlawful act involving electronic surveillance had in fact occurred. If such an unlawful act had in fact occurred, paragraph (2), below, will govern disclosure of the contents of the electronic surveillance records or transcripts to the defendant and his counsel, unless paragraph (3) applies.

Paragraph (2) as amended, provides that disclosure of information for a determination of whether evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, will not be required unless the information may be relevant to a pending claim of inadmissibility. Under this provision, the Government will not be required to disclose for the inspection of the claimant and his counsel electronic surveillance transcripts which may be irrelevant to a claim of admissibility. Application of this paragraph will ordinarily require in camera inspection of such information.

Under paragraph (2) disclosure of the information shall be required to be made to a defendant who has demonstrated the illegality of the electronic surveillance (occurring prior to June 19, 1968) and his standing where such information is or "may be" relevant to a claim of inadmissibility. In cases where the electronic surveillance occurred on or after June 19, 1968, disclosure is mandatory where illegality and standing are demonstrated. The provision thus alters the procedure announced in *Alderman* v. *United States*, 394 U.S. 165 (1968) with respect to "unlawful acts" committed prior to June 19, 1968. The provision is designed primarily to protect the lives of informants, Government agents, and others; to avoid unjustified harm to the reputations of the third persons; and to prevent compromising of the national security—purposes for which the Department of Justice urges protective orders have not been found adequate.

Paragraph (3) provides that no claim will be considered that evidence of an event is inadmissible on the ground that the evidence was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, if the event occurred more than 5 years after the alleged unlawful act. Under this provision, a claim that evidence was obtained by exploitation of an allegedly unlawful act involving electronic surveillance prior to June 19, 1968 would be barried if the event which the Government seeks to establish did not occur until more than 5 years after the act.

The provision amounts to a legislation directive that as a matter of law no evidence of an event can be found tainted by an alleged illegality anteceding the event by such a prolonged period of time. The provision does not apply to evidence directly procured from an allegedly unlawful act.

Section 3504(b) defines "unlawful act," as used in the section, to mean use of any electronic, mechanical, or other device (as defined in section 2510(5) of title 18, U.S. Code) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto.

*Section 703.*—This section establishes that the title will apply to all proceedings occurring after the date of its enactment, regardless of when they may have been initiated. It specifically provides, however, that paragraph (3) of section 3504(a), above, will not apply to any proceeding in which all the information to be relied upon to establish inadmissibility of evidence was possessed by the claimant and adduced in the proceeding prior to enactment of the title.

## TITLE VIII

### PART A

*Section 801.*—This section as amended, contains a special finding by the Congress that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities of interstate commerce.

### PART B

*Section 802.*—This section amends chapter 73 of title 18, United States Code, by adding a new section, section 1511, entitled "Obstruction of State or local law enforcement."

Section 1511(a) provides that it shall be unlawful for two or more persons to conspire 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 conspiracy; (2) one or more of such persons is an official or employee of such State or political subdivision; and (3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.

The officials covered by the provision are not limited to officials responsible for the enforcement of the criminal laws of a State or political subdivision—since officials acting in a wide variety of capacities may participate in conspiracies to obstruct State and local gambling

laws. The section applies generally to persons who participate in the ownership, management, or conduct of an illegal gambling business. The term "conducts" refers both to high level bosses and street level employees. It does not include the player in an illegal game of chance, nor the person who participates in an illegal gambling activity by placing a bet.

Section 1511(b) as amended, contains definitions of the terms used in the section:

Paragraph (1) defines "illegal gambling business" to mean a gambling business which: (*i*) is a violation of the law of a State or political subdivision in which it is conducted; (*ii*) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of the business; and (*iii*) has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross revenue of $2,000 in any single day.

Paragraph 2 defines "gambling" so that it includes, but is not limited to, pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita, or numbers games, or selling chances therein.

Paragraph 3 defines "State" to include the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories and possessions.

The intent of section 1511 and section 1955, below, is not to bring all illegal gambling activity within the control of the Federal Government, but to deal only with illegal gambling activities of major proportions. It is anticipated that cases in which their standards can be met will ordinarily involve business-type gambling operations of considerably greater magnitude than simply meet the minimum definitions. The provisions of this title do not apply to gambling that is sporadic or of insignificant monetary proportions. It is intended to reach only those persons who prey systematically upon our citizens and whose syndicated operations are so continuous and so substantial as to be of national concern, and those corrupt State and local officials who make it possible for them to function.

Section 1511(c) excludes from the operation of the section games of chance conducted by tax exempt organizations where no part of the gross receipts inures to the benefit of an individual.

Section 1511(d) provides for a fine of not more than $20,000 or imprisonment of not more than 5 years, or both, for a violation of the section.

PART C

*Section 803.*—This section amends chapter 95, title 18, United States Code, by adding a new section, section 1955, entitled "Prohibition of illegal gambling businesses."

Section 1955(a) as amended, provides that whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than 5 years or both.

Section 1955(b) as amended, contains definitions of the terms used in the section.

Paragraph (1) defines "illegal gambling business" to mean a gambling business which: (*i*) is a violation of the law of a State or political subdivision in which it is conducted; (*ii*) involves five or more per-

sons who conduct, finance, manage, supervise, direct or own all or part of the business; and (*iii*) has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross revenue of $2,000 in any single day.

Paragraph (2) defines "gambling" so that it includes, but is not limited to, pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita, or numbers games, or selling chances therein.

Paragraph (3) defines "State" to include the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories and possessions.

The above provisions parallel the provisions of section 1511(b), above.

Section 1955(c) as amended, provides that if five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business, and the business operates for two or more successive days, then for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

This provision establishes a "probable cause" finding to facilitate the enforcement of the provisions of the title. The finding goes solely to probable cause for warrants for arrests, interceptions or searches and seizures and cannot be utilized to establish an element of proof of the offense at trial.

Section 1955(d) provides that any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States.

Section 1955(e) excludes from the operation of the provision games of chance conducted by tax-exempt organizations where no part of the gross receipts inures to the benefit of any individual. See proposed section 2511(c) above.

PART D

*Section 804.*—Subsection (a) of this section establishes 2 years after the effective date of this title a Commission on the Review of the National Policy Toward Gambling.

Subsection (b) of this section establishes the composition of the Commission at 15 members, four appointed by the President of the Senate, two of whom shall be members of the majority party and two of whom shall be members of the minority party; four appointed by the Speaker of the House of Representatives, two of whom shall be members of the majority party, two of whom shall be members of the minority party; and seven other members appointed by the President of the United States.

Subsection (c) of this section authorizes the President to designate a chairman and provides that the filling of vacancies shall be done in the manner in which the original appointment was made.

Subsection (d) of this section provides that eight members of the Commission shall constitute a quorum.

Section 805.—Subsection (a) of this section provides that it shall

be the duty of the Commission to conduct a comprehensive review of existing Federal, State, and local policy in reference to gambling and formulate such changes as the Commission may deem appropriate. Such study shall include (1) a review of the effectiveness of existing policy, and (2) preparation of a review of existing statutes of the United States.

Subsection (b) of this section authorizes the Commission to make such interim reports as it deems advisable and a final report to the President and to the Congress within the 4-year period following the effective date of the establishment of the Commission.

Subsection (c) of this section provides that the Commission shall cease to exist 60 days after the submission of its final report.

Section 806.—Subsection (a) of this section authorizes the Commission or a subcommittee to hold hearings, administer oaths, and require testimony by subpoena.

Subsection (b) of this section authorizes contempt proceedings before U.S. district courts to enforce orders of the Commission.

Subsection (c) provides that the Commission shall be an "agency of the United States" for the purposes of granting immunity. See title II, proposed section 6001, above.

Subsection (d) of this section authorizes other governmental agencies to cooperate in the furnishing of statistical and other data to the Commission.

Section 807.—Subsection (a) of this section provides that Commission members who are Members of Congress or a member of the Federal judiciary shall serve without additional compensation but shall be reimbursed for travel and other expenses.

Subsection (b) of this section provides that Commission members who are not Members of Congress or the Federal judiciary shall receive $100 per diem and be reimbursed for travel, subsistence, and other expenses.

*Section 808.*—Subsection (a) of this section provides that the chairman shall have power to appoint and fix compensation of an executive director and such other personnel as he deems necessary and procure the temporary and intermittent services of consultants at a rate not to exceed $100 per day.

Subsection (b) of this section provides that the chairman shall include under his appointments individuals determined to be competent social scientists, lawyers and law enforcement officers.

*Section 809.*—This section provides that there may be appropriated to the Commission such sums as may be necessary to carry this title into effect.

PART E

*Section 810.*—This section amends 18 U.S.C., 2516 by including within the list of specific offenses for which the interception of wire or oral communications under court order is permitted the proposed sections 1511 and 1955.

*Section 811.*—This section makes explicit the intent of Congress that no provision of this title shall be understood to preempt the field of gambling regulation or to relieve any person of any obligation imposed by any law of any State or possession or a political subdivision.

## TITLE IX

*Section 901.*—This section amends title 18, United States Code, by adding a new chapter, entitled "Chapter 96—Racketeer Influenced and Corrupt Organizations" containing sections 1961 through 1968. Section numbers that follow refer to sections as they appear in chapter 96, title 18, United States Code.

Section 1961 contains definitions.

Subsection (1) defines "racketeering activity" to include murder, kidnaping, gambling, arson, robbery, bribery, extortion, narcotic violations, counterfeiting, usury, mail, bankruptcy, wire and securities fraud, and obstruction of justice. State offenses are included by generic designation. Federal offenses are included by specific reference. The term "racketeering activity" is a key statutory term. Under section 1962 below, racketeering activity is one of three prerequisites to commission of an offense. If there is no racketeering activity, or no collection of an "unlawful debt" there can be no violation of the provisions of this title.

Subsection (2) defines "State" comprehensively.

Subsection (3) defines "person" broadly to include any individual or organization that may hold any property interest. Any such "person" who violates the prohibitions of section 1962 is subject to the sanctions of sections 1963 and 1964, below—including forfeiture, divestiture, dissolution, and prohibition of future holding of interest.

Subsection (4) defines "enterprise" to include associations in fact, as well as legally recognized associative entities. Thus, infiltration of any associative group by any individual or group capable of holding a property interest can be reached.

Subsection (5) defines "pattern of racketeering activity" to require at least two acts of racketeering activity, as defined above. One act in the pattern must be engaged in after the effective date of the legislation. As amended by the committee, the two acts necessary to establish the pattern must occur within a period of 10 years, excluding any period the perpetrator was in confinement.

Subsection (6) as amended defines "unlawful debt" to include debts that are incurred either in connection with an illegal gambling business or an illegal usury business where the rate is at least twice the enforceable rate. This includes "loan-sharking" as a racketeering activity in connection with the acquisition or conduct of a legitimate business.

Subsection (7) defines "racketeering investigator" to mean any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter.

Subsection (8) defines "racketeering investigation" to mean any inquiry conducted by a racketeering investigator to determine if there has been any violation of this chapter or any final order, judgment, or other decree of any court duly entered in any case or proceeding arising under this chapter.

Subsection (9) defines "documentary material" to include any books, papers, records, recordings, and other materials. See title II, section 6001(2).

Subsection (10) defines "Attorney General" to include the Attorney General of the United States, the Deputy Attorney General, or any

department or agency employee designated by the Attorney General or Deputy Attorney General to carry out the powers conferred upon the Attorney General under this chapter.

Section 1962 establishes a threefold prohibition aimed at stopping the infiltration of racketeers into legitimate organizations.

Subsection (a) makes it unlawful to invest funds derived from a pattern of racketeering activity, as defined in section 1961 (1) and (5), or collection of unlawful debt as defined in section 1961 (6), in any enterprise engaged in interstate or foreign commerce. The funds must have been derived by the investing party from activity in which he participated as a principal. An exception has been provided for the purchase on the open market of less than 1 percent of a company's securities where there is no degree of control in law or in fact to the investor.

Subsection (b) prohibits acquisition or maintenance of an interprise through the proscribed pattern of racketeering activity or collection of unlawful debt. There is no 1 percent limitation here as in subsection (*a*) because (a) focuses on legitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition through the proscribed pattern of activity or collection of debt. Consequently, any acquisition meeting the test of subsection (b) is prohibited without exception.

Subsection (c) prohibits the conduct of the enterprise through the prohibited pattern of activity or collection of debt. Again, the prohibition is without exception.

Subsection (d) makes conspiracy to violate (a), (b), or (c) equally subject to the sanctions of sections 1963 and 1964, below.

Section 1963 provides criminal penalties—including criminal forfeitures—for violation of section 1962. The maximum penalty authorized under subsection (a) is a $25,000 fine and imprisonment for 20 years. But, in addition, violations shall be punished by forfeiture to the United States of all property and interests, as broadly described, which are related to the violations.

Subsection (b) provides for the entering of restraining orders and prohibitions and the requiring of performance bonds to prevent preconviction transfers of property to defeat the purposes of the new chapter.

Subsection (c) provides rules governing the forfeited property. In general, it incorporates by reference the long-tested customs law provisions. It adds a provision that those rights which are not exercisable or usable by the United States shall expire. The United States is required to dispose of property as promptly as is practical, making due provision for the rights of innocent persons.

Section 1964 provides civil remedies for the violation of section 1962, above.

Subsection (a) contains broad provisions to allow for reform of corrupted organizations. Although certain remedies are set out, the list is not meant to be exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons.

Subsection (b) allows courts to require performance bonds and to enter restraining orders ot prevent frustration of the aims of the

chapter. See proposed section 1963(b) above. Actions are to be brought by the Attorney General, as defined in section 1961(10). The court is directed to expedite actions hereunder.

Subsection (c) provides for the recovery of treble damages by any person injured in his business or property by reason of the violation of section 1962.

Subsection (d) provides specifically for collateral estoppel between final judgments or decrees rendered in criminal proceedings brought by the United States under the chapter and subsequent civil actions instituted by the United States.

Section 1965 contains broad provisions regarding venue and process, which are modeled on present antitrust legislation.

Subsection (a) establishes venue for civil proceedings under the chapter wherever the defendant resides, is found, has an agent, or transacts his affairs, without regard to the amount in controversy.

Subsection (b) provides nationwide service of process on parties, if the ends of justice require it, in actions under section 1964.

Subsection (c) provides nationwide subpena power for witnesses in civil or criminal proceedings instituted under the chapter. A court order on good cause shown is required for issuance if the witness in a civil action resides in another district and at a place more than 100 miles from the court.

Subsection (d) provides that all other process in actions under the chapter may be served wherever the person resides, is found, has an agent, or transacts his affairs.

Section 1966 allows the Attorney General, as defined in section 1961(10), to obtain the maximum practical expedition of those cases of general public importance.

Section 1967, as amended, provides that ancillary proceedings and civil actions under the chapter may be open or closed to the public at the discretion of the courts.

Section 1968 provides for civil investigative demands as a civil counterpart of grand jury process. The provisions of this section are adapted from the Antitrust Civil Process Act, 76 Stat. 548, 15 U.S.C., 1311 et seq., with certain variations. A principal variation is that "person" is defined (in sec. 1961 (3)) to include natural persons. "Attorney General" also has a broader meaning than in antitrust law (see sec. 1961 (10) above).

Subsection (a) authorizes the Attorney General, in the course of a racketeering investigation and prior to the institution of any civil or criminal process, to serve a civil investigative demand upon any person or enterprise believed to have material relevant to such investigation. Unlike the comparable situation in the antitrust laws, the person served need not himself be under investigation before documents relevant to the investigation may be obtained from him.

Subsection (b) requires that the demand describe the nature of the conduct and the violation being investigated, fairly identify the documents being demanded, set an immediate or reasonable future date for compliance, and identify the custodian to whom the material is to be made available.

Subsection (c) specifies that the demand may not set forth requirements which would be unreasonable, or seek information which would privileged from disclosure, if contained in a subpena duces tecum before a grand jury.

Subsection (d) permits service of the demand by delivery to the person specified or to an authorized business agent, by delivery to the person's principal place of business, or by registered or certified mail to the person's principal place of business.

Subsection (e) makes a verified return prima facie proof of service.

Subsection (f)(1) provides that the Attorney General may appoint a racketeering investigator to serve as a racketeer document custodian, and may appoint such deputies as are necessary.

Subsection (f)(2) requires that the person served make the designated material available for inspection, copying, and reproduction by the custodian at the person's principal place of business and at the time specified, or at such other place and time as may be agreed upon.

Subsection (f)(3) charges the custodian with responsibility for the produced material, permits him to copy it for official use, and precludes him from making the material available to anyone other than the Attorney General, the person providing the material, or the person's authorized representative.

Subsection (f)(4) provides that the custodian may make produced material available to any attorney for the Government for use in a court or grand jury proceeding involving racketeering activities.

Subsection (f)(5) provides that, upon the completion of the racketeering investigation and any case or proceeding arising therefrom, the custodian shall return all material, other than that in control of a court or grand jury, to the person producing it.

Subsection (f)(6) provides that if after a reasonable time no case or proceeding is instituted as a result of the racketeering investigation, the material produced shall be returned upon written demand.

Subsection (g) provides that when any person fails to comply with a civil investigative demand, the Attorney General may petition for a court order for the enforcement of the demand.

Subsection (h) permits a person served with a demand to petition for an court order modifying or setting aside the demand. The time for complying with the demand will not run during pendency of the petition.

Subsection (i) permits a person served with a demand to petition for a court order compelling the custodian to perform the duties imposed upon him by this section.

Subsection (j) authorizes appropriate district courts to hear and determine matters presented them under this section. The comparable provision in the antitrust laws (15 U.S.C. 1314(d)) provides that any disobedience of a final order entered under the section shall be punished as a contempt of court, and further provides that any final order shall be subject to appeal. Subsection (j) omits any reference to the contempt power on the ground that is redundant, and omits any reference to appealability because the committee believes that appeals should be limited, in general, as under existing law. This subsection in the antitrust laws (15 U.S.C. 1314(e)) which refers to the applicability of the Federal Rules of Civil Procedure, is unnecessary since rule 1 makes the civil rules applicable in this situation.

*Section 902.*—This section amends 18 U.S.C. 2516 by including within the list of specific offenses for which the interception of wire or oral communications under court order is permitted, the activities penalized by section 1963, above. It also amends 18 U.S.C. 2517 to

permit evidence obtained through the interception of wire or oral communications under court order to be employed in civil actions.

*Section 903.*—This section amends 18 U.S.C. 1505 to make obstruction of a civil investigative demand under section 1968 a crime.

*Section 904.*—This section provides that the provisions of this title shall be liberally construed to effectuate its remedial purposes, that nothing in this title shall supersede any provision of Federal or State law imposing criminal penalties or affording civil remedies in addition to those provided for in this title, and that the title shall not limit certain authority of attorneys representing the United States.

## Title X

*Section 1001.*—This section amends chapter 227, title 18, United States Code, by adding four new sections, numbered 3575 through 3578. Section numbers that follow refer to sections as they appear in chapter 227 of title 18, United States Code.

Section 3575 establishes authority, standards and procedures for imposition of extended terms of imprisonment on dangerous special offenders.

Subsection (a) provides that 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 21 years of age has reason to believe that the defendant is a dangerous special offender (see proposed subsections (e) and (f) below), the attorney, a reasonable time before trial or acceptance of plea, may sign and may thereafter amend a notice (1) specifying that the defendant is a dangerous special offender who upon conviction is subject to the imposition of a sentence under subsection (b) below, and (2) setting out with particularity the reasons why he believes the defendant to be a dangerous special offender. In order to assure that the filing of the notice will not prejudice the jury or the court against the defendant before the determination of his guilt or innocence, the allegation shall not be disclosed to the jury, and without the consent of the parties shall not be communicated to the presiding judge before any plea of nolo contendere or verdict or finding of guilty. If a judge of the court in which the notice is filed finds that the filing of the notice as a public record may prejudice fair consideration of the pending criminal case, it may order the notice sealed against public inspection or production upon subpoena during the pendency of the proceeding. However, the notice will be subject to inspection by the defendant and his counsel.

Subsection (b) provides that upon any plea or determination of guilt the court shall give 10 days' notice to the Government and the defendant, and shall then hold a presentence hearing, sitting without a jury. The United States and counsel for the defendant, or the defendant if he is not represented by counsel, may inspect the presetence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification of the facts recited therein. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, confidential sources of information, and material previously disclosed in open court. However, a court withholding all

or any part of a presentence report must advise the parties of its action and must place its reasons upon the record. The court may require parties inspecting a presentence report to give notice of any part which will be controverted at the hearing. In connection with the hearing, the United States and the defendant have rights to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear. A duly authenticated copy of a former judgment shall be prima facie evidence of such former judgment. If it appears by a preponderance of the information, including information submitted at trial or the 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 25 years and not disproportionate in severity to the maximum term otherwise authorized by law for the felony of which he stands convicted. Compare the American Bar Association Standards Relating To Sentencing Alternatives and Procedures, 3.1(c)(i) and 3.3(a). Otherwise it shall sentence the defendant in accordance with the penalties prescribed for such felony, absent such aggravating factors. The findings of the court, including an identification of the information relied upon, and its reasons, shall be placed in the record.

Subsection (c) provides that this section shall not prevent the imposition and execution of a sentence of death, or the imposition of a life term or a term in excess of 25 years.

Subsection (d) provides that the court shall not impose upon a dangerous special offender a sentence less than any mandatory minimum. Section 3575 is not to be construed as in itself creating a mandatory minimum penalty.

Subsection (e) sets out the meanings of "special offender."

Paragraph (1) defines a special offender to include a defendant who has previously been convicted of two felonies committed on different occasions and who is convicted of a third felony committed on an occasion different from the first two, if he has been imprisoned following one of the prior convictions, and at the time of the commission of the third felony less than 5 years had elapsed since the commission of the last prior felony or the defendant's release from imprisonment for one of the prior convictions. Compare the American Bar Association Standards Relating to Sentencing Alternatives and Procedures, 3.3(b)(i). This provision is designed to deal with the habitual offender. Any proceeding which results in a disposition traditionally considered a "conviction," including a court-martial or a proceeding under chapter 402 of title 18 not set aside under 18 U.S.C. sec. 5021, is considered a "conviction." Juvenile proceedings under chapter 403 of title 18 are not included.

Paragraph (2) defines special offender to include a defendant who is convicted of a felony committed 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 which manifested special skill or expertise. This provision is designed to deal with the professional offender, who may neither be a convicted recidivist nor play a leadership role in organized crime.

Paragraph (3) defines "special offender" to include a defendant who is convicted of a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any

jurisdiction, or who is convicted of a felony which was in furtherance of such a conspiracy, and who did, or agreed that he would, act in a specified leadership position or use force or bribery as all or part of such conduct. This provision is designed to deal primarily with the organized crime offender. Those who personally play or are to play leadership roles or are the enforcers or executors of violence are singled out for special sentencing treatment. Those who give and those who receive bribes are also covered.

For the purposes of paragraph (1) of subsection (e), a conviction shown on direct or collateral review or at the hearing to be invalid, or a conviction for which the defendant has been pardoned on the ground of innocence, is to be disregarded.

For the purposes of paragraph (2) of subsection (e), it may be shown that the defendant had under his own name or control income or property not explained as derived from a course other than criminal conduct. A "substantial source" of income, for the purpose of proving a defendant to be within the category therein delineated, is deemed to be a source which yields in excess of the amount for a year or more of income which a workingman receives under the Fair Labor Standards Act (act of 1938, 52 Stat. 1602, as amended, 80 Stat. 838, and as hereafter amended) based upon a 40-hour week and a 50-week year, and which for the same period provides the defendant with an income exceeding 50 percent of his declared adjusted gross income under section 62 of the Internal Revenue Act of 1954 (68A Stat. 17, as amended, 83 Stat. 655, and as hereafter amended). "Special skill or expertise" in criminal conduct, for purposes of the paragraph, is defined to include unusual knowledge, judgment, or ability (including manual dexterity) facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution, or concealment of criminal conduct, and the enlistment of accomplices, escape from apprehension or detection, and the disposition of the fruits of criminal conduct. The foregoing provisions are designed to define as explicitly as practicable the standards by which a defendant may fairly be considered a professional criminal for special sentencing purposes, and, as to the "substantial" nature of the income from criminal sources, to provide an objective and convenient measure of proof. Both factors tend to establish "professionalism" and, therefore, likelihood of further criminal conduct.

For the purposes of both paragraphs (2) and (3) of subsection (e), criminal conduct forms a "pattern" if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated events. Elements of the pattern may or may not have been committed after the enactment of this section, may or may not have been the subject of prior judicial proceedings, and may or may not have constituted conduct for which prosecution is barred by the statute of limitations.

Subsection (f) provides that a defendant is "dangerous" if confinement longer than that ordinarily provided is required to protect the public from further crime by him. "Dangerous" is not limited to a particular type of offense.

Subsection (g) provides that the time for appealing the conviction of one sentenced after special offender proceedings is measured from

the imposition of the original sentence. Delay in appealing the conviction until either party's appeal of the sentence is exhausted, or until a new sentence is imposed after review of the sentence, is not permitted.

Section 3576 provides that the Government or the defendant may seek court of appeals review with respect to the imposition, or subsequent correction or reduction, of the sentence imposed following a special hearing. Any review taken by the Government must be taken at least 5 days before expiration of the time for taking a review or appeal by the defendant and must be diligently prosecuted. The time for taking a review may be extended by up to 30 days. Any extension of the Government's time must be granted before the ordinary time expires and must be accompanied by an equal period of extension for the defendant. The taking of a review of the sentence by the United States will be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant, so that the case will be before the court of appeals for all purposes. The scope of the review of the sentence includes review of whether the procedure was lawful, whether the findings were clearly erroneous, and whether the discretion of the sentencing court was abused.

The court of appeals, after considering the entire record, may affirm the sentence, impose or direct the imposition of any sentence that the sentencing court could have imposed, or remand for further proceedings and imposition of sentence, except that a sentence may be made more severe only on review taken by the Government and after hearing. Failure of the Government to take a review of the original sentence precludes any later imposition of a sentence more severe than that originally imposed. Upon the subsequent taking of a review by the Government after a correction or reduction of the sentence, the corrected or reduced sentence may be increased by the court of appeals only to the limit of the original sentence. Withdrawal or dismissal of review taken by the Government forecloses imposition of a more severe sentence, but otherwise does not remove the case from the consideration of the court of appeals. A review by the Government may be dismissed for abuse of the right to take such review. In any case in which a sentence review is taken either by a defendant or by the Government, the court of appeals must state in writing the reasons for its disposition of the review.

Section 3577 provides that no limitation shall be placed on the information which a court may receive and consider for the purpose of imposing an appropriate sentence. See *Williams* v. *New York*, 337 U.S. 241 (1949).

Section 3578 in subsection (a) authorizes the Attorney General to establish in the Department of Justice a repository to retain records of convictions and records of determinations of the validity of convictions.

Subsection (b) provides that following the establishment of the repository, all courts of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories or possessions, or political subdivisions, and the departments or agencies thereof, will send to the repository certifications of convictions for offenses punishable by death or imprisonment for more than 1 year, and certifications

of judicial determinations of the validity of such convictions upon collateral review, in a form to be prescribed by the Attorney General.

Subsection (c) provides that the records maintained in the repository will not be public records, but certified copies will be made available for specified law enforcement purposes. Paragraph (1) makes the records available upon request to Federal courts or law enforcement or corrections officers. Paragraph (2) makes records available upon request to the State courts and law enforcement officers contingent upon the State's participation in the certified records repository plan. Paragraph (3) makes certified copies of conviction records prima facie evidence in Federal courts to establish that the convictions occurred, and to determine whether they have been judicially found invalid upon collateral review.

Subsection (d) provides for public notice by the Attorney General to afford interested parties the opportunity for a hearing, prior to his prescribing regulations under the section.

*Section 1002.*—This section amends 18 U.S.C. § 3148 to extend to defendants awaiting special sentencing review the bail provision now applicable to persons charged with capital offenses or convicted and awaiting sentence or consideration of appeal or certiorari.

## TITLE XI

*Section 1101.*—This section declares that it is the purpose of this title to protect interstate and foreign commerce by reducing the hazards to persons and property associated with the misuse of explosives without placing unnecessary restrictions on lawful uses of explosives.

*Section 1102.*—This section amends title 18, United States Code, by adding a new chapter 40 with section numbers 841 through 848 governing the importation, manufacture, distribution and storage of explosive materials. The section numbers which follow refer to the sections as they appear in chapter 40, title 18, United States Code.

*Section 841 provides definitions*

Sections 841 (a) and (b) define the terms "person" and "interstate or foreign commerce" respectively in the same manner as they are defined in the Gun Control Act of 1968.

Section 841 (c) defines the term "explosive materials" to include explosives, blasting agents, and detonators. The terms "explosives," "blasting agents," and "detonators" are then defined in sections 841 (d) through (f), respectively.

Section 841 (d) defines the term "explosive," except for the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844. The term means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary of the Treasury is directed to publish in the Federal Register, at least annually, a list of these and any additional exlosives which he determines to be within the coverage of the chapter. It should be noted that the term "explosives" does not include fertilizer and gasoline, nor is the definition intended to include propellant ac-

tuated devices or propellant actuated industrial tools used for their intended purposes.

For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844, the term "explosive" has a somewhat different meaning as set forth in section 844(j).

Section 841(e) defines the term "blasting agent" to mean any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

Section 841(f) defines the term "detonator" to means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

Section 841(g) defines the term "importer" in the same manner as under the Gun Control Act of 1968.

Section 841(h) defines the term "manufacturer" not only as a person who engages in the business of manufacturing explosive materials for the purpose of sale or other distribution, but also for his own use. Thus, the manufacturing of explosive materials for commercial on site use is covered by this chapter.

Section 841(i) defines the term "dealer" in the same manner as under the Gun Control Act of 1968.

Section 841(j) defines the term "permittee" as any user of explosive materials for lawful purposes who has obtained a Federal permit under this chapter to purchase explosive materials.

Section 841(k) defines the term "Secretary" to mean the Secretary of the Treasury or his delegate to eliminate the necessity of repeating the term "Secretary of the Treasury or his delegate" in several provisions in this chapter.

Section 841(l) defines the term "crime punishable by imprisonment for a term exceeding 1 year" in the same manner as under the Gun Control Act of 1968.

Section 841(m) defines the term "licensee" as any importer, manufacturer, or dealer licensed under the provisions of this chapter.

Section 841(n) defines the term "distribute" to include selling, issuing, giving, transfering, or otherwise disposing of. This permits the shorthand reference to all of these words by the use of the term "distribute" throughout this chapter.

*Section 842 enumerates unlawful acts under the regulatory provisions of this chapter*

*Section 842(a)(1)*.—This paragraph proscribes any person from engaging in the business of importing, manufacturing, or dealing in explosive materials without a license. Thus, it makes it clear that a license is required for an intrastate business as well as for an interstate business.

*Section 842(a)(2)*.—This paragraph proscribes the making of a knowingly false oral or written statement or deceitful practice, intended or likely to deceive: (1) for the purpose of obtaining explosive materials from a licensee; (2) for the purpose of obtaining a license or permit under this chapter from the Secretary; and (3) for the

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purpose of obtaining relief from the Secretary pursuant to section 845(b) from a disability imposed under the provisions of this chapter.

*Section 842(a)(3)(A)*.—This paragraph contains one of the principal provisions of the chapter—the barring of the interstate shipment, transportation, or receipt of explosive materials by any person other than a licensee or permittee, except that a person, who lawfully purchases explosive materials from a licensee in a State contiguous to the purchaser's State of residence, may ship or transport such explosive materials to his State of residence and receive them if the purchaser's State of residence permits such transportation, shipment, or receipt by law.

*Section 842(a)(3)(B)*.—This paragraph prohibits persons, other than licensees or permittees, from distributing explosive materials to persons, other than licensees or permittees, who they know or have reason to believe reside in a State other than that in which the distributor resides. Thus, this paragraph is designed to prevent interstate distribution of explosive materials by unregulated distributors to unregulated persons.

*Section 842(b)*.—This paragraph prohibits a licensee from knowingly distributing explosive materials to any person other than another licensee, a permittee, or a person who is a resident of the State in which the licensee is licensed to do business and in which the distribution takes place. The only exception to this prohibition is that if a purchaser's State of residence by statute permits him to buy explosive materials in a State contiguous to it, a licensee in such a contiguous State may lawfully distribute such explosive materials to him. This paragraph is intended to make it clear that even regulated distributors of explosive materials may not engage in interstate transactions in explosive materials with unregulated distributees except where such unregulated purchasers reside in contiguous States which specifically permit such transactions.

*Section 842(c)*.—This paragraph proscribes the sale of explosive materials to any person who the dealer has reason to believe intends to transport such explosive materials into a State in which such person's purchase, possession, or use of explosive materials is prohibited or which bars its residents from transporting or shipping such explosive materials into it or from receiving explosive materials in it. This provision is designed to further assist the States in protecting their own laws regulating the purchase, possession, use, and transportation of explosive materials from circumvention by means of interstate transactions in such explosive materials.

*Section 842(d)*.—This paragraph establishes six categories of persons, whose possession of explosive materials this committee has found to present a special danger to the public safety and welfare, and prohibits licensees from knowingly distributing explosive materials to them. These categories are: persons under 21 years of age, convicted felons, persons under indictment for a felony, fugitives from justice, unlawful users of drugs, and adjudicated mental defectives.

*Section 842(e)*.—This paragraph is designed to implement State and local explosive materials regulatory controls by making it unlawful for a licensee knowingly to distribute explosive materials to a person where the purchase, possession, or use of such explosive materials by such person would be in violation of State law or any published local ordinance applicable at the place of distribution.

*Section 842(f)*.—This paragraph sets forth recordkeeping provisions which implement each of the controls imposed by the chapter. One of the important features of this provision is that it requires licensees to obtain certain identifying information from transferees of explosive materials including a statement of the intended use of such explosive materials. A knowingly false statement by the transferee of explosive materials as to his intended use of them, subjects the transferee to the sanctions of section 842(a)(2).

*Section 842(g)*.—This paragraph proscribes the making of knowingly false entries by licensees or permittees in records which they are required to keep under this section or regulations issued under this chapter.

*Section 842(h)*.—This paragraph prohibits the possession, transportation, shipment, and distribution of stolen explosive materials knowing or having reasonable cause to believe they had been stolen. The committee believes that this total coverage of stolen explosive materials is necessary to the effective operation of any Federal explosives regulatory statute because of the special problem presented by such stolen explosive materials and the persons possessing them.

*Section 842(i)*.—This paragraph prohibits convicted felons, persons under indictment for a felony, fugitives from justice, unlawful users of drugs, and adjudicated mental defectives from shipping, transporting, or receiving explosive materials in interstate or foreign commerce.

*Section 842(j)*.—This paragraph makes it a misdemeanor for any person to store explosive materials in a manner not in conformity with regulations promulgated by the Secretary which regulations must take into account the class, type, and quantity of explosive materials to be stored as well as industrial standards for safety and security against theft. This total Federal coverage of the storage of explosive materials is necessary to deal with the particular safety hazards presented by improperly stored explosive materials, as well as a means of curbing thefts of explosive materials and the special dangers attendant to such thefts. For these reasons, the committee believes that this Federal regulation of the storage of explosive materials is necessary to the effective operation of the whole regulatory framework established by this chapter.

*Section 842(k)*.—This provision places an affirmative duty on possessors of explosive materials to notify the Secretary and the appropriate local authorities within 24 hours of the possessors' discovery of a theft or loss of such explosive materials. This provision is necessary to deal with the special problems presented by stolen explosives.

*Section 843 establishes the procedures governing the licensing of importers, manufacturers, and dealers and the granting of permits to users of explosive materials*

This section is patterned on the licensing provisions of the Gun Control Act of 1968. It establishes a maximum fee of $200 for licenses and permits and sets forth certain qualifications for licensees and permitees. It prohibits the issuance of licenses and user permits to persons (1) prohibited from buying explosives, (2) who have willfully violated any provisions of this chapter, (3) who do not have a business premises, (4) who do not have adequate storage facilities, or (5) who

have not certified their familiarity with applicable State laws and local ordinances. It also establishes procedures for the approval, denial, or revocation of licenses and permits. The section expressly provides for a hearing procedure and judicial review upon the denial or revocation of a license or permit.

Section 843(f) places the requirement on all licensees and permittees to make their records available for inspection at reasonable times, to submit such reports to the Secretary as he shall prescribe by regulation, and to permit the Secretary to enter their premises and places of storage of explosive materials for the purpose of inspecting and examining their records and explosive materials during business hours.

*Section 844 sets the penalties for violation of the regulatory provisions of this chapter and creates certain offenses pertaining to the unlawful use of explosives*

Section 844(a) makes violation of section 842 (a) through (i) a felony subjecting the violator to up to 10 years imprisonment, or a fine of not more than $10,000, or both.

Section 844(b) makes violation of section 842 (j) and (k) misdemeanors carrying maximum penalties of 1 year imprisonment and a $1,000 fine.

Section 844(c) subjects to forfeiture all explosive materials involved in, used, or intended for use in violation of any provision of this chapter or of the Federal criminal law.

Section 844(d) replaces present section 837(b), title 18, United States Code. Section 837(b) is presently confined to proscribing the transporting, or the aiding and abetting of another in transporting, an explosive in commerce "with knowledge or intent that it will be used to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives or of intimidating any person pursuing such objectives." The proposed legislation has been amended to include "receiving" in commerce, and attempting to transport or receive in commerce. The existing reference to "aiding and abetting" has been deleted as unnecessary. See, 18 U.S.C. 2.

The existing knowledge or intent requirement has been substantially altered by making transportation or receipt of an explosive in commerce an offense if the individual knows or intends (1) that it will be used to kill, injure, or intimidate an individual, in which case no further knowledge or intent should be required, or (2) that it will be used "lawfully" to damage any building, vehicle, or other property. The existing purpose requirement has been deleted, in the belief that a more simple standard will facilitate proof at trial.

Finally, the existing penalty provisions have been changed to increase the basic penalty from a maximum 1 year or $1,000 fine or both, to a maximum 10 years of $10,000 fine or both. Where injury results, the penalty has been increased from 10 years or $10,000 fine or both to 20 years or $20,000 or both. In present section 837(b) the death penalty may be imposed if death results. This provision is constitutionally defective, *United States* v. *Jackson*, 390 U.S. 570, and has been replaced in section 844(d) by language imposing life imprisonment or the death penalty, where death results, pursuant to 18 U.S.C.

34, which is not constitutionally defective. The gravity of the offense, in our judgment, clearly warrants the increase in penalties.

Section 844(e) is a revision of present section 837(d) of title 18, United States Code. It is designed to deal more specifically with bomb threats and to increase the penalties applicable to such threats. The penalty is increased from a maximum of 1 year imprisonment or a fine of $1,000 or both to a maximum of 5 years imprisonment or a fine of $5,000 or both.

Because of the increased penalty, and because of the particularly severe problems caused by bomb threats, section 844(e) is confined to information or threats concerning explosives. The section makes it an offense to threaten, or convey false information known to be false, about attempts to kill, injure, or intimidate any person, or unlawfully to damage or destroy any building or property. In order to avoid coverage of a number of innocent situations, and unduly inhibit communication of desirable information, section 844(e) requires that the conveyance of information be done "maliciously," a requirement now in the aircraft bomb threat statute, 18 U.S.C. 35(b).

Section 844(f) unlike the previous two subsections, is new, and relies for its constitutional base on the power of the Federal Government to protect its own property. See, e.g., 18 U.S.C. 641 (theft of Government property); 18 U.S.C. 1361 (willful destruction of Government property). Destruction of any vehicle used in commerce by means of an explosive is presently prohibited by 18 U.S.C. 33, but it is not clear that all Federal vehicles are protected. Willful destruction of Government property by any means is now prohibited by 18 U.S.C. 1361, and is punishable by a maximum 10 years or $10,000 fine if the destruction is more than $100 in value. However, because use of explosives is so inherently dangerous to life, it is desirable to have specific legislation dealing with destruction by explosives and imposing penalties varying on whether injury or death is caused. Section 844(f) permits imposition of the death penalty if death is caused. The penalties in section 844(f) are the same as those provided in subsection (d). The requirement of willfulness excludes accidental damage.

To permit the Federal Government to more directly participate in the investigation and prosecution of the recent rash of attacks on ROTC facilities and other buildings on college campuses culminating in the tragedy at the University of Wisconsin, section 844(f) also encompasses real and personal property belonging to institutions and organizations receiving Federal financial assistance.

Section 844(g) makes it an offense, punishable by up to 1 year imprisonment or $1,000 fine or both, to possess an explosive in a building in whole or in part owned by or leased to the Federal Government, except with the written consent of the agency, department or other person responsible for the management of such building.

Section 844(h) carries over to the explosives area the stringent provisions of the Gun Control Act of 1968 relating to the use of firearms and the unlawful carrying of firearms to commit, or during the commission of a Federal felony.

Section 844(i) proscribes the malicious damaging or destroying, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity

affecting interstate or foreign commerce. Attempts would also be covered. Since the term affecting [interstate or foreign] "commerce" represents "the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause," *NLRB* v. *Reliance Fuel Corp.*, 371 U.S. 224, 226 (1963), this is a very broad provision covering substantially all business property. While this provision is broad, the committee believes that there is no question that it is a permissible exercise of Congress authority to regulate and to protect interstate and foreign commerce. Numerous other Federal statutes use similar language and have been constitutionally sustained in the courts. See, Labor Management Relations Act, 29 U.S.C. 141 et seq.; Labor Management Reporting and Disclosure Act, 29 U.S.C. 401 et seq.; Civil Rights Act of 1964 (equal employment opportunity provisions), 42 U.S.C. 2000 et seq.; Consumer Credit Protection Act (truth in lending provisions), 15 U.S.C. 1601, et seq. and (loan sharking provisions), 18 U.S.C. 891 et seq.

Like section 844 (d) and (f), section 844(i) provides for more severe penalties in cases where personal injury or death results, including the death penalty in the latter case.

Section 844(j) sets forth the definition of "explosive" for the purposes of section 844(d) through (i). The use of the separate definition is for the purpose of including incendiary devices within the coverage of section 844 (d) through (i), and to make the exceptions applicable to the regulatory provisions of this chapter inapplicable to these sections.

*Section 845 concerns exceptions to the regulatory provisions of the chapter and relief from disabilities under the chapter*

Section 845(a) creates certain exceptions to the provisions of this chapter which specifically are not applicable to section 844 (d) through (i). It states that this chapter is not meant to affect aspects of the transportation of explosive materials regulated by the Department of Transportation. The use of explosive materials in medicines and medicinal agents is exempted as is the delivery of explosive materials to Federal, State and local governmental agencies. Subsections (4) and (5) are designed to except firearms ammunition and a small quantity of black powder, used by "handloaders" for sporting purposes, from the coverage of the regulatory provisions of this chapter. Finally, subparagraph (6) excludes explosive materials manufactured under regulation of a military department, and the distribution of explosive materials to, or the storage or possession of explosive materials by, the armed services or other Federal agencies.

Section 845(b) enables the Secretary to grant relief to certain individuals from the restrictions that are or would be imposed upon them under this chapter by reason of having been indicted for, or convinced of, a felony. Thus, the Secretary will be permitted to grant relief to persons who had been convicted of a felony in the past, but who have demonstrated since that time that they would not be likely to act in a manner dangerous to the public safety if permitted to purchase explosive materials.

This provision also permits a licensee or permittee who makes application for relief to continue in business pending final action on the application.

*Section 846 prescribes certain additional powers of the Secretary*

This section gives the Secretary the additional power of inspecting sites of accidents in which there is reason to believe that explosive materials were involved for the purpose of developing precautionary measures to avoid such accidents in the future.

This section also makes it clear that the power of the Federal Bureau of Investigation to investigate violations of section 844 (d) through (i) was not intended to be diminished.

*Section 847 gives the Secretary regulation and rulemaking authority*

This section grants rulemaking authority to the Secretary and also specifically provides that interested parties will be given the opportunity for a public hearing on proposed rules and regulations after notice.

*Section 848 sets forth the intended effect of this chapter on State law*

This section sets forth the intent of Congress that this chapter shall not be construed to operate to the exclusion of State statutes covering explosive materials and certain offenses within the scope of this chapter unless there is a direct and positive conflict between this chapter and a State law.

The following comments relate to sections 1103 through 1107 of title XI of this bill.

*Section 1103.*—This section amends section 2518 of title 18, United States Code, to permit court approved wiretapping in connection with investigations of violations of the nonregulatory sections of chapter 40, section 844 (d) through (i).

*Section 1104.*—This section provides that nothing in this act would modify or affect any provision of the National Firearms Act (26 U.S.C. 5801 et seq.); section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934); section 1716 of title 18, United States Code, relating to nonmailable materials; sections 831 through 836 of title 18, United States Code, relating to the transportation of explosive materials; and chapter 44 of title 18, United States Code, relating to firearms control.

*Section 1105.*—Paragraphs (a) and (b) of this section provide that except for sections 841, 844 (d) through (j), 845, 846, 847, and 848, this chapter will take effect 120 days from the enactment of this act. The excepted provisions will take effect immediately upon enactment of this act.

Subsection (c) of this section permits persons engaging in a business or operation requiring a license or a permit to continue in that business prior to the issuance of a license or permit to them if they file an application for a license or permit with the Secretary within 120 days after the enactment of this act. Such persons, however, would be subject to the provisions of this chapter pending final action on their applications.

*Section 1106.*—This section repeals the outdated Federal Explosives Act (50 U.S.C. 121–144), which is no longer in effect, and section 837 of title 18, United States Code, which is replaced by section 844 (d) through (j) of chapter 40 enacted by this title.

*Section 1107.*—Authorizes the appropriation of funds necessary to the implementation of this title.

## TITLE XII

*Section 1201.*—This section establishes a Commission on Individual Rights.

*Section 1202.*—This section establishes the composition of the Commission at 15 members: Four appointed by the President of the Senate from Members of the Senate; four appointed by the Speaker of the House of Representatives from Members of the House of Representatives; and seven appointed by the President of the United States, none of whom shall be officers in the executive branch but shall include lawyers, jurists, and policemen.

*Section 1203.*—This section authorizes the President to designate a Chairman and provides that the filling of vacancies shall be done in the same manner in which the original appointment was made.

*Section 1204.*—This section provides that it shall be the duty of the Commission to conduct a comprehensive study and review of Federal laws and practices relating to special grand juries and dangerous special offender sentencing authorized under this act, wiretapping and electronic surveillance, bail reform and preventive detention, no-knock search warrants, and the accumulation of data or individuals by Federal agencies as authorized by law or acquired by executive action. The Commission is directed to determine which laws and practices are needed, are effective, and whether they infringe upon individual rights.

*Section 1205.*—Subsection (a) of this section provides that, subject to such rule and regulation as the Commission may adopt, the Chairman shall have power to appoint and fix the compensation of an executive director and such other personnel deemed necessary, and to procure the temporary and intermittent services of consultants at a rate not to exceed $100 per day.

Subsection (b) of this section provides that the Chairman shall include under his appointments individuals determined to be competent social scientists, lawyers, and law enforcement officers.

*Section 1206.*—Subsection (a) of this section provides that Commission members who are Members of Congress shall serve without additional compensation but shall be reimbursed for travel and other expenses.

Subsection (b) of this section provides that Commission members who are from private life shall receive $100 per diem and be reimbursed for travel, subsistence, and other necessary expenses.

*Section 1207.*—This section authorizes other governmental agencies to cooperate in the furnishing of statistical data, reports, and other information to the Commission.

*Section 1208.*—This section authorizes the Commission to make interim reports and recommendations as it deems advisable and to make a final report to the President and the Congress at the end of 6 years following the effective date of this section. It also provides that the Commission shall cease to exist 60 days after submitting its final report.

*Section 1209.*—Subsection (a) of this section exempts, except as provided in subsection (b), any Commission member with respect to his appointment from the operations of the conflict-of-interest laws. Subsection (b) denies the exemption granted in subsection (a) to—

(1) receipt of salary in connection with the appointee's Govern-

ment service from anyone other than the Commission member's private employer at the time of his appointment; or

(2) the prosecution of claims against the Government during the period of his appointment, involving matters with which the Commission member was directly connected by reason of his appointment.

*Section 1210.*—This section provides that the provisions of title XII shall take effect on January 1, 1972.

*Section 1211.*—This section authorizes to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this title.

*Section 1212.*—This section repeals section 804 of the Omnibus Crime Control and Safe Streets Act of 1968 that provided for the establishment in 1974 of a National Commission for the Review of Federal and State Laws Relating To Wiretapping and Electronic Surveillance.

COMMUNICATIONS

Attached hereto and made a part of this report are letters dated April 7 and April 20, 1970, to Chairman Emanuel Celler from William E. Foley, Acting Director, Administrative Office of the U.S. Courts, indicating the views of the Judicial Conference of the United States on S. 30.

Also attached and made a part hereof are letters dated July 23 and September 9, 1970, to Chairman Emanuel Celler from Will Wilson, Assistant Attorney General, Criminal Division, discussing various provisions of S. 30.

ADMINISTRATIVE OFFICE OF THE
U.S. COURTS,
*Washington, D.C., April 7, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN CELLER: This is in further reply to your letter of February 20, 1970, requesting the views of the Judicial Conference of the United States on S. 30, relating to the control of organized crime in the United States.

At its recent meeting on March 16 and 17, 1970, the Judicial Conference separately considered each title of this bill, making the following recommendations:

Title I contains provisions relating to the procedures and functions of Federal grand juries which were previously disapproved by the Conference (Conference Report, October 1969, p. 67).

Title II would make uniform a large number of immunity statutes. Its provisions are substantially identical to those contained in H.R. 11157, 91st Congress, which was approved by the Conference at the October 1969 session (Conference Report, p. 64). Upon recommendation of the committee the Conference reaffirmed its approval of this proposal.

Title III would authorize the commitment of a recalcitrant witness who refuses to testify. The Conference approved the recommendation of the committee disapproving this proposal as unnecessary in that the normal powers of the court are sufficient to deal with the recalcitrant

witness who has been accorded immunity. This title would also prohibit the interstate flight by a witness who is to appear before a State investigating agency. It was the view of the committee that this provision would place an excessive burden on Federal law enforcement officials and would have a great potential of abuse, unless is was restricted to the area of organized crime. Upon recommendation of the committee, the Conference approved the proposal only to the extent that it applies to investigations of organized crime.

Title IV would provide criminal penalties for making false declarations in any proceeding before any court or grand jury of the United States. It was the view of the committee that the language of the bill would have greater clarity if the words "false statements of material fact" were substituted for "materially false declarations." The Conference agreed with the suggestion of the committee and approved this title of the bill with the suggested amendment.

Title V provides for special housing facilities for the protection of Government witnesses. The Conference voted to make no recommendation with respect to this proposal.

Title VI would provide for the taking of depositions in criminal cases. It was the view of the Conference that depositions fall within the rulemaking function and should not be made the subject of legislation. Accordingly, the subject matter of this title was referred to the Advisory Committee on the Federal Rules of Criminal Procedure for its consideration.

Title VII, relating to litigation concerning sources of evidence, would, among other things, exclude objections to evidence of an event on the grounds that such evidence was unlawfully obtained or given under compulsion and grant of immunity if the unlawful acts or the compulsion and immunity occurred more than 5 years before the event. The Conference discussed the proposal, but voted to take no position with respect to it.

Title VIII would provide penalties for syndicated gambling. The Conference voted to take no position with respect to the provisions of this title.

Title IX would amend the Criminal Code to include a new chapter relating to racketeer-influenced and corrupt organizations. The committee recommended that the various sections of the chapter be approved except the proposed section 1966 relating to the expendition of actions, and section 1967 relating to evidence, the latter on the basis that it would require all depositions and other ancillary civil proceedings to be open to the public. This recommendation was approved by the Conference.

Title X would provide special sentencing procedures for habitual or dangerous offenders. After full discussion the Conference voted to approve the principle of special sentencing for dangerous offenders, but was of the view that provisions of this nature should be the subject of overall legislation dealing with sentencing and should not be included in a special statute.

The Conference voted to make no recommendation on the proposed section 3578 to establish a Federal depository for conviction records.

Sincerely,

WILLIAM E. FOLEY,
*Acting Director.*

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
*Washington, D.C., April 20, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN CELLER: This is in further reference to my letter of April 7, setting forth the views of the Judicial Conference of the United States on S. 30, relating to the control of organized crime in the United States.

We think it is necessary to clarify the fact that title I relating to Federal grand juries was considered by the Judicial Conference in the form in which that title appeared in the original version of the bill as introduced in the Senate on January 15, 1969. It should be recognized that changes were made in title I of S. 30 in the form in which it was passed by the Senate. The Judicial Conference did not consider title I of S. 30 with the changes incorporated in the bill as passed by the Senate.

We shall be glad to provide any further information which may be desired concerning the bill.

Sincerely,

WILLIAM E. FOLEY,
*Acting Director.*

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DEPARTMENT OF JUSTICE,
*Washington, July 23, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In the course of the testimony on May 21, 1970, before Subcommittee No. 5 of the House Committee on the Judiciary in support of S. 30, the Organized Crime Control Act of 1969," it was agreed that the Department of Justice would submit to you its written views on certain issues which arose in the general discussion of the bill.

TITLE I

It was asked that the Department of Justice comment upon the procedural differences between the provisions of title I of S. 30, pertaining to the reporting function of special Federal grand juries, and the comparable provisions of New York procedural law (New York Code of Criminal Procedure, sec. 253a (1964)). It should be noted at the outset of such a comparison that the similarities between the two far outnumber the differences. The thrust of each is to permit grand juries to render reports in the public interest as to matters revealed in the course of duly authorized criminal investigations within their jurisdiction, with certain safeguards to protect persons who may be adversely affected by the publication of such reports from unjust censure and exposure to public opprobrium. We will briefly summarize the major features of the New York and proposed Federal procedures, and indicate where the latter diverges from the law upon which it was modeled.

Under the New York law (New York Code of Criminal Procedure, sec. 253a(1)) a grand jury, upon the concurrence of 12 or more of its

members (of a total of not less than 16 nor more than 23 persons), may submit to the court for which it was impaneled a report—

(*a*) concerning noncriminal misconduct, nonfeasance or neglect in office by the public officer or employee as a basis for a recommendation of removal or disciplinary action; or

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

(*c*) proposing recommendations for legislative, executive or administrative action in the public interest based upon stated findings.

The reports in all categories must be based upon facts revealed in the course of an investigation to inquire into crimes committed within the jurisdiction; or to inquire as to persons imprisoned on criminal charges and not indicted; or to inquire into the misconduct of public officers, as authorized by a previously enacted New York statute (New York Code of Criminal Procedure secs. 245, 253).

Under the provisions of proposed section 3333 of title 18 (sec. 101 of S. 30), a special Federal grand jury will be permitted to make similar reports, with the concurrence of a majority of its members, upon the expiration of its term or extensions thereof. As S. 30 was originally introduced in the Senate, the above New York provisions for grand jury reports were incorporated almost verbatim. However, certain changes were made following Senate hearings on the bill.

First, for the words "noncriminal misconduct, nonfeasance or neglect in office," the words "noncriminal misconduct, malfeasance or misfeasance in office" were substituted in the provision for reports comparable to those of category (a) of the New York statute (sec. 3333(a)(1)). The intent is to assure protection to public officers and employees from allegations of nonfeasance or neglect based upon relatively harmless failures to perform the perfunctory duties of their offices. (See Senate hearings, p. 331.) The terms "malfeasance" and "misfeasance" connote a degree of willful wrongdoing on the part of a public officer or employee as opposed to mere inaction or lack of diligence in the prosecution of his duties. We think the limitation is particularly appropriate since the Federal proposal broadly defines "public officer or employee" to include 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. (Sec. 3333(f).)

Second, to the three types of grand jury reports authorized by the New York law, S. 30 adds a fourth category; special grand juries may also make reports "regarding organized crime conditions in the district." (Sec. 3333(a)(4).) This provision was added at the suggestion of the Department of Justice to carry out a recommendation of the President's Commission on Law Enforcement and Administration of Justice. (Department of Justice comments on S. 30, Senate hearings, pp. 368–369.)

All four categories of reports under S. 30 must be based upon facts revealed in the course of an investigation by a special grand jury im-

paneled "to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district which is brought to the attention of the grand jury by the court or by any person" (sec. 3332(b)). The foregoing provision makes it clear that investigations are to be conducted only into criminal conduct, as under New York law, and not into noncriminal misconduct for the purpose of report writing. It further indicates that the special Federal grand juries may undertake inquiries into criminal matters upon their own initiative, without referral from the district court or the prosecuting attorney. This is a restatement or existing Federal law as reflected in *Hale* v. *Henkel*, 201 U.S. 43 (1906). New York grand juries also have the prerogative of inquiring into crimes upon their own initiative (N.Y. Code Cr. P., sec. 245).

The New York law prohibits reports critical of "identified or identifiable persons" in its category (c) above, which pertains to recommendations for legislative, executive or administrative action in the public interest (sec. 253a(a)). The counterpart of this provision in the proposed Federal law provides that neither reports pertaining to organized crime conditions, nor those recommending legislative, executive or administrative action may be "critical of an identified person" (sec. 3333(b)(2)). It has been suggested that the language of the New York statute affords greater protection to individuals from unjust exposure to public opprobrium than the somewhat narrower term substituted in title I (report, Association of the Bar of the City of New York, Committee on Federal Legislation, p. 19). The clause was narrowed by the Senate Judiciary Committee, Senator McClellan has stated, because it concluded that the word "identifiable" could be construed to include such indirect means of identification as would defeat the purpose of including the category of organized crime reports in the legislation. (See statement by Senator McClellan, Congressional Record daily ed. S. 8684, June 9, 1970.) Senator McClellan has said that the word "identified" is not to be considered synonomous with "named," but includes identification by name, job identification, or other clearly inferred means. (Id.) We think that this interpretation is consistent with the commonly accepted meaning of the word and that the import of the provision has not been materially altered. We note that in the Senate-passed bill the prohibition against reports "critical of an identified person" does not apply to the category of reports exonerating public officials from charges of misconduct as does the New York statute (sec. 253a(b)). We do not think it necessary to include the restriction here since the purpose of these reports is to exonerate rather than to criticize public officials.

Both the New York law and S. 30 provide a number of procedural safeguards for the protection of public officials who are identified in grand jury reports:

1. Under the New York statute, a court will order a duly authorized report accepted and filed if "it is supported by the preponderance of the credible and legally admissible evidence" (sec. 253a(a)). Title I requires that the court, prior to acceptance and filing, must be satisfied that a duly authorized report "is supported by the preponderance of the evidence" (sec. 3333(b)(1)). The difference between these provisions reflects a difference in the evidentiary rules of the two juris-

dictions. New York, by statute, limits the kind of evidence which a grand jury may receive in the investigation of a charge for the purpose of indictment to the sworn testimony of witnesses, legal documentary evidence, and duly authorized depositions; a New York grand jury may receive only "legal evidence" (N.Y. Code Cr. P., secs. 248, 249). Federal grand juries, however, may indict upon the basis of any credible evidence demonstrating probable cause whether or not legally admissible at trial. The Supreme Court has ruled that whereas the fifth amendment provides that Federal prosecutions for capital or otherwise infamous crimes must be instituted by presentments or indictments of grand juries, neither the fifth amendment nor any other constitutional provision prescribes that grand juries must act only upon certain kinds of evidence, and consequently hearsay evidence may properly be the basis of an indictment. *Costello* v. *United States*, 350 U.S. 359, 363 (1956); cf. *United States* v. *Blue*, 384 U.S. 251 (1966). In this respect the Federal law adheres to the English common law tradition of permitting grand jurors to act as a body of laymen free from the restraints of rigid procedural rules. Sufficient protection will be afforded a public official named in a grand jury report by the requirement in title I that grand jury reports must be supported by "a preponderance of the evidence," a protection not available to a defendant charged in a grand jury indictment.

Under the proposed standard, the district court will have an affirmative duty to inquire into the nature of the evidence received by the grand jury, and to consider its probative value in making the necessary determination that it supports the conclusions of the grand jury's report. The district court's finding will then be subject to review upon appeal.

2. When a report is submitted by a grand jury concerning the misconduct in office of a public official, the New York law requires that he be afforded an opportunity to testify before the grand jury prior to the acceptance and filing of the report (sec. 253a(2)(b)). Title I also assures a person named in a report the right to appear before the grand jury and provides, additionally, that he may compel the attendance of any reasonable number of witnesses to testify in his behalf (sec. 3333(b)(2)).

3. Title I provides that grand jury reports will be sealed until 31 days after a copy has been served on an officer or employee named therein and an answer has been filed (or the time for filing an answer has expired, or, if an appeal is taken, until all rights of review have expired or tarminated in an order accepting the report (sec. 3333(c)(1)). The New York law contains similar provisions (sec. 253a(3)(a)). However, in New York an appeal is expressly authorized by statute (sec. 517a). While it is not made express in title I what Federal laws of procedure will govern the appeal referred to, Senator McClellan has pointed out that "a fair reading of title I leads to the conclusion that proceedings concerning a grand jury report are civil proceedings so are covered by the provisions of the Federal Rules of Civil Procedure concerning appeals" (statement, Congressional Record, daily ed., S 8648, June 9, 1970). We believe that it may be advisable to incorporate in title I a more explicit provision concerning the right to appeal.

4. If a public officer or employee named in a grand jury report elects to file an answer to the charges, under New York law he may do so within 20 days after a copy of the report is served upon him. Title I contains a similar provision, but expressly provides for an extension of the time period upon a showing of good cause. Under either procedure, the answer will state the facts and the law constituting a defense against the charges of the report. The answer, except for such parts as the court may determine to be scandalously or prejudiciously and unnecessarily inserted, will become an appendix to the report (N.Y. Code Cr. P., sec 253a(3)(b); title I, sec. 3333(c)(2)).

5. Under the New York law, at the expiration of 31 days, or of the period allowed for an answer or disposition of an appeal, the district attorney will deliver a copy of the report, and the appendix, if any, for appropriate action to each public officer or body having removal or disciplinary authority over each officer or employee named in the report (sec. 253a(3)(c)). The report may be ordered filed as a public record at this time. Title I makes similar provision for the delivery of reports by the U.S. Attorney to appropriate public officers or governmental agencies (sec. 3333(c)(3)). However, title I further requires that the court withhold acceptance and publication of the report for an additional 30 days after delivery. Public officials may therefore have time to examine the report and to take remedial action if they wish to do so before the report is published (Senate report, p. 143). Moreover, there are included in title I, but not in the New York law, provisions for the court to issue appropriate orders to prevent unauthorized publication of "leaks" of reports, and to punish unauthorized publication by contempt of court (sec. 3333(b)(1).

6. When a proposed report does not comply with prescribed standards for acceptance, New York law provides that it may be returned to the grand jury for the taking of additional testimony, or sealed so that it will not be filed as a public record and will not be subject to subpena (sec. 253a(5)). Title I similarly provides for the return of a report to the grand jury for the taking of additional testimony or other steps necessary to assure its compliance with statutory requirements prior to filing as a public record. It further provides that a grand jury may extend its term if necessary for the taking of testimony or other measures necessary to make its reports conform to statutory standards (sec. 3333(3)).

The New York law does not afford a public officer who is cited for noncriminal misconduct in office in a grand jury report the full panoply of procedural safeguards to which a defendant is entitled in a criminal trial, nor does its proposed Federal counterpart. However, we believe that both procedures assure the elements of fairness that are essential to due process. In *Hannah* v. *Larche*, 363 U.S. 420, 449–452 (1960), the Supreme Court drew an analogy between the procedures of certain Federal investigatory agencies—including the Commission on Civil Rights—and the grand jury. The Court noted that certain procedures such as the right of confrontation and cross-examination of witnesses have never been essential to a grand jury proceeding because "the grand jury merely investigates and reports * * * it does not try." The Court found the Commission's duties to be of an investigative rather than an adjudicatory nature because the Commission "investigates and reports leaving affirmative action, if

there is to be any, to other governmental agencies where there must be action de novo." A grand jury's rendering reports, as its returning of criminal indictments, clearly cannot be characterized as "adjudicatory in nature." Remedial action, if there is to be any, is left to legislative, administrative, or executive agencies, just as trial on an indictment is left to the courts. We think that the safeguards provided afford full protection to the rights of individuals, and that whatever remote possibility may exist that a public official may be undeservedly criticized, such a possibility is far outweighed by the important public interest that will be served by permitting grand juries to apprise the citizenry of official misconduct and misfeasance which it comes across in the course of criminal investigations.

TITLE VII

1. The subcommittee requested case authority illustrating the "attenuation" concept pertaining to the admissibility of evidence, allegedly derived from a tainted lead, upon which is based the provision in title VII establishing a 5-year limitation on litigation concerning the sources of evidence.

The Supreme Court held in *Weeks* v. *United States*, 232 U.S. 383, 384 (1914), that evidence obtained in violation of the rights of a defendant under the fourth amendment is not admissible at trial. In *Silverthorne* v. *United States*, 251 U.S. 385 (1920), the Court held that the prohibition applied also to other evidence derived through the evidence directly obtained by such an illegal search or seizure. The Court added however, that the facts thus obtained do not become "secret and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others." Id. at 392. In *Nardone* v. *United States*, 308 U.S. 338 (1939), the Court considered a claim of the inadmissibility of evidence derived from a wire interception in violation of section 605 of the Communications Act of 1934. Mr. Justice Frankfurter, writing for the Court, stated (Id. at 341):

"The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that wire-tapping was unlawfully employed. Once that is established—as was plainly done here—the trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree. This leaves ample opportunity to the Government to convince the trial court that its proof had an independent origin."

The Court thus indicated, as in *Silverthrone*, that the Government could not rely upon evidence obtained by its own wrongdoing, but that it could refute a claim of inadmissibility on this ground by showing an "independent origin." The Court also stated (Ibid.):

"Sophisticated argument may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint."

In other words, the Court indicated that as an alternative to proving an independent source, the Government might show sufficient attenuation of the casual connection to avoid the necessity for applying the exclusionary rule.

The latter theory was more fully developed by the Supreme Court in *Wong Sun* v. *United States*, 371 U.S. 471 (1963). The defendant Wong Sun, following an unlawful arrest on narcotics charges, was arraigned and released on his own recognizance. Several days later, he voluntarily returned to the police station and made an unsigned incriminatory statement. The Court, considering whether the statement was rendered inadmissible as a result of the unlawful arrest, said, citing *Nardone* (Id. at 491):

"* * * We hold that the connection between the arrest and the statement had 'become so attenuated as to dissipate the taint.' "

In deciding that a statement made by Wong Sun's co-defendant Toy, made virtually simultaneously with an illegal arrest was rendered inadmissible as fruit of the poisonous tree, the Court said (Id. at 487–488):

"* * * This is not the case envisioned by this Court where the Government learned of evidence from an independent source [citing *Silverthorne*]; nor is this a case in which the connection between the lawless conduct of the police and the discovery of the challenged evidence has become so attenuated as to dissipate the taint [citing *Nardone*]. We need not hold that all evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made, has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint" [citing *Maguire*, Evidence of Guilt, 221 (1959)].

As a result of the above cases, the Federal courts, in evaluating the admissibility of evidence obtained after an illegal act on the part of Government agents, direct inquiry to the question whether the evidence had been "come at by the exploitation of the illegality" (*Wong Sun*), or whether instead the evidence either had an "independent source" (*Silverthorne-Nardone*) or had "become so attenuated as to dissipate the taint" (*Nardone*).

The Supreme Court reaffirmed the *Nardone* and *Wong Sun* doctrines in the following decisions: *Costello* v. *United States*, 365 U.S. 265, 280 (1960); *United States* v. *Wade*, 388 U.S. 218, 239–242 (1967); *Gilbert* v. *California*, 388 U.S. 263, 273 (1967); *Alderman* v. *United States*, 394 U.S. 165, 180–181 (1968); and *Harrison* v. *United States*, 392 U.S. 219, 230–231 (White, J., dissenting opinion) (1968).

The United States Court of Appeals have applied the *Nardone-Wong Sun* standards in the following cases among others: *Wayne* v. *United States*, 318 F. 2d 205, 209 (D.C. Cir., 1963); *McLindon* v. *United States*, 329 F. 2d 238, 240 (D.C. Cir., 1964); *Rogers* v. *United States*, 330 F. 2d 535, 540 (5th Cir., 1964); *United States* v. *McGavie*, 337 U.S. 317, 318 (6th Cir., 1964); *Copeland* v. *United States*, 343 F. 2d 287, 290 (D.C. Cir., 1965); *Commonwealth of Pennsylvania* v. *Maroney*, 348 F. 2d 22, 28 (3d Cir., 1965); *United States* v. *Gorman*, 355 F. 2d 151, 154 (2d Cir., 1965); *Thomas* v. *United States*, 377 F. 2d 118, 120 (5th Cir., 1967); *Jacobs* v. *Warden, Maryland Penitentiary*, 377 F. 2d 321, 323 (4th Cir., 1966); *Vanella* v. *United States*, 371 F. 2d 50, 54 (9th Cir., 1966); *Fletcher* v. *Wainwright*, 399 F. 2d 62, 64 (5th Cir., 1968); *Phelper* v. *Decker*, 401 F. 2d 232, 237–238 (5th Cir., 1968);

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*Green* v. *United States*, 386 F. 2d 953, 956 (10th Cir., 1966); *Durham* v. *United States*, 403 F. 2d 190, 195 (9th Cir., 1968); *Samora* v. *United States*, 406 F. 2d 1095, 1099 (5th Cir., 1969); *Harney* v. *United States*, 407 F. 2d 586, 589 (5th Cir., 1969); *Thompson* v. *Warden, Maryland Penitentiary*, 413 F. 2d 454, 455 (4th Cir., 1969).

The U.S. district courts have applied the *Nardone-Wong Sun* standards in the following cases: *United States* v. *Burke*, 215 F. Supp. 508, 511 (D. Mass. 1963); *United States* v. *Smalls*, 223 F. Supp. 387, 389 (S.D.N.Y., 1963); *Reeves* v. *Warden, Maryland Penitentiary*, 226 F. Supp. 953, 958 (D. Md. 1964); *United States* v. *Avila*, 227 F. Supp. 36 (D.D.C., 1963); *Presley* v. *Pepersack*, 228 F. Supp. 95, 104 (D. Md., 1964); *United States* v. *Perdiz*, 256 F. Supp. 805, 806 (S.D.N.Y., 1966); *United States* v. *Birrell*, 269 F. Supp. 716, 724 (S.D.N.Y., 1967); *United States* v. *Ketchum*, 272 F. Supp. 897, 907 (D. Md., 1967); *United States* v. *Washington*, 292 F. Supp. 284, 289 (D.D.C., 1968); *U.S. ex rel Geralds* v. *Deegan*, 292 F. Supp. 968, 974 (S.D.N.Y., 1968); *Houston* v. *Peyton*, 297 F. Supp. 717, 722 (W.D. Va., 1969).

2. The subcommittee further requested information as to the volume of the electronic surveillance records which the Department sought to have screened for potential relevance by the district court in an in camera proceeding in the *Alderman* case (*Alderman* v. *United States*, 394 U.S. 165). Our records indicate that the transcripts in that case consisted of approximately 905 typewritten pages.

3. The subcommittee also asked whether it might be possible for a district court judge to refer to a magistrate, under the United States Magistrates Act, the task of examining electronic surveillance transcripts for possible relevancy to a criminal prosecution. We think that this may be done under the Magistrates Act, and that this procedure may help allevaite the occasional burden on a district court when faced with the necessity of examining an unusually lengthy record as concerned the court in *Alderman*.

The pertinent portion of the Magistrates Act, (sec. 636 of title 28, United States Code; Public Law 90-578, title I, sec. 101), did not become effective until after the filing of the briefs and the presentation of oral arguments in *Alderman*. In addition to conferring specific duties upon U.S. magistrates, it permits a district court by a majority vote of all district judges to adopt rules under which magistrates may be assigned, within the court's territorial jurisdiction, "such additional duties as are not inconsistent with the Constitution and the laws of the United States." The additional duties authorized specifically include, by virtue of subsection (b) (2), "assistance to a district judge in the conduct of pretrial or discovery proceedings in civil or criminal actions."

Senator Tydings, whose Senate Subcommittee on Improvements in Judicial Machinery was responsible for much of the drafting of the Magistrates Act, stated (hearings before Subcommittee No. 4 of the House Committee on the Judiciary on S. 945, 90th Cong., second sess., March 1968, p. 73):

"The act specifies that such additional duties may include, but are not limited to, service as special master in an appropriate case, supervision of pretrial or discovery proceedings, and preliminary consideration of petitions for postconviction relief.

"U.S. commissioners are not presently empowered to perform any of these additional duties, with or without district court permission, but it became apparent to our subcommitttee, as well as to judges and court administrators, that an important opportunity to further economy and efficiency in the administration of the district court might be overlooked if we did not examine the role that a Federal magistrate might play in easing some of the routine nonjudicial burdens of these courts.

"Although a district judge would retain ultimate responsibility for decisionmaking in every instance in which a magistrate might exercise additional duties jurisdiction, use of magistrates, as aides to judges, in such matters is sure to increase the time available to those judges for the careful and unhurried performance of their traditional adjudicatory duties."

The Department of Justice, commenting on proposed S. 2292 in a letter to Senator Eastland, chairman of the Senate Judiciary Committe, dated September 9, 1969 (Senate report on S. 30 at p. 135), indicated that assistance to the district court in connection with in camera screenings of surveillance records might be rendered by U.S. magistrates, pursuant to the authorization contained in 28 U.S.C. 636(b)(2). As we then noted, unlike a ruling on an issue affecting the reliability of the guilt-determining process, a ruling affecting the applicability of the exclusionary rule to plainly trustworthy evidence is a function of a nature which appropriately may be delegated. Certainly the deterrent purpose of the exclusionary rule can be served as well by the possibility of an adverse ruling of a magistrate as by the possibility of an adverse ruling of a judge. The Congress, therefore, has already provided the means for solving a primary matter of concern to the court in *Alderman.*

TITLE X

With reference to title X, it was asked whether there might be an inconsistency between subsection (f) of proposed section 1001, which defines a defendant as "dangerous" for the purposes of the section, "if a period of confinement longer than that provided for such felony [i.e., the felony of which he has been convicted] is required for the protection of the public from further criminal conduct by the defendant," and subsection (d) of proposed section 1001 which provides that "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." It would, of course, be logically inconsistent for a court after making a finding that the defendant was "dangerous" under the above criteria, to thereupon sentence him to a term or imprisonment less than the mandatory minimum which the law prescribes for the felony offense.

Subsection (d) must be read in the context of the section as a whole, including the preceding subsections which provide:

"(b) * * * If it appears by a preponderance of the information * * * that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for a term not to exceed 30 years. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony.

"(c) This section shall not prevent the imposition and execution of a sentence to death or of imprisonment for life or for a term exceeding 30 years upon any person convicted of an offense so punishable."

When read in this context, it is apparent that subsection (d) is intended simply to emphasize that nothing in the section is to be construed in any way to abrogate any otherwise applicable minimum penalty. This might perhaps be made clearer by the deletion in subsection (d) of the words "a dangerous special" and the substitution of the word "any."

The subcommittee asked to be advised of the present status of each of the higher echelon figures of organized crime who were convicted in the years 1968 and 1969. That information is contained in the attached tabulation furnished by the organized crime and racketeering section of the Criminal Division.

Please let me know if I can be of further assistance to you and the subcommittee in your consideration of this needed legislation.

Sincerely,

WILL WILSON,
*Assistant Attorney General.*

HIGHER ECHELON CONVICTIONS OF ORGANIZED CRIME FIGURES

(By the U.S. Department of Justice, Criminal Division, Organized Crime and Racketeering Section)

*Convicted and Presently in Custody*

FISCAL YEAR 1968: 23 CONVICTIONS, 18 CASES

1. Amabile, Joseph:
   DOB: 10-17-15, Chicago.
   Indicted 2-16-67, Hobbs Act, N. D. Ill.
   Concivted first violation 5-29-67. Sentenced to 15 years.
   Convicted second violation 11-13-67. Sentenced to 15 years, to be served consecutively.
   Entered Leavenworth on 7-22-67.
   Mandatory release date 6-29-87.
   Eligible for parole 5-7-77.
   Full Term 5-7-91.
   NOTE.—On 4-3-69 the sentence of 11-13-67 was reversed. The 15 year sentence of 5-29-67 must be served.)
2. Cacioppo, Frank C.:
   DOB: 4-3-28, Mo.
   Indicted 2-19-68, Theft from Interstate Commerce.
   Convicted on 6-12-68. Sentenced to 3 years.
   Entered Terre Haute on 7-18-68 and Leavenworth on 8-29-68.
3. Cino, Stephen A.:
   DOB: 10-29-36, N.Y.
   Indicted 6-29-67, Hobbs Act, W.D.N.Y.
   Convicted on 11-21-67. Sentenced to 20 years.
   Entered Lewisburg on 12-11-67.
   Remanded to Lewisburg 1-6-68.
   Indicted 5-2-68, Hobbs Act, W.D.N.Y.
   Mandatory release date 4-25-81.
   Eligible for parole 7-21-74.
   Full term 5-24-87.
4. Corallo, Antonio:
   DOB: 2-12-14, N.Y.
   Indicted 12-18-67, ITAR—Kickbacks, S.D.N.Y.
   Convicted on 6-18-68. Sentenced to 3 years.

Indicted 12-20-68, Hobbs Act, ITAR—Mail Fraud, Conspiracy, S.D.N.Y.
Convicted on 12-13-69. Sentenced to 4½ years.
Began sentence in Atlanta on 12-29-69.

5. De Pietto, America:
DOB: 3-31-14, N.Y.
Indicted 10-29-63, Narcotics, S.D.N.Y.
Convicted on 6-4-64. Sentenced to 20 years.
Entered Leavenworth on 11-19-64.
Mandatory release date 2-19-78.
Not eligible for parole.
Full Term 9-15-84.
Indicted 12-19-67, Hijacking, Bank Robbery, N.D. Ill.
Convicted on 2-2-68. Sentenced to 7 years concurrent with narcotics case.

6. De Rose, Salvatore:
DOB: 7-10-19, Ill.
Indicted 11-67, Theft From Interstate Commerce, N.D. Ill.
Convicted on 6-18-68. Sentenced to 7 years.
Entered Terre Haute on 7-15-68.
Mandatory release date 8-21-73.
Eligible for parole 10-24-70.
Full Term 6-24-75.

7. Esperti, Anthony:
DOB: 8-6-32.
Indicted 1-5-67, Hobbs Act, S.D. Fla.
Convicted on 6-17-67 on guilty plea.
Sentenced on 8-16-67 to 10 years.
Entered Atlanta on 3-13-70.
(NOTE.—On 10-31-67 Esperti was charged with the murder of Thomas Altamura. The Jury on 3-9-68 could not agree; he is, therefore, to be retried.)

8. Natarelli, Pasquale:
DOB: 7-9-10, N.Y.
Indicted 6-29-67, Hobbs Act.
Convicted on 11-21-67.
Sentenced to 20 years.
Entered Atlanta on 3-1-68.
Indicted 5-2-68, Hobbs Act, W.D. N.Y.
Mandatory release date 4-24-81.
Parole 7-20-74.
Full Term 11-19-87.

9. Patriarca, Raymond:
DOB: 3-17-08, Mass.
Indicted 6-20-67, ITAR-Bribery, Mass.
Convicted on 3-8-68. Sentenced to 5 years.
Entered Atlanta on 3-29-68.
Mandatory release date 11-7-72.
Eligible for parole 12-2-70.
Full Term 3-2-74.
Indicted 8-20-69, Conspiracy, Mass.
Indicted 9-9-69, ITAR, Mass.
Convicted in Massachusetts State Court of conspiracy to murder on 3-27-70.

10. Potenza, Vincent:
DOB: 8-25-26, N.Y.
Indicted 8-23-67, Theft of and Passing Stolen Travelers Checks, S.D. N.Y.
Convicted on 11-9-67. Sentenced to 5 years.
Entered Lewisburg on 1-4-68.
Mandatory release date 9-11-71.
Eligible for parole 9-3-69.
Full Term 1-3-73.

11. Randaccio, Frederico:
DOB: 7-10-07, Italy.
Indicted 6-29-67, Hobbs Act, W.D.N.Y.
Convicted 11-21-67. Sentenced to 20 years.

Entered Terre Haute on 1-14-68 and Leavenworth on 4-3-68.
Mandatory release date 4-25-81.
Eligible for parole 7-21-74.
Full Term 11-20-87.
Indicted 5-2-68, Hobbs Act, W.D.N.Y.

12. Rao, Vincent John:
DOB: 6-26-98, Sicily.
Indicted 3-17-65, Perjury, S.D.N.Y.
Convicted on 11-17-67. Sentenced to 5 years.
Entered Lewisburg on 11-22-69.

13. Stassi, Joseph:
DOB: 12-2-06.
Indicted 3-19-63, Narcotics, S.D. Texas.
Convicted on 3-14-67.
New trial ordered 4-14-67.
Reconvicted on 6-28-67. Sentenced to 18 years.
Entered Atlanta on 12-10-67.
Mandatory release date 6-5-79.
Not eligible for parole.
Full Term 5-4-85.

14. Tameleo, Henry:
DOB: 7-12-01, R.I.
Indicted 6-20-67, ITAR Bribery, Mass.
Convicted on 3-8-68. Sentenced to 5 years.
Detainer filed in Walpole State Prison.

15. D'Amato, Paul E.:
DOB: 12-01-08, N.J.
Indicted, Corporate Tax Evasion, N.J.
Convicted on 4-22-68, *nolo* plea. No sentence imposed.

16. Dio Guardia, John:
DOB: 4-28-14, N.Y.
Indicted 4-21-66, Bankruptcy Fraud, S.D.N.Y.
Convicted on 11-10-67. Sentenced to 5 years and $10,000 fine. On appeal.

17. Di Piazza, Salvatore:
DOB: 10-14-25, L.A.
Indicted 3-8-67, ITAR—Gambling, S.D. Ohio.
Convicted on 9-26-67.
Sentenced to 10 years and $50,000 fines. On appeal.

18. Forlano, Nicholas:
DOB: 10-24-13, N.Y.
Indicted 3-13-67, ITAR, S.D. N.Y.
Convicted on 11-29-67.
Sentenced to one year and $10,000 fine. On appeal.

19. Fratranno, James:
DOB: ?
Indicted on 11-9-67. False Statements, S.D. Calif.
Convicted on 6-28-68.
Sentenced to 3 years probation and $10,000 fine.

20. Massi, Pasquale:
DOB: 11-07-03, Italy.
Indicted 8-16-67, Illegal Activity on Government Property, W.D. Ark.
Convicted on 1-25-68. Sentenced to 7 years. Suspended.

21. Panzarella, Anthony:
DOB: 11-22-08, Ohio.
Indicted for Income Tax Evasion, N.D. Ohio.
Convicted on 3-22-68, guilty plea.
Sentenced to 5 years probation on 6-18-68.

22. Persico, Jr., Carmine:
DOB: 08-08-33.
Indicted 4-28-60, Hobbs Act, E.D.N.Y.
Convicted on 5-9-68.
Sentenced to 14 years on 6-6-69. On Appeal.

23. Rosselli, John:
DOB: 07-04-04, Ill.
Indicted on 10-20-67, Failure To Register As An Alien, C.D. Calif.
Convicted on 5-23-68. Sentenced to 6 months. On appeal.

FISCAL YEAR 1969: 29 CONVICTIONS, 28 CASES

1. Alderisio, Felix:
   DOB: 4–26–12, N.Y.
   Indicated 2–4–64, Threats—Extortion, Conspiracy, Colorado.
   Convicted on 4–8–65. Sentenced to 4½ years.
   Remanded for further hearing by Supreme Court on 3–10–69.
   Final determination 6–29–69. Sentenced to 4½ years. 7$,500 fine.
   Entered Leavenworth on 9–29–69.
   Mandatory release date 3–15–73.
   Eligible for parole 3–28–71.
   Full Term 3–28–74.
   (NOTE.—Alderisio was also indicted on 7–25–69 for misapplication of bank funds and on 8–12–69 on a gun charge. N.D. Ill. On 1–23–70, after Government's case was in, pled *Nolo*. Sentenced to 2 years on gun charge and 5 years on bank charge, concurrent with 4½ years sentence in Colorado case.)
2. Cassessa, Ronald A.:
   DOB: 12–22–31. Mass.
   Indicted on 6–20–67. ITAR-Bribery and Conspiracy. Mass.
   Convicted on 3–8–68. Sentenced to 5 years and $10,000 fine. Term of years begins at end of State sentence.
   On 4–8–66 Cassessa was sentenced in State Court to Massachusetts Correctional Institute for 9–15 years for armed robbery.
3. Daddano, William:
   DOB: 12–28–12, Ill.
   Indicted 12–18–67, Bank Robbery, N.D. Ill.
   Superseding indictment 3–5–68.
   Convicted on 10–3–68. Sentenced to 15 years.
   Entered Atlanta on 10–8–68.
   Mandatory release date 10–27–78.
   Eligible for parole 10–1–73.
   Full Term 10–1–83.
4. Falange, Anthony:
   DOB: ?
   Indicted 9–20–68, Conspiracy-ITSP, N.D.N.Y.
   Convicted on 2–28–69.
   Sentenced to 5 years and $500 fine on 4–14–69.
   Entered Atlanta on 5–12–69.
   Mandatory release date 11–1–72.
   Eligible for parole 10–26–70.
   Full Term 2–24–74.
5. Cenova, Peter:
   DOB: 6–29–13, Conn.
   Indicted 6–5–67, Counterfeiting, S.D.N.Y.
   Convicted on 3–31–69. Sentenced to 3½ years.
   Entered Lewisburg on 12–19–69.
6. Infelice, Ernest:
   DOB: 03–16–24, Wisc.
   Indicted 12–8–65, Conspiracy, N.D. Ill.
   Convicted on 5–10–66. Sentenced to 5 years.
   Entered Leavenworth on 8–10–67.
   Indicted 4–7–66, Income Tax Evasion, N.D. Ill.
   Convicted in 1968. Sentenced to 1 year.
   Mandatory release date 11–6–71.
   Eligible for parole 6–4–69.
   Full Term 6–4–73.
7. Manfrendonia, John:
   DOB: 01–31–15, N.Y.
   Indicted 5–9–68, Perjury, S.D.N.Y.
   Convicted 10–11–68.
   Sentenced to 18 months and $2,000 fine.
   Entered Lewisburg on Oct. 10, 1969.
8. Mannarino, Giacento:
   DOB: ?
   Indicted 11–27–68, ITSP, E.D.N.Y.

Convicted on 2–14–69. Sentenced to 4 years on 7–11–69.
Entered Lewisburg on 8–21–69.
Entered Atlanta on 9–30–69.
Reduction of Sentence to 2 years on 10–9–69.

9. Passalacqua, Salvatore:
DOB: 12–21–09, Pa.
Indicated 10–16–68, Counterfeiting, E.D.N.Y.
Convicted on 6–9–69, guilty plea. Sentenced to 4 years.
Entered Lewisburg on 10–3–69.

10. Romano, Arnold:
DOB: ?
Indicted 9–30–64, Narcotics, S.D.N.Y.
Indicted 4–7–65, Bail Jumping, S.D.N.Y.
Convicted on 10–7–66, bail jumping. Sentenced to 5 years.
Entered Atlanta on 3–19–67.
Convicted on 4–15–69, Narcotics. Sentenced to 30 years.

11. Ramano, Giuseppe:
DOB: ?
Indicted 1969, Smuggling Counterfeit Money Into U.S., E.D.N.Y.
Convicted on 6–23–69. Sentenced to 5 years on 9–5–69.
Entered Danbury on 9–12–69.

12. Tropiano, Ralph:
DOB: 8–18–12, Conn.
Indicted 3–27–68, Hobbs Act, Conn.
Convicted on 11–15–68. Sentenced to 12 years.
Entered Leavenworth on 12–9–68.

13. Aloisio, William:
DOB: 10–9–06, Chicago.
Indicted 2–1–68, Passing Counterfeit Notes, N.D. Ill.
Superseding indictment 7–3–68.
Convicted on 4–24–69, guilty plea. Sentenced to 5 years. On appeal.

14. Bisogno, Joseph:
DOB ?
Indicted 7–31–68, Counterfeiting, S.D. Fla.
Superseding indictment 10–9–68.
Convicted on 3–26–69. Sentenced 10 years, deceased.

15. Cimini, Anthony J.:
DOB: 12–24–21, Detroit.
Indicted 5–14–67, Theft from Interstate Commerce, F.D. Mich.
Convicted on 4–3–69, guilty plea.
Sentenced to 2 five-year concurrent terms on 5–26–69.
Indicted 5–15–68, ITSP (forged checks).
Convicted on 11–15–68. Sentenced to 2 years. On appeal.

16. Dippolito, Joseph:
DOB: 12–28–14, N.Y.
Indicted 1–30–69, Perjury, C.D. Calif.
Convicted on 5–13–69. Sentenced to 10 years. On appeal.

17. Gatto, John:
DOB: ?
Indicted 1–26–67, ITAR Gambling, E.D. Pa.
Convicted on 10–29–68.
Sentenced to 3 years probation.

18. Glimco, Joseph P.:
DOB: 01–14–09, Italy.
Indicted 6–1–66, Taft-Hartley Act, N.D. Ill.
Convicted on 2–4–69. Sentenced to $40,000 fine.

19. Guglielmini, Frank:
DOB: 3–8–25.
Indicted 6–22–66, Bankruptcy Fraud, E.D. N.Y.
Convicted on 11–30–66.

Sentenced to 5 years on 1–13–67.
Reversed and remanded on 10–4–67.
Reconvicted on 4–28–69.
Sentenced to 2 years on 8–15–69. On appeal.

20. Lombardozzi, Carmine:
DOB: 2–8–13, N.Y.
Indicted 8–21–68, ITSP, E.D.N.Y.
Convicted on 3–12–69, guilty plea. On appeal.
(NOTE.—On 2–20–69 Lombardozzi was arrested by IRS for false statements to IRS in re Roosevelt Raceway mutual tickets. E.D.N.Y.)

21. Mancuso, Thomas:
DOB: 08–29–07, N.Y.
Indicted 8–14–68, Narcotics Registration Violation, E.D.N.Y.
Convicted on 3–26–69. Sentenced to 1 year and $1,000 fine.

22. Marcello, Carlos:
DOB: 2–6–10
Indicted 6–1–67, Assault on Federal Officer, E.D. La.
Convicted on 8–8–68 in S.D. Texas. Sentenced to 2 years. On apeal.

23. Mosiello, Mario:
DOB: ?
Indicted 1–26–67, ITAR Gambling, E.D. Pa.
Convicted on 10–29–68.
Sentenced to 5 years probation.

24. Pecora, Joseph N.:
DOB: 12–12–19, Pa.
Indicted on 1–18–68, Liquor Law Violation, W.D. W. Va.
Convicted on 9–23–68.
Sentenced to 5 years probation.

25. Roselli, John:
DOB: 7–4–04, Ill.
Indicted 10–20–67, Failure to Register as Alien, C.D. Calif.
Indicted 12–21–67, Tax Exasion, C.D. Calif.
Convicted on 5–23–68. Sentenced to 6 months (alien reg.).
Convicted on 12–2–68, Tax Evasion. Sentenced to 5 years, sentences to be served concurrently. Both convictions on appeal.

26. Rubino, Mathew-Mike:
DOB: 2–26–11, Mich.
Indicted 5–20–68. Income Tax Evasion, E.D. Mich.
Convicted 1–29–69. Sentenced to 10 years. On appeal.

27. Sansone, Ernest:
DOB: ?
Indicted 12–14–67. ITAR Gambling, N.D. Ill.
Convicted on 2–12–69. Sentenced to 18 months. On appeal.

28. Schipani, Joseph:
DOB: 4–5–12, N.Y.
Indicted 4–11–63, Income Tax Evasion, E.D.N.Y.
Convicted on 10–15–65.
Reversed on 12–12–66.
Reconvicted 11–11–68. Sentenced to 3 years and $12,500 fine. On appeal.

29. Strada, Ross J.:
DOB: ?
Indicted on 6–24–68, ITAR Gambling, W.D. Mo.
Convicted on 11–6–68. Sentenced to 6 months and 5 years probation.

DEPARTMENT OF JUSTICE,
*Washington, September 9, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Upon the conclusion of the hearings on August 5, 1970, by Subcommittee No. 5 of the House Committee on the Judiciary on S. 30, the Organized Crime Control Act of 1969, it was agreed that the Department of Justice would furnish its views upon certain issues relating to the bill.

(1) Counsel for the subcommittee requested an examination of the opinion of the U.S. Supreme Court in *Jenkins* v. *McKeithen*, 395 U.S. 411 (1969), to determine whether it affects the validity of the grand jury reports contemplated in title I of S. 30, as supported by the Court's earlier decision in *Hannah* v. *Larche*, 363 U.S. 420 (1960).

In *Jenkins* the Court held that where a commission allegedly makes an actual finding that a specific individual is guilty of a crime, due process requires the commission to afford the person being investigated the right to confront and cross-examine the witness against him, subject only to traditional limitations on these rights. (*Supra*, at 429). The Court distinguished *Hannah* v. *Larche*, and reaffirmed its opinion in that case. Also, the Court remanded to the district court for its determination the question whether the due process clause requires that the State commission whose procedure was challenged need provide all the procedural protections afforded a defendant in a criminal prosecution or whether something less would be sufficient. The Court reiterated its observation from *Hannah* v. *Larche*, at 422, that "whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors." (*Jenkins*, *supra*, at 426, 430.) The Court further reiterated that a grand jury need not provide all the procedural guarantees because, as noted in *Hannah* v. *Larche*, at 449, "the grand jury merely investigates and reports. It does not try." (*Jenkins*, *supra*, at 430.) The Court implied also that the grand jury has constitutional sanction not accorded other investigative bodies. It noted, at 430, that the functions of the grand jury are rooted in long centuries of Anglo-American history, and that the grand jury differs from the investigative commission in that it is designed to interpose an independent body of citizens between the accused and the prosecuting attorney.

The function of the investigative commission in *Jenkins* v. *McKeithen*, which was to make specific findings of guilt, is not analogous to the function which grand juries would perform under the report provisions of title I, which is to investigate and recommend. Under title I, where a special grand jury finds evidence of criminal misconduct, it will indict. Where, in investigating criminal misconduct, it finds evidence of noncriminal misconduct, malfeasance, or misfeasance in office by a public employee, it will report and make recommendations to that officer's superiors. In this, and other material ways, the special grand jury's procedure and reporting function may be distinguished from the functions and procedures of the State investigative commission.

We think that *Jenkins* v. *McKeithen*, considered in conjunction with *Hannah* v. *Larche*, clearly indicates that reporting grand juries may be expected to withstand the constitutional challenge leveled at State investigative commissions.

(2) With reference to title IV, which would add a new false declarations offense to Federal law, it was asked whether proof of the offense could be made by showing two or more contradictory statements under oath regardless of the lapse of time which might have intervened between the statements.

The proposal as drafted contains no time limitation. Proof of false declarations by inconsistent statements requires only that the statements be made knowingly under oath, be "manifestly contradictory," and be "material to the point in question" in any proceeding before or

ancillary to any court or grand jury of the United States. The comparable provision of the Model Perjury Act, pertaining to proof of perjury by contradictory statements, is similarly unrestricted by a time limitation. (We compared the major substantive provisions of title IV with those of the Model Act in our letter of August 3, 1970.) However, the analogous New York law permitting proof of perjury by inconsistent statements requires that each statement upon which the prosecution is based be made "within the period of the statute of limitations for the crime charged." (N.Y. Penal Law § 210.20; L. 1965, eff. Sept. 1, 1967.) The purpose of the restriction, as noted in the legislative commentary, is to prevent a person from being indirectly punished for an old offense. In the absence of a comparable provision in title IV, the latter of the inconsistent statements upon which the prosecution is based will necessarily be within the statute of limitations, since this is the point at which an offense under the statute is committed, but previous inconsistent statements may have been made at a more remote time in the past. If the subcommittee wishes to incorporate a provisions such as the New York law contains, we would have no objection.

(3) With respect to title VI, which authorizes the taking of depositions of prospective government and defense witnesses in criminal cases, the subcommittee asked if the Department of Justice would agree to a provision specifying the circumstances under which such depositions would be admissible at trial. Admissibility of depositions of defense witnesses under present law is governed by paragraph (e) of rule 15, of the Federal Rules of Criminal Procedure. Title VI contains no equivalent provision but, as noted in the Senate report, leaves the admissibility of depositions to follow previous law.

The grounds for use of depositions in criminal cases as codified in rule 15(e) are essentially those which were recognized at common law. In *West* v. *Louisiana*, 194 U.S. 258, 262 (1904), the U.S. Supreme Court held that at common law the right existed to read the deposition of a witness upon the trial of a defendant, if the deposition had been taken when the defendant was present, was with counsel, and was afforded an opportunity to cross examine, provided that the witness at the time of trial was dead, was insane, was too ill ever to be expected to attend the trial, or was kept away by the connivance of the defendant. These are the most common statutory grounds for the admission of depositions in criminal trials in the States today. In certain cases, without benefit of statute, courts have permitted depositions from preliminary examinations to be read at trial where the deponent was present but was excused from testifying on the ground that by so doing he might incriminate himself. Courts have also without statutory authorization admitted statements from preliminary proceedings where the witness is known to be in the jurisdiction, upon a showing that he is deliberately hiding and successfully evading process servers, as would be permitted under rule 15(e).

If the subcommittee is of the opinion that a clarifying amendment governing the admissibility of depositions will be useful, we suggest that it be sufficiently broad to allow the court to respond to unforeseeable circumstances, and to permit continued development of the case law is this area.

(4) The subcommittee expressed an interest in certain empirical data obtained from past Department of Justice studies which substantiate

the findings of part A of title VII relating to litigation concerning sources of evidence. Certain statistics resulting from Department surveys were furnished to Senator John L. McClellan at the time S. 2292, from which title VII is derived, was introduced in the Senate on May 29, 1969.

We indicated at that time that since *Schipani* v. *United States*, 385 U.S. 372, was argued before the Supreme Court in the fall of 1969, we had made 6,750 inquiries of the Federal Bureau of Investigation to ascertain whether particular individuals had been subjected to electronic surveillance in an effort to determine the instances in which unlawful wiretapping or eavesdropping might have affected a case which had been brought to trial. We reported then that only two Federal cases had been dismissed following hearings on the effect of electronic surveillance, and that we had been advised of one State case dismissed because of tainted evidence. In addition to processing the 6,750 inquiries and replies, we indicated that we had been involved in perhaps 75 to 100 disclosure hearings resulting from defendants' claims that their cases were tainted by unlawful electronic surveillance. Making these checks obviously involved an expenditure of an enormous amount of attorney time as well as agent time.

We have since had occasion to calculate the time spent in connection with electronic surveillance hearings in the case of *Kolod* v. *United States*, 371 F. 2d 983, reversed and remanded *sub nom Alderman* v. *United States*, 394 U.S. 165 (1969). There were two such hearings in connection with this particular case—the first, in June of 1966 (during the pendency of the appeal), involving electronic surveillance of one of the defendants in Nevada; the other in the spring and early summer of 1969 (after the Supreme Court decision remanding *Alderman* to the district court), relating to the electronic surveillance of another of the defendants. In the 1966 hearing, three attorneys consumed approximately 52 man-days in preparation and in the hearing. In the 1969 hearing, attorneys consumed approximately 153 man-days in preparation and hearing, the hearing itself taking place over a period of several weeks and consuming approximately 5 court days during that period. Thus the electronic surveillance hearings in connection with the case consumed a total of approximately 205 attorney man-days. In addition, 21 agents of the Federal Bureau of Investigation were brought to Denver for the 1966 hearing, each spending a substantial amount of time in preparation and in actual testimony, and a similar number appeared in connection with the hearing in 1969. Thus the agent man-days consumed in connection with these hearings were at least several times the attorney man-days consumed.

Following the hearings in 1969, the district court judge found that there was absolutely no connection between the electronic surveillance and the case on which the defendant was convicted, and accordingly judgment was reinstated. The case was then reargued in the 10th Circuit Court of Appeals. On March 31, 1970, the 10th circuit again remanded the case for further hearing, but, in the meantime, Felix Alderisio, the sole remaining defendant contesting the conviction, pleaded guilty to bank fund misapplication and unlawful gun possession charges in Chicago. He therefore waived his right to further hearings in this case and consented to an entry of final judgment. Thus the case, which was initiated by indictment in February 1964

and tried in March and April 1965, was terminated finally in June 1970.

In cases where an unlawful surveillance has preceded the commission of a charged offense, we are aware of no cases where the evidence offered by the Government has been found to be tainted. Our most recent study indicated that courts in the past few years have been asked to ascertain whether a prior illegality has led to evidence of a subsequent offense in 85 cases, reported and unreported, against as many defendants. In all but two cases, the issue was resolved in favor of the Government. In these two cases, the courts ordered additional disclosures which moved the Government to dismiss the indictments so as to maintain the security of continuing investigations.

We have found that as a practical matter evidence obtained through a surveillance as long as 5 years before a charged offense can provide, as to that offense, only general background information concerning the perpetrator—the kind of general information that is usually duplicated by similar information from several independent sources over such a protracted period of time, particularly where the subject is one of continuing interest to law enforcement officials as organized crime offenders are. In any event, whether or not similar evidence is accumulated from independent sources, a lead becomes so dated as to lose most of its value at the end of a year or two. The 5-year time limitation was selected out of an abundance of caution, since our survey indicated that as a practical matter, after the lapse of far less time, the probability of finding a casual link between the illegal electronic surveillance and the evidence of a later offense is virtually nonexistent.

(5) The subcommittee has asked whether the Department would support an amendment to title VII that would make the proposed subsections 3504(a)(2) and 3504(a)(3) of title 18, United States Code, applicable only with respect to acts committed before the enactment of title VII.

The enactment of title VII with such a limiting amendment would still serve to alleviate a great deal of the difficulties occasioned by the existence of the past electronic surveillances which had been conducted by the Government at a time when no warrant procedure was available. The administrative and manpower problems arising from such past electronic surveillances, and the danger to innocent third parties, informants, and the national security stemming unnecessarily from the presently unlimited hearings concerning such past surveillances, would be resolved as well by title VII as so amended, as by title VII as it is now written.

Nevertheless, the rationale underlying the provisions of title VII is as applicable to defense challenges to future instances of electronic surveillance as it is to defense challenges to past instances. Despite scrupulous efforts by the Department and Federal investigative agents, and despite the closest scrutiny by district courts in reviewing applications for electronic surveillance warrants under chapter 119 of title 18 of the United States Code, it is apparent that there will be some instances in which warrants—thought to be lawful when applied for and issued—subsequently are determined by an appellate court to have been improperly issued because, for instance, of some new construction of the evidence required to be presented to the district court (see, e.g. *Spinelli* v. *United States*, 393 U.S. 410 (1969)), or some new

interpretation of the Constitution vitiating the usability of what at the time reasonably had been considered properly obtained evidence (cf. *Miranda* v. *Arizona*, 384 U.S. 436 (1966); *Johnson* v. *New Jersey*, 384 U.S. 719 (1966)). As to section 3504(a)(2), there is certainly as much reason to assure that in future cases involving danger to innocent third parties, informants, and the national security, as well as in past cases, such interests will not unnecessarily be jeopardized. While an "interest of justice" provision similar to that in the proposed section 3504(a)(2) appears in 18 U.S.C. 2518(10)(a), the availability and scope of this provision is far less certain than that in title VII due to the fact that section 2518 was enacted prior to the Alderman case and does not have the benefit of clear expressions of congressional intent in the legislative history. As to section 3504(a)(3), there is as much reason to avoid totally unnecessary hearings concerning future surveillances as well as past ones, although the number of occasions for challenging such surveillances will have decreased markedly. Still, a single application for court-authorized electronic surveillance has in the past resulted in the indictment of as many as 70 defendants, and an adverse appellate ruling on the propriety of granting a warrant predicated upon such an application could, absent title VII, result in scores of defendants challenging the admissibility of evidence against them in every future case in which they are involved, no matter how unrelated to the original information gained by the surveillance in question. Moreover, as noted above, a single appellate decision interpreting constitutional requirements in a new manner many render evidence against hundreds or even thousands of defendants inadmissible, although secured in good faith under the law as it then existed. To lose the use of such evidence and its fruits presents serious obstacles to the administration of justice, but to require the Federal district courts to hold evidentiary hearings in still future cases—on patently specious defense claims that such evidence led to evidence of all further offenses of those defendants committed over 5 years after the surveillance in question—is simply not warranted.

Finally, there should be no question but that the deterrent effect of the exclusionary rule will not in any way be lessened by the enactment of title VII as it now stands. That title maintains the absolute prohibition against any use in any criminal prosecution of any information obtained by an unlawful surveillance, and any information developed from leads suggested by an unlawful surveillance. Moreover, as of June 1968, electronic surveillance not sanctioned by a court order is a Federal criminal offense entailing a fine of up to $10,000 and imprisonment of up to 5 years. (18 U.S.C. 2511.)

In view of the above, the Department would not support a temporal limitation on the provisions of title VII, and the Department strongly urges that such a limitation not be adopted.

(6) Counsel for the subcommittee asked for the views of the Department as to whether that part of title VIII which relates to the bribery of State and local officials might be predicated upon the guaranty clause of the United States Constitution, article IV, section 4, which guarantees to every State a republican form of government. The question implies that the provisions pertaining to the obstruction of local criminal laws should be considered separately from the

other portions of title VIII, which relates in its entirety to the control of illegal syndicated gambling and is now predicated upon the commerce clause.

We would object to the use of the guaranty clause as a jurisdictional base for two reasons. First, we would be reluctant to divide the proposed criminal statute into component parts for jurisdictional purposes, since it is directly solely to the objective of providing for more effective Federal prosecution of illegal gambling—the lifeline of organized crime. Second, because the guaranty clause has not previously been utilized by the Congress for such a purpose, there is a lack of precedent and judicial authority to indicate whether legislation may be predicated upon it.

As the subcommittee is aware, Federal jurisdiction under title VIII rests upon specific findings of the Congress that illegal gambling, in diverse ways, involves the widespread use of interstate commerce, and affects interstate commerce. Part A contains a finding that, among other things, "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 of the title makes it 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 with intent to facilitate an illegal gambling business if (1) one or more of the persons does any act to effect the object of the scheme, (2) one or more of the persons is an official who is responsible for the enforcement of the criminal laws of the State or political subdivision, and (3) one or more of the persons participates in an illegal gambling business. The obstruction of State and local law enforcement with which the statute is concerned thus relates solely to schemes to facilitate illegal gambling business.

For the foregoing reasons, we prefer not to speculate as to the feasibility of using the guaranty clause as an alternative jurisdictional base, but to predicate the title squarely upon the tested and proven constitutional basis which the commerce clause affords.

The power of Congress to prevent criminal activities which take place in or affect interstate commerce is well established. (See, *Caminetti* v. *United States*, 242 U.S. 470 (1917); *Wickard* v. *Filburn*, 317 U.S. 111 (1942); *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241 (1964); *Katzenbach* v. *McClung*, 379 U.S. 294 (1964).) As is accurately reflected in the findings of part A, illegal gambling operations have a direct effect upon interstate commerce. Under its authority to regulate or prohibit syndicated gambling activities, we think it is clear that the Congress may also prohibit conduct which facilitates the operation of illegal gambling businesses.

(7) You requested that the Department apprise the subcommittee of its views concerning the amendments to title X proposed by the American Bar Association, as set forth in the statement by the association's president-elect, which was submitted to the subcommittee on July 23, 1970. The ABA recommended generally that where appropriate the provisions of title X relating to increased sentences for dangerous special offenders be amended to incorporate the association's standards pertaining to sentencing alternatives and procedures.

(a). First, the ABA recommends that section 3575 be amended in subsection (e)(1), which establishes criteria for finding a defendant

a recidivist offender, to require proof of two prior convictions for felonies committed on different occasions prior to the commission of the triggering felony upon a third occasion. Also, it suggests that subsection (e) be amended to include a cutoff time of 5 years, or another specific time period, between the commission of the last prior felony, or the offender's release from a prison sentence served for commission of the felony, and the triggering offense (ABA statement, pp. 22–23).

We would have no objection to the first amendment which the association here proposes. As the bill is drafted, a recidivist offender is by definition a defendant who on at least *two previous occasions* has been *convicted* of an offense punishable by over 1 year imprisonment, and who previously has been imprisoned for at least one such offense. Thus it requires three separate convictions, but does not specifically require that more than two of the felonies of which the defendant is found guilty be committed upon different occasions.

The requirement for a lapse of less than 5 years (or other specified period) between a prior conviction, or term of imprisonment, and the triggering felony is suggested for inclusion by the ABA on the premise that "the judgment of likely recurrence which repeated criminality permits, and which provides the justification for an enhanced term in the first place, becomes progressively diluted as the time between the present and the last offense increase" (ABA statement p. 23). The fact that the last offense occurred at all, however, tends to vitiate the central assumption of the premise. Moreover, the premise assumes that the defendant has lived as a law abiding citizen while at liberty between his convictions. We would recommend against the inclusion of a specific cutoff time in S. 30 because it would protect defendants in organized crime cases who, because of the insulation provided by the criminal syndicate, have successfully escaped arrest and conviction for a long period of time while pursuing criminal careers. We think that the time elapsing between the defendant's convictions is a factor to be considered by a court in determining "dangerousness" pursuant to subsection (f) of proposed section 3575, but if the court finds that the intervening time in fact was devoted by the defendant to criminal pursuits, the lapse of time between convictions should not control the court's finding as to whether the defendant is a dangerous special offender.

(b) The ABA recommends that subsection (b) of section 3575 which provides that the court "shall" sentence the defendant to imprisonment for a term not to exceed 30 years if it appears that he is a "dangerous special offender," be amended to substitute the word "may" for "shall." It was suggested that a range of possible terms of imprisonment should be provided, but that the bill as drafted might be construed to make mandatory at least a minimum prison sentence. Thus it is thought to conflict with the ABA's announced policy that: "The legislature should not specify a mandatory sentence for any sentencing category or for any particular offense" (ABA statement, p. 24).

We think that the term "shall" as used here is appropriate. It conforms with the language generally used in the sentencing provisions of title 18, which has not previously been misconstrued as providing for a mandatory minimum sentence. Furthermore, inasmuch as an offender in any of the three defined categories is to be considered "dan-

gerous" only when the court finds that a longer prison term than that which may be imposed for the felony of which he has been convicted is required to protect the public from further criminal conduct on his part, it would be incongruous for the court to fail to sentence a "dangerous" offender to any prison term at all. Therefore, a provision that some such term of imprisonment "shall" be imposed is appropriate for the purposes of the title. If a court finds that the usual maximum term for the felony, or any lesser term, is all that should be imposed, by definition the court could not find the defendant to be a dangerous special offender. The proposed change from "shall" to "may" therefore, would serve no purpose.

(c) The ABA standards provide a maximum 25-year term for special offenders, which the association would substitute for the maximum 30-year term which title X authorizes (ABA report, p. 26).

We see no reason to change the bill in respect to the maximum term provided, although we would not oppose a maximum 25-year term in lieu of a maximum 30-year term. Since there is complete flexibility in sentencing under title X which permits terms of much less than 30 years, and since there are no restrictions placed upon parole, we think that the maximum 30-year term is reasonable and in keeping with the objectives of special offender sentencing.

(d). The ABA has expressed the view that in certain prosecutions title X would permit a wide disparity in sentencing between the maximum term which could be imposed for the offense of which the defendant has been convicted, and an increased term up to 30 years. The association suggests that subsection (b) of section 3575 of title X be amended to provide that the special sentence imposed "should not be disproportionately more severe than the maximum sentence generally provided by law for such felony," so as to assure that a sentence imposed under title X will be related in severity to the sentence otherwise provided for the felony offense.

In practice, we do not believe that the sentence imposed under title X as it is presently drafted would reflect the wide disparity that in theory could occur. The bill contains many safeguards, including provisions for appellate review, which are designed to prevent this result. However, an amendment to title X which would require specifically that the sentencing court take into consideration the nature of the crime of which the defendant stands convicted—as well as other information from the trial, the presentence report, and the sentencing hearing as the bill now provides—would certainly not be objectionable.

(e). The ABA suggests that disclosure of the presentence report to defendant and his counsel be authorized in accordance with its explicit standards, rather than by the general provision in proposed subsection (b) of section 3575 which requires disclosure 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" (ABA statement, pp. 26, 27).

We think that the provision contained in the bill as drafted is compatible in principle with the ABA standards, and is the preferable approach. The standards, for example, would specifically permit withholding of "parts of the report which are not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of

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rehabilitation, of sources of information which have been obtained on a promise of confidentiality." This information would also be withheld under the general standard of S. 30. However, if the bill is amended as suggested, all potentially compelling reasons for nondisclosure would not be included. Such a limitation to specific criteria would sacrifice flexibility and hamper the courts' discretion. It should be noted that title X, as well as the ABA standards, promotes liberal disclosure by requiring that reasons for the nondisclosure of any parts of the presentence report be stated on the record where they will be subject to appellate review. Also, neither the bill nor the standards would preclude disclosure of the entire record in appropriate cases.

(f). The ABA finds section 3575, subsection (a), of title X objectionable on the ground that where an increased sentence will be sought by the Government the prosecutor is required to notify the court prior to trial of the basis for believing that the defendant is subject to sentencing as a "dangerous special offender." The association states that "such notification can only prejudice the court against the defendant during the trial of the offense with which he is presently charged" (ABA report, p. 28).

There is no reason to believe that the court will be prejudiced by such notification so as to jeopardize the defendant's opportunity for a fair trial. Prior to a trial or the acceptance of a plea of guilty a judge has frequent occasion to receive information which reflects adversely upon a defendant's background and character—as at a bail hearing or a hearing upon a motion to suppress evidence—and a judge who rules upon such preliminary matters is not thereby disqualified from presiding at trial. Nor is there otherwise a serious risk of prejudice to the defendant's case, as long as this information cannot be disclosed at trial or otherwise be revealed to the jury. Moreover, a court could make provision for sealing a notification if it wished to do so to avoid the possibility of public disclosure. In any event, as a matter of fairness it is essential that a defendant be notified prior to pleading that he faces the possibility of sentencing as a dangerous special offender, whether or not such notice is at that time required to be filed with the court.

(g) The ABA does not believe that proposed section 3575 of title X adequately delineates the kind of offender upon whom a special term may be imposed pursuant to subsection (e), paragraphs (2) and (3). The association states that the definitions relating to the so-called professional and organized crime offenders are sufficiently vague as to be inconsistent with its sentencing standards. It notes that the ABA standard which endorses special confinement terms for exceptional cases (e.g., the particularly dangerous offender and the professional criminal) does so provided that "adequate criteria will be developed and stated in the enabling legislation which carefully delineate the type of offender on whom such a special term can be imposed" (ABA statement p. 28).

We believe that the criteria used to delineate these special dangerous offenders have been stated so as to withstand serious challenge on grounds of "vagueness." Paragraph (2) defines a special offender to include a defendant who committed the triggering felony as part of a pattern of conduct which was criminal under the applicable laws of any jurisdiction, which constituted a substantial source of his income,

and which manifested special skill or expertise. It is designed to reach the professional criminal who is a repeating offender but who may not have a prior conviction record. Paragraph (3) defines a special offender to include a defendant who committed the triggering 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 acted or agreed to act in a leadership position, or to use force, or to give or receive a bribe. It is designed to deal primarily with the organized crime offender. In both classifications, the requirement of a pattern of criminal conduct precludes application of special sentencing provisions to an isolated offense. Also, under either classification, an offender must not only come within these criteria, but must be found by the court to be "dangerous" in the sense that confinement longer than that ordinarily provided for the crime of which he has been convicted is required to protect the public from further criminal conduct by him. The Department of Justice commented upon the standards for delineating these two classes of offenders in S. 30 as the bill was introduced in the Senate, and our suggestions are reflected in the bill in its present form. We would be glad to assist in evaluating any alternative proposals which the subcommittee may wish to consider. However, in the absence of an affirmative suggestion by the ABA as to how the "professional" and "organized crime" offenders may be more precisely defined, we have no recommendations for changes at this time.

(8) Finally, the subcommittee requested that the Department comment upon certain questions concerning the possible applicability to title X of three Supreme Court decisions.

(a) First, it has been asked whether the appellate review of sentencing provided in title X will run counter to the Supreme Court's holding in *North Carolina* v. *Pearce*, 395 U.S. 711 (1969).

In the *Pearce* case the Court considered the question whether a defendant upon retrial after successfully having his conviction reversed on appeal or collateral attack may receive a more severe sentence than that imposed upon his initial trial, while a defendant who does not appeal or attack his conviction runs no risk of an increased sentence. The Court concluded that the double jeopardy clause would not prevent a more severe sentence upon retrial, because the power of a trial court to impose whatever sentence is legally authorized is a corollary to the power to retry the defendant. In the imposition of such an increased sentence, however, the Court said that due process requires that "vindictiveness" against a defendant for having successfully challenged his conviction must play no part. To preclude this possibility in the factual situations before it, the Court said that the trial court must affirmatively state its reason for imposing an increased sentence upon retrial, and that the trial court's second sentence must be based upon objective information concerning the defendant's conduct since the original sentencing proceeding.

Turning first to the matter of having the reasons for a sentence increase expressly stated on the record, we invite the subcommittee's attention to the Department of Justice's comments upon S. 30 of May 21, 1970, in which we suggested, citing *Pearce*, that consideration be given to adding to title X the requirement that an appellate court

in imposing an increased sentence state on the record the reasons for its action.

The requirement in the *Pearce* situation that an increased sentence be based upon objective information concerning the defendant's conduct since his previous trial is, of course, inapplicable to appellate review of the propriety of the initial sentence. In *Pearce* the Supreme Court's action was based upon pragmatic considerations, the justices joining or concurring in the majority opinion clearly believing that the possibility of retaliatory motivation on the part of reversed trial judges was more than a theoretical factor to be considered. The emphasis was on possible vindictiveness for a defendant's "having successfully pursued a statutory right." *Pearce*, *supra*, at 724. In the situation covered by title X, it is only the affirmative action of the Government, not the pursuit of a statutory right by the defendant, that brings the matter within the power of the appellate court. Moreover, the possibility of increase will be available only when the defendant is not in fact successful in overturning his conviction through whatever appellate action he himself may have initiated. Finally, appellate judges, in reviewing the propriety of a sentence imposed by a trial judge, are simply not logically susceptible to any charge that vindictiveness may consciously or unconsciously enter into their decision, although reversed trial judges may logically be susceptible to such a charge. Consequently, the considerations which prevailed in the retrial context and which prompted the Court's decision in *Pearce* are not applicable in the context of sentence review by an appellate court. As the Supreme Court recently noted in considering a different problem, "whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors." *Jenkins* v. *McKeithen*, 395 U.S. 411, 426, 430 (1969), quoting *Hannah* v. *Larche*, 363 U.S. 420, 442 (1960).

(b) Second, it has been asked whether *Green* v. *United States*, 355 U.S. 184 (1957), in which the Supreme Court held that the double jeopardy clause forbids the relitigation of an acquittal of the greater related offense (first degree murder) when the defendant has been convicted of a lesser included offense (second degree murder), prevents the imposition of an increased sentence by an appellate court under title X upon a defendant who has been found by the trial judge not to be a dangerous special offe nder.

Prior to the *Pearce* decision, it was frequently assumed that a sentence imposed in a trial proceeding established a ceiling which could not be exceeded by a sentence imposed upon retrial without a violation of the double jeopardy clause. However, the Court in the *Pearce* decision dispelled this notion when it held that a greater sentence could be imposed upon retrial. The trial court there had adjudged a specific sentence to be appropriate on the basis of the facts before it at the first trial, the first sentencing adjudication as opposed to the conviction was not itself found by the appellate court to have been defective in any way, yet the Supreme Court held that the earlier adjudication of an appropriate sentence for the offense did not preclude a subsequent adjudication of a higher sentence. It is thus apparent that a pronouncement of a sentence based upon a determination by the trial judge can-

not be equated with a rendering of a verdict or a judgment of guilt or acquittal insofar as double jeopardy is concerned.

Nonetheless, it has been contended that the *Green* case may invalidate the special sentencing review incorporated in title X on the theory that once having been "acquitted" by the trial judge not only of being deserving of a greater sentence but of being a dangerous special offender, the defendant should not be placed in jeopardy for the same "offense" at a hearing on the appellate level (Association of the Bar of the City of New York Report on S. 30, p. 103). This argument can be persuasive only if the finding of special offender status can reasonably be said to resemble a conviction for a separate offense. The finding of special offender status, however, is nothing more than a finding that the defendant deserves a greater sentence than is ordinarily available. Moreover, for reasons discussed below in connection with *Specht* v. *Patterson*, we do not think that special sentencing can be characterized as analagous to a conviction for a separate offense.

Title X, therefore, does not in our opinion run counter to the *Green* decision.

(c). Third, it has been suggested that the Supreme Court's decision in *Specht* v. *Patterson*, 386 U.S. 605 (1967), can be read to indicate that whenever a court is asked to make factual determinations which increase the maximum punishment that the court may impose, the defendant is entitled to whatever rights a defendant has at trial.

We do not think that the *Specht* decision can properly be read so broadly. In that case, the defendant was convicted of the crime of indecent liberties under a State statute which provided a maximum sentence of 10 years, and was then sentenced under a separate Sex Offenders Act for an indeterminate term of from 1 day to life imprisonment. The sentence was imposed without a hearing, and was predicated solely on the basis of a psychiatric report. The Supreme Court held that the invocation of the Sex Offenders Act made one conviction the basis for another proceeding under new charges, and that in these circumstances due process required that in the proceeding the defendant be present with counsel, have an opportunity to be heard, be confronted with witnesses against him, have the right to cross-examine, and have the right to offer evidence of his own. The Court also held that there must be findings adequate to make meaningful any appeal. (*Id.* at 610).

Title X, as opposed to the Sex Offenders Act which the Court struck down, does not make a conviction the basis for commencing a new criminal proceeding. The dangerous offender criteria to be determined by the trial court are facts which aggravate the triggering offense itself and which justify an enhanced punishment for the triggering offense. The Supreme Court has ruled that an offender sentenced under a recidivist statute is neither tried nor punished for past offenses, but that his latest offense is considered aggravated by special circumstances. *Gryger* v. *Burke*, 334 U.S. 728 (1948); *Graham* v. *West Virginia*, 244 U.S. 616 (1912). The same principle applies to the "organized crime" or "professional" categories of special offenders in title X, since the definitions require that the triggering offense be the result of an accomplished or planned pattern of such criminal conduct. As to such cases, where the triggering offense is simply aggravated by the past conduct, the Court in *Specht* noted that they were "not unlike" the situation

then before it, but stated that a habitual criminal issue is a "distinct issue" on which a defendant "must receive reasonable notice and opportunity to be heard," citing *Graham* v. *West Virginia*, *supra*, at 625; *Oyler* v. *Boles*, 368 U.S. 448, 452, (1962); and *Chandler* v. *Fretag*, 348 U.S. 3, 8 (1954). *Specht*, *supra* at 610. It appears appropriate to distinguish between a proceeding which is based upon a new and distinct criminal *charge*, and one in which an imposition of an enhanced sentenced is "a distinct issue."

In any event, title X provides a wide range of procedural protections for a defendant to be sentenced under its provisions. Under a title X proceeding, the defendant will be present, he will be accorded the assistance of counsel, he will be entitled to compulsory process, he will have the right to confront and to cross-examine the Government witnesses that appear at the hearing, he will have the opportunity to be heard and to present evidence of his own, and he will have a right to recorded findings and a meaningful appeal. As to evidence submitted in the form of reports, it should be borne in mind that the defendant may compel the attendance of any witness he chooses and that judges, by experience, are familiar with the necessity of weighing the value of hearsay information used for sentencing and other purposes and may be expected to give such hearsay such reduced weight as may be appropriate. Certainly there is nothing in *Specht* to indicate that the Court intended to reduce in any degree the ability of the trial courts to rely upon such hearsay information as has traditionally been found appropriate in sentencing situations. In fact the Court quoted at length from its earlier opinion in *Williams* v. *New York*, 337 U.S. 241 (1949), a case which strongly affirmed the necessity of a sentencing judge receiving and considering probation and medical information which it would be "totally impractical if not impossible" to receive in open court subject to cross-examination. *Specht*, *supra* at 606.

For these reasons, we feel that it cannot properly be said that the *Specht* decision requires that a defendant in a sentencing proceeding such as that contemplated by title X be accorded all the procedural rights to which he is entitled at trial.

If we can be of assistance to the subcommittee in its further review of S. 30, please do not hesitate to call upon us.

Sincerely,

WILL WILSON,
*Assistant Attorney General, Criminal Division.*

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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## Part I.—CRIMES

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## Chapter 39.—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

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[Sec. 837. Explosives; illegal use or possession; and, threats or false information concerning attempts to damage or destroy real or personal property by fire or explosives.]

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### § 835. Administration.

(a) The Interstate Commerce Commission is authorized and directed to administer, execute, and enforce all provisions of sections 831–835, inclusive, of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration, and to employ such officers and employees as may be necessary to carry out these functions.

(b) The Commission is authorized to make such studies and conduct such investigations, obtain such information, and hold such hearings as it may deem necessary or proper to assist it in exercising any authority provided in sections 831–835, inclusive, of this chapter. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. [No person shall be excused from complying with any requirement under this paragraph because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (49 U.S.C. 46), shall apply with respect to any individual who specifically claims such privilege: *Provided, however,* That before any person may be required to appear and testify or produce documentary evidence, he shall be advised by the Commission that he must specifically claim such privilege.] Witnesses subpenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

* * * * * * *

**[§ 837. Explosives; illegal use or possession; and, threats or false information concerning attempts to damage or destroy real or personal property by fire or explosives.**

(a) As used in this section—

["commerce" means commerce between any State, Terrtitory, Commonwealth, District, or possession of the United States, and any place outside thereto; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory, or possession of the United States, or the District of Columbia;

["explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound or mixture or any part thereof may cause an explosion.

[(b) Whoever transports or aids and abets another in transporting in interstate or foreign commerce any explosive, with the knowledge or intent that it will be used to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both; and if personal injury results shall be subject to imprisonment for not more than ten years or a fine of not more than $10,000, or both; and if death results shall be subject to imprisonment for any term of years or for life, but the court may impose the death penalty if the jury so recommends.

[(c) The possession of an explosive in such a manner as to evince an intent to use, or the use of, such explosive, to damage or destroy any building or other real or personal property used for educational, religious, charitable, residential, business, or civic objectives or to intimidate any person pursuing such objectives, creates rebuttable presumptions that the explosive was transported in interstate or foreign commerce or caused to be transported in interstate or foreign commerce by the person so possessing or using it, or by a person aiding or abetting the person so possessing or using it: *Provided, however*, That no person may be convicted under this section unless there is evidence independent of the presumptions that this section has been violated.

[(d) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully imparts or conveys, or causes to be imparted or conveyed, any threat, or false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives, or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year or a fine of not more than $1,000, or both.

[(e) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, Territory, Commonwealth, or possession of the United States, and no law of any State, Territory, Commonwealth, or possession of the United States which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.]

## *Chapter 40.—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS*

*Sec.*
*841. Definitions.*
*842. Unlawful acts.*
*843. Licensing and user permits.*
*844. Penalties.*
*845. Exceptions; relief from disabilities.*
*846. Additional powers of the Secretary.*
*847. Rules and regulations.*
*848. Effect on State law.*

### § *841. Definitions*

*As used in this chapter—*

*(a) "Person" means any individual, corporation, company, association, firm, partnership, society, or joint stock company.*

*(b) "Interstate or foreign commerce" means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).*

*(c) "Explosive materials" means explosives, blasting agents, and detonators.*

*(d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, "explosives" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term "explosive" is defined in subsection (j) of such section 844.*

*(e) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: Provided, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.*

(*f*) "*Detonator*" *means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.*

(*g*) "*Importer*" *means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.*

(*h*) "*Manufacturer*" *means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.*

(*i*) "*Dealer*" *means any person engaged in the business of distributing explosive materials at wholesale or retail.*

(*j*) "*Permittee*" *means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.*

(*k*) "*Secretary*" *means the Secretary of the Treasury or his delegate.*

(*l*) "*Crime punishable by imprisonment for a term exceeding one year*" *shall not mean* (*1*) *any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or* (*2*) *any State offense* (*other than one involving a firearm or explosive*) *classified by the laws of the State as misdemeanor and punishable by a term of imprisonment of two years or less.*

(*m*) "*Licensee*" *means any importer, manufacturer, or dealer licensed under the provisions of this chapter.*

(*n*) "*Distribute*" *means sell, issue, give, transfer, or otherwise dispose of.*

### § *842.* ***Unlawful acts***

(*a*) *It shall be unlawful for any person—*

(*1*) *to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;*

(*2*) *knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and*

(*3*) *other than a licensee or permittee knowingly—*

(*A*) *to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment,*

*or receipt is permitted by the law of the State in which he resides; or*

*(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.*

*(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—*

*(1) a licensee;*

*(2) a permittee; or*

*(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous therto if permitted by the law of the State of the purchaser's residence.*

*(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.*

*(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:*

*(1) is under twenty-one years of age;*

*(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;*

*(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;*

*(4) is a fugitive from justice;*

*(5) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954); or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721(a) of the Internal Revenue Code of 1954), or*

*(6) has been adjudicated a mental defective.*

*(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.*

*(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.*

*(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pur-*

*suant to this section or regulations promulgated under section 847 of this title.*

*(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.*

*(i) It shall be unlawful for any person—*

*(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;*

*(2) who is a fugitive from justice;*

*(3) who is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or*

*(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;*

*to ship or transport any explosive in interstate or foreign commerce or to receive any explosive which has been shipped or transported in interstate or foreign commerce.*

*(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.*

*(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.*

### *§ 843. Licenses and user permits*

*(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed $200 for each license or permit. Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.*

*(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—*

*(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;*

*(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;*

*(3) the applicant has in a State premises from which he conducts or intends to conduct business;*

*(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and*

*(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.*

*(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.*

*(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.*

*(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.*

*(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701–706 of title 5, United States Code.*

*(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secre-*

*tary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.*

*(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.*

**§ 844. Penalties**

*(a) Any person who violates subsections (a) through (i) of section 842 of this chapter shall be fined not more than $10,000 or imprisoned not more than ten years, or both.*

*(b) Any person who violates any other provision of section 842 of this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.*

*(c) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.*

*(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.*

*(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of an explosive shall be imprisoned for not more than five years or fined not more than $5,000, or both.*

*(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years, or fined not more than $20-000, or both; and if death results shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.*

*(g) Whoever possesses an explosive in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building shall be imprisoned for not more than one year, or fined not more than $1,000, or both.*

*(h) Whoever—*

*(1) uses an explosive to commit any felony which may be prosecuted in a court of the United States, or*

*(2) carries an explosive unlawfully during the commission of any felony which may be prosecuted in a court of the United States,*

*shall be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.*

*(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal injury results shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.*

*(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.*

### § 845. Exceptions; relief from disabilities

*(a) Except in the case of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:*

*(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof;*

*(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;*

*(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;*

*(4) small arms ammunition and components thereof;*

*(5) black powder in quantities not to exceed five pounds; and*

*(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.*

*(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.*

### *§ 846. Additional powers of the Secretary*

*The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.*

### *§ 847. Rules and regulations*

*The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.*

### *§ 848. Effect on State law*

*No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the*

*same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.*

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## Chapter 42.—EXTORTIONATE CREDIT TRANSACTIONS

Sec.
891. Definitions and rules of construction.
892. Making extortionate extensions of credit.
893. Financing extortionate extensions of credit.
894. Collection of extensions of credit by extortionate means.
[895. Immunity of witnesses.]
896. Effect on State laws.

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### [§ 895. Immunity of witnesses.

Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness in any case or proceeding before any grand jury or court of the United States involving any violation of this chapter is necessary to the public interest, he, upon the approval of the Attorney General or his designated representative, may make application to the court that the witness be instructed to testify or produce evidence subject to the provisions of this section. Upon order of the court the witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor may testimony so compelled be used as evidence in any criminal proceeding against him in any court, except a prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.]

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## Chapter 49.—FUGITIVES FROM JUSTICE

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### § 1073. Flight to avoid prosecution or giving testimony.

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State, is charged, *or (3) to avoid service of, or contempt proceedings for alleged disobedience of, lawful process requiring at-*

*tendance 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.

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, *or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed*, and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

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## Chapter 68.—NARCOTICS

Sec.

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[1406. Immunity of witnesses.]

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### [§ 1406. Immunity of witnesses.

[Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

[(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

[(2) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), or

[(3) the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a),

is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.]

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## Chapter 73.—OBSTRUCTION OF JUSTICE

Sec.

1501. Assault on process server.

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

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### § 1505. Obstruction of proceedings before departments, agencies, and committees.

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part with any civil investigative demand duly and properly made under the Antitrust Civil Process Act *or section 1968 of this title* willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of such demand; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

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### *§ 1511. Obstruction of State or local law enforcement*

*(a) It shall be unlawful for two or more persons to conspire 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 conspiracy;*

*(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and*

*(3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of 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 in which it is conducted;*

*(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and*

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

*(2) "gambling" includes but is not limited to poolselling, 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.*

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## Chapter 79.—PERJURY

Sec.
1621. Perjury generally.
1622. Subornation of perjury.
*1623. False declarations before grand jury or court.*

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### *§ 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 false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material 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, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—*

*(1) each declaration was material to the point in question, and*

*(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.*

*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 irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.*

*(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.*

*(e) 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.*

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## Chapter 95.—RACKETEERING

Sec.
1951. Interference with commerce by threats or violence.
1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.
1953. Interstate transportation of wagering paraphernalia.
1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan.
*1955. Prohibitions of illegal gambling businesses.*

* * * * * * *

### § 1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan.

[(a)] Whoever being—

(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or

(2) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan; or

(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or

(4) a person who, or an officer, counsel, agent, or employee of an organization which, provides benefit plan services to such plan

receives or agrees to receive or solicits any fee, kickback, commission gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of the actions, decisions, or other duties relating to any question or matter concerning such plan or any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value

prohibited by this section, shall be fined not more than $10,000 or imprisoned not more than three years, or both: *Provided*, That this section shall not prohibit the payment to or acceptance by any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as such person, administrator, officer, trustee, custodian, counsel, agent, or employee of such plan, employer, employee organization, or organization providing benefit plan services to such plan.

As used in this section, the term (a) "any employee welfare benefit plan" or "employee pension benefit plan" means any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act, as amended, and (b) "employee organization" and "administrator" as defined respectively in sections 3(3) and 5(b) (1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended.

[(b) Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of this section, or any conspiracy to violate such section, is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this subsection, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution decribed in the next sentence) against him in any court. No witness shall be exempt under this subsection from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this subsection.]

### *§ 1055. Prohibition of illegal gambling businesses*

*(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of 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 in which it is conducted;*

*(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and*

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

*(2) "gambling" includes but is not limited to poolselling, 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) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.*

*(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 vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise and baggage or the proceeds from such sales; 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.*

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## *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) if the act indictable under section 659 is felonious, 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 felonious 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 and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;*

*(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part*

*as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable 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 foregn 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.*

**§ *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 jurisdiction 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 effect 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) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.*

*(d) 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 proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas 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 may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.*

**§ 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 materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding 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 assembled 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 to 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 shall 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.*

## Chapter 117.—WHITE SLAVE TRAFFIC

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### § 2424. Filing factual statement about alien female.

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(b) In any prosecution brought under this section, if it appears that any such statement required is not on file in the office of the Commissioner of Immigration and Naturalization, the person whose duty it is to file such statement shall be presumed to have failed to file said statement, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to incriminate him or subject him to a penalty or forfeiture, [but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter, or thing, concerning which he may truthfully report in such statement] *but no information contained in the statement or any evidence which is directly or indirectly derived from 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.*

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## Chapter 119.—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

Sec.
[2514. Immunity of witnesses.]

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### [§ 2514. Immunity of witnesses.

[Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of this chapter or any of the offenses enumerated in section 2516, or any conspiracy to violate this chapter or any of the offenses enumerated in section 2516 is necessary to the public interest, such United States attorney, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify

or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or fortfeiture. No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except in a proceeding described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.]

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**§ 2516. Authorization for interception of wire or oral communications.**

(1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), or chapter 102 (relating to riots);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 224 (bribery in sporting contests), *subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives)*, section 1084 (transmission of wagering information), section 1503 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), *section 1511 (obstruction of State or local law enforcement)*, section 1751 (Presidential assassinations, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1954 (offer,

acceptance, or solicitation to influence operations of employee benefit plan), *section 1955 (prohibition of business enterprises of gambling)*, section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), or sections 2314 and 2315 (interseate transportation of stolen property), *section 1963 (violations with respect to racketeer influenced and corrupt organizations)*;

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving bankruptcy fraud or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under section 892, 893, or 894 of this title; or

(g) any conspiracy to commit any of the foregoing offenses.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire or oral communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

**§ 2517. Authorization for disclosure and use of intercepted wire or oral communications.**

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communi-

cation or such derivative evidence while giving testimony under oath or affirmation in any [criminal proceeding in any court of the United States or of any State or in any Federal or State grand jury proceeding] *proceeding held under the authority of the United States or of any State or political subdivision thereof.*

(4) No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

## Part II.—CRIMINAL PROCEDURE


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## Chapter 207.—RELEASE

* * * * * * *

### § 3148. Release in capital cases or after conviction.

A person (1) who is charged with an offense punishable by death, or (2) who has been convicted of an offense and is either awaiting sentence *or sentence review under section 3576 of this title* or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger

to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 3147 shall not apply to persons described in this section: *Provided*, That other rights to judicial review of conditions of release or orders of detention shall not be affected.

* * * * * * *

## *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, the district court determines the business of the grand jury has not been completed, the court may 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 or enters an order for the discharge of such grand jury before such grand jury 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. 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) 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. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of*

*the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other pesron shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.*

*(b) Whenever the district court determines that the volume of business of the special grand jury exceeds the capacity of the grand jury to discharge its obligations, the district court may order an additional special grand jury for that district to be impaneled.*

**§ 3333. Reports**

*(a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report—*

*(1) concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by any appointed public officer or employee as the basis for a recommendation of removal or disciplinary action; or*

*(2) 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 (a) 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 and any reasonable number of witnesses in his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (2) 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 or be 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 or be subject to subpena or otherwise made public until the provisions of subsection (b) of this section are met. A special grand jury term may be extended by the district court 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.*

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## Chapter 223.—WITNESSES AND EVIDENCE

Sec.

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[3486. Compelled testimony tending to incriminate witnesses; immunity.]

*3503. Depositions to preserve testimony.*

*3504. Litigation concerning sources of evidence.*

* * * * * * *

**[§ 3486. Compelled testimony tending to incriminate witnesses; immunity.**

[(a) In the course of any investigation relating to any interference with or endangering of, or any plans or attempts to interfere with or endanger the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence, no witness shall be excused from testifying or from producing books, papers, or other evidence before either House, or before any committee of either House, or before any joint committee of the two Houses of Congress on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, when the record shows that—

[(1) in the case of proceedings before one of the Houses of Congress, that a majority of the members present of that House; or

[(2) in the case of proceedings before a committee, that two-thirds of the members of the full committee shall by affirmative vote have authorized such witness to be granted immunity under this section with respect to the transactions, matters, or things concerning which he is compelled, after having claimed his privilege against self-incrimination to testify or produce evidence by direction of the presiding officer and

that an order of the United States district court for the district wherein the inquiry is being carried on has been entered into the record requiring said person to testify or produce evidence. Such an order may be issued by a United States district court judge upon application by a duly authorized representative of the Congress or of the committee concerned. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecutions described in subsection (d) hereof) against him in any court.

[(b) Neither House nor any committee thereof nor any joint committee of the two Houses of Congress shall grant immunity to any witness without first having notified the Attorney General of the United States of such action and thereafter having secured the approval of the United States district court for the district wherein such inquiry is being held. The Attorney General of the United States shall be notified of the time of each proposed application to the United States district court and shall be given the opportunity to be heard with respect thereto prior to the entrance into the record of the order of the district court.]

**§ 3500. Demands for production of statements and reports of witnesses.**

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) [to an agent of the Government] shall

be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under [paragraph] *subsection* (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him; [or]

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness [to an agent of the Government] and recorded contemporaneously with the making of such oral statement*; or (3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.*

[(c) Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand

jury or court of the United States involving any violation of section 1751 of title 18 of the United States Code, or involving any interference with or endangering of, or any plans or attempts to interfere with or endanger, the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy, violations of chapter 115 of title 18 of the United States Code, violations of the Internal Security Act of 1950 (64 Stat. 987), violations of the Atomic Energy Act of 1946 (60 Stat. 755), as amended, violations of sections 212(a) (27), (28), (29) or 241(a) (6), (7) or 313(a) of the Immigration and Nationality Act (66 Stat. 182–186; 204–206; 240–241), and conspiracies involving any of the foregoing, is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in subsection (d) hereof) against him in any court.

[(d) No witness shall be exempt under the provision of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.]

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### § 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. A motion by the Government to obtain an order under this section shall contain certification by the Attorney General or his designee that the legal proceeding is against a person who is believed to have participated in an organized criminal activity.*

*(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. Whenever a deposition is taken at the instance of the Government, or whenever a deposition is taken at the instance of a defendant who appears to be unable to 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, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. 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 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 witnesses were testifying at the trial.*

*(f) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the witness refuses in the trial or hearing to testify concerning the subject of the deposition or part offered; or that the party offering the deposition has been unable to procure the attendance of the witness by subpena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.*

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

### § 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—*

*(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;*

*(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; 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 occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.*

*(b) As used in this section "unlawful act" means the use of any electronic, mechanical, or other device (as defined in section 2510 (5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto.*

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## Chapter 227.—SENTENCE, JUDGMENT, AND EXECUTION

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*3575. Increased sentence for dangerous special offenders.*
*3576. Review of sentence.*
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* * * * * * *

### *§ 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, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender and his counsel.*

*(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. 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. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extroardinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States 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 an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony. 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 twenty-five 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. This section shall not be construed as creating any mandatory minimum penalty.*

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

*(1) the defendant has previously been convicted in courts 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 two or more offenses committed on occasions different from one another and from such felony and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony, and less than five years have elapsed between the commission of such felony and either the defendant's release, on parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offenses or another offense punishable by death or imprisonment in excess of one year under applicable laws 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; 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 on direct or collateral review or at the hearing 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 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. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1602, as amended 80 Stat. 838), and as hereafter amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Rev-*

*enue Act of 1954 (68A Stat. 17, as amended 83 Stat. 655), and as hereafter amended. For purposes of paragraph (2) of this subsection, special skill or expertise in criminal conduct includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of criminal conduct, the enlistment of accomplices in such conduct, the escape from detection or apprehension for such conduct, or the disposition of the fruits or proceeds of such conduct. For purposes of paragraphs (2) and (3) of this subsection, criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.*

*(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 the imposition, correction, or reduction of a sentence after proceedings under section 3575 of this chapter, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction 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 of the sentence 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 of the sentence by the United States after the time has expired. A court extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire 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 made more severe only on review of the sentence taken by the United States and after*

*hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence 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 backgrounl, 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) The Attorney General of the United States is authorized to establish in the Department of Justice a repository for records of convictions and determinations of the validity of such convictions.*

*(b) Upon the conviction thereafter 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, or a judicial determination of the validity of such conviction on collateral review, the court shall cause a certified record of the conviction or determination to be made to the repository in such form and containing such information as the Attorney General of the United States shall by regulation prescribe.*

*(c) Records maintained in the repository shall not be public records. Certified 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 Comonwealth 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 exvcess of one year, or a judicial determination of the validity of such conviction on collateral review, the court cause a certified record of the conviction or determinaiton to be made to the repository in such form and*

*containing such information as the Attorney General of the United States shall by regulation prescribe; and*

*(3) shall be prima facie evidence 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, that the convictions occurred and whether they have been judicially determined to be invalid on collateral review.*

*(d) The Attorney General of the United States shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations under this section.*

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## 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 section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, 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 of Columbia Court of Appeals, the Superior Court of the District of Columbia, 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 an 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; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) 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 or a grand jury of the United States, 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 part.*

*(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, the agency may, with the approval of the Attorney General, 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 part.*

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

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*(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.*

**§ *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 part.*

*(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 affimative 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.*

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**Commodity Exchange Act § 6, 69 Stat. 160 (1955) (7 U.S.C. § 15)**

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(b) . . . For the purpose of securing effective enforcement of the provisions of this Act, and for the purpose of any investigation or proceeding under this Act, the provisions, including penalties, of the Interstate Commerce Act, as ammended and supplemented [(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] *(49 U.S.C. § 12) relating to the attendance and testimony of witnesses and the production of documentary evidence*, are

made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture (or any person designated by him), the commission, and any referee designated pursuant to the provisions of this Act, and to any person subject thereto.

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**United States Grain Standards Act, 82 Stat. 768 (7 U.S.C. § 87f(f))**

§ 17. Enforcement provisions—

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[Refusal to testify; prohibition

[(f) No person shall be excused from attending and testifying or from producing documentary evidence before the Secretary, or in obedience to the subpena of the Secretary, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Federal Insecticide, Fungicide, and Rodenticide Act § 5, 61 Stat. 168**

SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section, *or any evidence which is directly or indirectly derived from such*

*evidence*, shall not be used in a criminal prosecution of the person from whom obtained.

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## Perishable Agricultural Commodities Act § 13, 46 Stat. 536 (7 U.S.C. 499m(f))

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[(f) No person shall be excused from attending, testifying, answering any lawful inquiry, or deposing, or from producing any documentary evidence, before the Secretary or any officer or employee designated by him, in obedience to the subpena of the Secretary or any such officer or employee, in any cause or proceeding, based upon or growing out of any alleged violation of this Act, or upon the taking of any deposition herein provided for, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he is compelled under oath so to testify, or produce evidence, documentary or otherwise, before the Secretary or any officer or employee designated by him, in obedience to the subpena of the Secretary, or any such officer or employee, or upon the taking of any such deposition, or in any such cause or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.]

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## Cotton Research and Promotion Act § 16, 80 Stat. 285 (7 U.S.C. 2115)

Investigations: Power to Subpena and Take Oaths and Affirmations: Aid of Courts [: Self-Incrimination]

SEC. 16. [(a)] The Secretary may make such investigations * * *

[(b) No person shall be excused from attending and testifying or from producing books, papers, and documents before the Secretary, or in obedience to the subpena of the Secretary, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any order or rule or regulation issued thereunder on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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## Act To Establish a Uniform System of Bankruptcy Throughout the United States § 7, 52 Stat. 847 (11 U.S.C. 25)

### Chapter III.—BANKRUPTS

SEC. 7. (a) Duties of Bankrupts. . . . (10). at the first meeting of his creditors, at the hearing upon objections, if any, to his discharge and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate or the granting of his discharge; but no testimony, *or any evidence which is directly or indirectly derived from such testimony, given* by him shall be offered in evidence against him in any criminal proceeding, except such testimony as may be given by him in the hearing upon objections to his discharge: * * *

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## Federal Deposit Insurance Act § 10, 64 Stat. 882 (12 U.S.C. § 1820(d))

SEC. 10. * * *

(d) In cases of refusal to obey a subpena issued to, or contumacy by, any person, the Board of Directors may invoke the aid of any court of the United States within the jurisdiction of which such hearing, examination or investigation is carried on, or where such person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. And such court may issue an order requiring such person to appear before the Board of Directors, there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or carries on business or wherever he may be found. [No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpena issued under the authority of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.] * * *

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## Act of February 25, 1903 (Making appropriations, etc.), Ch. 755, 32 Stat. 904 (15 U.S.C. 32)

DEPARTMENT OF JUSTICE

(Para. 7)

* * * [: *Provided*, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said Act: *Provided further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying].

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## Act of June 30, 1960, Ch. 3920, 34 Stat. 798 (15 U.S.C. 33)

[That under the immunity provisions in the Act entitled "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, section six of the Act entitled "An Act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and in the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three, immunity shall extent only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.]

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## Federal Trade Commission Act, ch. 311, 38 Stat. 722 (15 U.S.C. 49)

SEC. 9.

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[No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, docu-

mentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Sec. 21. Securities Exchange Act of 1934, 48 Stat. 899 (15 U.S.C. 78u(d)**

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[(d) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Securities Act of 1933, 48 Stat. 86 (15 U.S.C. 77v(c) (15 U.S.C. 78v(d))**

SEC. 22

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[(c) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Public Utility Act of 1935, 49 Stat. 831 (15 U.S.C. 79r(e))**

SEC. 18.

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[(e) No persons shall be excused from attending and testifying or from producing books papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Investment Company Act of 1940, 54 Stat. 842 (15 U.S.C. 80a—41(d))**

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Sec. 42.

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[(d) No person shall be excused from attending and testifying or from producing books, papers, correspondince, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Investment Advisers Act of 1940, 54 Stat. 853 (15 U.S.C. 80b—41(d))**

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SEC. 209.

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[(d) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts,

agreements, or other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**China Trade Act, 1922, 42 Stat. 953 (15 U.S.C. 155(c))**

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SEC. 15.

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[(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing, as to which, in obedience to a subpena and under oath, he may so testify, except that no person shall be exempt from prosecution and punishment for prejury committed in so testifying.]

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**Natural Gas Act, 52 Stat. 828 (15 U.S.C. 717m(h))**

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SEC. 14.

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[(h) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or for-

feiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Federal Hazardous Substances Labeling Act of 1960, 74 Stat. 379 (15 U.S.C. 1271)**

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SEC. 12. For the purpose of enforcing the provisions of this Act, carriers engaged in interstate commerce, and persons receiving hazardous substances in interstate commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any such hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates: *Provided*, That evidence obtained under this section, *or any evidence which is directly or indirectly derived from such evidence*, shall not be used in a criminal prosecution of the person from whom obtained: * * *

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**Interstate Land Sales Act of 1968, 82 Stat. 596 (15 U.S.C. 1714(e))**

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SEC. 1415.

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[(e) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memorandums, and other records and documents before the Secretary, or in obedience to the subpena of the Secretary or any officer designated by him, or in any cause or proceeding instituted by the Secretary, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any

penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Federal Power Act, 49 Stat. 586 (16 U.S.C. 825f(g))**

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SEC. 307.

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[(g) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Tariff Act of 1930, 46 Stat. 699 (19 U.S.C. 1333(e))**

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SEC. 333. Testimony and production of papers.

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(e) Fees and mileage of witnesses.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States[: *Provided*, That no person shall be

excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the commission; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Federal Food, Drug and Cosmetic Act, 52 Stat. 1057 (21 U.S.C. 373)**

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SEC 703. Records of interstate shipment.

For the purpose of enforcing the provisions of this chapter, * * * *Provided*, That evidence obtained under this section, *or any evidence which is directly or indirectly derived from such evidence*, shall not be used in a criminal prosecution of the person from whom obtained: * * *

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TITLE 26.—UNITED STATES CODE—INTERNAL REVENUE CODE

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**Chapter 39.—REGULATORY TAXES**

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**Subchapter D**

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PART III.—ADMINISTRATIVE PROVISIONS

Sec.

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[4874. Immunity of witnesses.]

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[§ 4874. Immunity of witnesses.

[No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of this subchapter shall withhold his testimony because of complicity by him in any violation of this subchapter or of any regulation made pursuant to this subchapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.]

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## Chapter 76.—JUDICIAL PROCEEDINGS

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### Subchapter E

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[7493. Immunity of witnesses in cases relating to cotton futures].

* * * [§ 7493. Immunity of witnesses in cases relating to cotton futures.

[No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 (relating to cotton futures) shall withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39, or of any regulation made pursuant to such chapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.]

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### Labor Management Relations Act of 1947, 49 Stat. 455 (29 U.S.C. 161(3))

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**Sec. 11. Investigatory powers of Board.**

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[(3) Privilege of witnesses: immunity from prosecution.

[No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture: but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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### Act to provide that tolls on certain bridges over navigable waters of the United States shall be just and reasonable and for other purposes, 1935, 49 Stat. 671 (33 U.S.C. 506)

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SEC. 4. * * * [No person shall be excused from attending and testifying or from producing books, papers, and documents in any inquiry under this section and section 504 of this title, or obedience to any such subpena, or in any cause of proceeding, criminal or other-

wise, based upon or arising under said sections, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committee in so testifying.] * * *

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## Social Security Act (42 U.S.C. 405(f))

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SEC. 205.

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[ Self-incrimination.

[No person so subpenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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## Atomic Energy Act, 68 Stat. 948 (42 U.S.C. 2201(c))

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SEC. 161. General provision.

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(c) make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exerciing any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authoized to administer oaths and affirmations, and by subpena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. [No person shall be excused from complying with any requirements under this paragraph because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, shall apply with respect to any individual who specifically claims such privilege.] * * *

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## Railway Labor Act, 44 Stat. 582 (45 U.S.C. 157)

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SEC. 7.

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(h) All testimony before said board shall * * * [In the event of the failure of any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Interstate Commerce Act as amended.]

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## Railroad Unemployment Insurance Act, 52 Stat. 1107 (45 U.S.C. 362(c))

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SEC. 12. Duties and powers of Board.

[No person shall be excused from attending or testifying in obedience to a subpena issued under this act or from complying with any subpena duces tecum issued under this Act, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, but such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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## Shipping Act, 1916, 39 Stat. 737 (46 U.S.C. 827)

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[SEC. 28. Immunity of witnesses.

[No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the Federal Maritime Board or of any court in any proceeding based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may also testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Merchant Marine Act, 1936, 49 Stat. 1991 (46 U.S.C. 1124(c))**

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SEC. 214.

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[(c) No person shall be excused from attending and testifying or from producing books, papers, or other documents before the Commission, or any member or officer or employee thereof, in any investigation instituted by the Commission under this Act, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subject to any penalty or forfeiture for or an account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Communications Act of 1934, 48 Stat. 1096 (47 U.S.C. 409(1))**

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SEC. 409.

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[(i) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, and documents before the Commission, or in obedience to the subpenas of the Commission, whether such subpena be signed or issued by one or more commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Interstate Commerce Act, 24 Stat. 382, 54 Stat. 946, 56 Stat. 297 (49 U.S.C. 9, 916(a), 1017(a))**

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SEC. 9. * * * In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or com-

pany defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit [; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceedings].

* * * * * * *

SEC. 316. (a) The provisions of section 12 and section 17 of part I [,] and the Compulsory Testimony Act (27 Stat 443) [, and the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755, sec. 1),] shall apply with full force and effect in the administration and enforcement of this part.

* * * * * * *

SEC. 417. (a) The provisions of sections 12 and 17 of part I of this Act, together with such other provisions of such part (including penalties) as may be necessary for the enforcement of such provisions [,] and of the Compulsory Testimony Act (27 Stat. 443) [, and of the Immunity of Witnesses Act (34 Stat. 798; 32 Stat. 904, ch. 755 sec. 1),] shall apply with full force and effect in the administration and enforcement of this part.

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## An Act to further regulate Commerce with foreign nations and among the States, 1903, 32 Stat. 848 (49 U.S.C. 43)

SEC. 3. * * * And in proceedings under this Act and Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction [; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such persons from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions]. *The provisions of* an Act * * *.

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## Act of February 11, 1893, 27 Stat. 443 (49 U.S.C. 46)

[That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled, "An act to regulate com-

merce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to the subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Federal Aviation Act of 1958, 72 Stat. 792 (49 U.S.C. 1484(i))**

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SEC. 1004.

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[Compelling Testimony

[(i) No person shall be excused from attending and testifying, or from producing books, papers, or documents before the Board, or in obedience to the subpena of the Board, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, on the ground, or for the reason, that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Internal Security Act of 1950, 64 Stat. 998, 81 Stat. 768 (50 U.S.C. 792(c))**

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SEC. 13. Proceedings Before Board.

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(c) * * * [No person, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture,

shall be excused from testifying or producing documentary evidence before the Board in obedience to a subpena of the Board issued on request of the Attorney General when the Attorney General represents that such testimony or evidence is necessary to accomplish the purposes of this title; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he, under compulsion as provided in this subsection, may testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.]

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## Second War Powers Act, 1942, 56 Stat. 185

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SEC. 1302. * * * [No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpena, or in any action or proceeding which may be instituted under this section, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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## An act to expedite national defense, and for other purposes, 1940, 54 Stat. 676 (50 U.S.C. App. 1152(a)(4))

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SEC. 2.

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(a)

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(4) * * * [No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpena, or in any action or proceeding which may be

instituted under this subsection, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.]

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**Export Control Act of 1949, 63 Stat. 8 (50 U.S.C. App. 2026(b))**

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SEC. 6.

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[(d) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443) shall apply with respect to any individual who specifically claims such privilege.]

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**Act of September 8, 1950, To Amend the Tariff Act of 1930, 64 Stat. 816 (50 U.S.C. 2155(b))**

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SEC. 705.

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[(b) No person shall be excused from complying with any requirement under this section or from attending and testifying or from producing books, papers, documents, and other evidence in obedience to a subpena before any grand jury or in any court or administrative proceeding based upon or growing out of any alleged violation of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture in any court, for or on account of any transaction, matter, or thing, concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such natural person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying: *Provided*, That the immunity granted herein from prosecution and punishment and from any penalty or forfeiture shall not be construed to vest in

any individual any right to priorities assistance, to the allocation of materials, or to any other benefit which is within the power of the President to grant under any provision of this Act.]

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## DISTRICT OF COLUMBIA CODE

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### D.C. Code, Sec. 23–545

**[§ 23–545. Immunity of witnesses**

[(a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury in the District of Columbia involving any violation of this subchapter and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section, or any information obtained by the exploitation of such testimony or other information, 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.

[(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury in the District of Columbia, the court before which the proceeding is or may be held shall issue, upon the request of the United States attorney, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

[(c) The United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) when in the judgment of the United States attorney—

[(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.]

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### Act of October 9, 1940, 54 Stat. 1082, Sec. 42 (Sec. 35–1346, District of Columbia Code)

**[§ 35–1346. Testimony—Production of books—No refusal because of self-incrimination—Exemption from punishment except for perjury.**

[No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter, on the ground

or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or foreiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempt from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.]

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**Act of June 19, 1934, 48 Stat. 1176, Sec. 2 (Sec. 35–802, District of Columbia Code)**

**[§ 35–802. Testimony—Production of books—Immunity of witness.**

[No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 3–8 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.]

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**Act of March 4, 1922, 42 Stat. 414, Sec. 29 (Sec. 35–1129, District of Columbia Code)**

**[§ 35–1129. Production of incriminating evidence compellable—Immunity of witness.**

[No person shall be excused from attending and testifying or producing any books, papers, or other documents before any court or magistrate upon any investigation, proceeding, or trial for a violation of any of the provisions of sections 35–1101 to 35–1132 upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced by him shall be used against him upon any criminal investigation, proceeding, or trial.]

## Act of February 7, 1914, 38 Stat. 282, Sec. 9, as amended (Sec. 22–2721, District of Columbia Code)

**[§ 22–2721. Granting immunity to witnesses.**

[In any prosecution for violation of sections 22–2713 to 22–2721 or so much of section 22–2722 as relates to the keeping of a bawdy or disorderly house, the court, upon application of the United States attorney made after such attorney has given notice thereof to the Corporation Counsel of the District of Columbia, may order any witness to testify or to produce evidence, or both. Upon such order of the court, such witness shall not be excused from testifying or from producing evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he has been ordered to testify or to produce evidence after having claimed the privilege against self-incrimination nor shall testimony or other evidence ordered to be given or produced under the provisions of this section be used as evidence in any criminal proceeding against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed in connection with giving testimony or producing evidence under order of the court as provided in this section.]

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## Act of February 7, 1914, 38 Stat. 281, Sec. 5 (Section 22–2717, District of Columbia Code)

**§ 22–2717. Order of abatement—Sale of property—Entry of closed premises punishable as contempt.**

If the existence of the nuisance be established in an action as provided in sections 22–2713 to 22–[2721] *2720*, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed he shall be punished as for contempt, as provided in section 22–2716.

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## Act of February 7, 1914, 38 Stat. 282, Sec. 8 (Section 22–2720, District of Columbia Code)

**§ 22–2720. Tax for maintaining such nuisance.**

Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by sections 22–2713 to 22–[2721] *2720*, there shall be assessed against said building and the ground upon which the same is located and against

the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of $300. The assessment of said tax shall be made by the assessor of the District of Columbia and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the chief of police, and a return of said assessment shall be made to the collector of taxes. Said tax shall be a perpetual lien upon all property, both personal and real used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any other penalties provided by law. The provisions of the law relating to the collection and distribution of taxes upon personal and real property shall govern in the collection and distribution of the tax herein prescribed in so far as the same are applicable and not in conflict with the provisions of said sections.

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## TITLE 28.—UNITED STATES CODE

### Chapter 119.—EVIDENCE; WITNESSES

Sec.

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*1826. Recalcitrant witnesses.*

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### § 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—*

*(1) the court proceeding, or*

*(2) the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.*

*(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 if it appears that the appeal is frivolous or taken for delay. 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.*

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## [FEDERAL EXPLOSIVES ACT

### [AN ACT

[to regulate the manufacture, distribution, storage, use and possession of explosives, to authorize regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That as used in this Act—

[(1) The terms "explosive" and "explosives" shall mean gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound or mixture or any part thereof may cause an explosion. The term "explosive" or "explosives" shall not include cartridges for small arms or shotguns, or such fireworks or signalling devices as are designated by the Director, nor shall such terms include ships' signal or emergency equipment.

[(2) The term "ingredients" shall mean phosphorus and active oxidizing chemicals that can be combined with one or more reducing materials to produce an explosive.

[(3) The term "person" shall include executive departments, independent establishments, and other agencies of the United States, the District of Columbia, Territories, and insular possessions of the United States, States, and municipalities and other political subdivisions thereof; and individuals, partnerships, associations, societies, and corporations.

[(4) The term "Director" shall mean the Director of the Bureau of Mines.

[SEC. 2. No person shall manufacture, distribute, store, sell, issue, give, or otherwise dispose of explosives or ingredients unless such person is licensed under this Act.

[Except as provided in section 4, no person shall distribute, sell, issue, give, or otherwise dispose of explosives or ingredients to a person who is not licensed under this Act.

[Except as provided in section 4, no person shall possess, purchase, accept, receive, acquire, or use explosives or ingredients unless such person is licensed under this Act.

[SEC. 3. The purchase or possession of ingredients when purchased or held in small quantities and not used or intended to be used in the manufacture of explosives shall not be subject to the provisions of this Act. This Act shall not apply to explosives or ingredients which are in transit upon vessels, railroad cars, aircraft, or other conveyances in conformity with statutory law or with the rules and regulations of the Secretary of Transportation. This Act shall not be construed to prevent the manufacture under the authority of the United States of explosives for, or their sale to or possession by, the military or naval service of the United States or the Federal Bureau of Investigation. This Act shall not apply to arsenals, navy yards, depots or other establishments owned by, or operated by or on behalf of, the United States. The Director may, however, cooperate with the heads of departments having jurisdiction over such establishments. Nothing in this Act shall be construed to modify or otherwise affect in any way the authority of the Federal Bureau of Investigation with respect to the investigation of explosions, accidents, or fires.

[SEC. 4. A superintendent, foreman, or other duly authorized employee at a mine, quarry, or other work, may, when licensed so

to do, sell or issue to any employee under him such amount of explosives or ingredients as may be required by that employee in the performance of his duties. The employee may purchase or accept the explosives or ingredients so sold or issued, but the person so selling or issuing the same shall see that any unused explosives or ingredients are returned and that no explosives or ingredients are taken by the employee to any point not necessary to the carrying on of his duties.

[SEC. 5. Each person licensed to sell, issue, or otherwise dispose of explosives or ingredients shall keep a complete, itemized, and accurate record showing each person to whom and the purpose for which explosives or ingredients are sold, issued, or otherwise disposed of; the quantity and kind of explosives or ingredients sold, issued, or otherwise disposed of; and the date of such sale, issuance, or other disposition, and such other information as the Director by regulation may require. The record shall be sworn to and furnished to the Director or his authorized representatives whenever requested.

[SEC. 6. The Director is hereby authorized to issue licenses as follows:

[(a) Manufacturer's license, authorizing the manufacture, possession, and sale of explosives and ingredients.

[(b) Vendor's license, authorizing the purchase, possession, and sale of explosives or ingredients.

[(c) Purchaser's license, authorizing the purchase, possession, and use of explosives and ingredients.

[(d) Foreman's license, authorizing the purchase and possession of explosives and ingredients and the sale and issuance of explosives and ingredients to employees as provided in section 4.

[(e) Analyst's, educator's, inventor's, and investigator's licenses, authorizing the purchase, manufacture, possession, testing, and disposal of explosives and ingredients.

[Nothing contained in this Act shall be construed as requiring a license under this Act for the exportation or importation of explosives or ingredients, license for which is required under the provisions of the joint resolution of Congress approved January 31, 1922 (42 Stat. 361), the joint resolution of Congress approved November 4, 1939 (54 Stat. 4), or the Act of Congress approved July 2, 1940 (54 Stat. 712), or any proclamation or regulation issued pursuant thereto: *Provided, however*, That in all such cases the exporter or importer shall duly notify the Director of the character and quantity of the explosives or ingredients so exported or imported, and any other information the Director or any of his agents may from time to time require. No license under this Act shall be required for the exportation of explosives or ingredients of explosives which constitute defense articles within the meaning of section 2 of the Act of March 11, 1941 (Public Law 11, Seventy-seventh Congress), and which, under authority of section 3(a)(2) of that Act have been sold, transferred, exchanged, leased, loaned, or otherwise disposed of to the government of any country whose defense the President deems vital to the defense of the United States.

[SEC. 7. The Director may designate as licensing agents persons authorized by law to administer oaths and may authorize such agents to issue vendor's, purchaser's, and foreman's licenses; and wherever

possible the Director shall select as licensing agents qualified officers or employees of the several States or of political subdivisions or public bodies thereof. Applications for vendor's, purchaser's, and foreman's licenses may be made to the licensing agent in the district within which the explosives or ingredients are to be sold or used. Such agents may collect a fee of 25 cents for each license issued, and shall be entitled to no other compensation from the United States for their services.

[Licensing agents shall keep an accurate record of all licenses issued, in manner and form to be prescribed by the Director, and shall make reports from time to time as the Director may require. The Director shall furnish to the agents the necessary blanks and blank records. The Director may revoke the authority of licensing agents, and all licenses issued by them shall be subject to revocation by the Director as provided in section 8.

[SEC. 8. The Director shall provide for the renewal of licenses issued under this Act. No license shall be valid for more than one year. All licenses outstanding on the termination of a war in which the United States may be engaged or on the day set by Presidential proclamation for the suspension of the operation of the provisions of this Act shall expire on such termination or on that day.

[The Director or a licensing agent may refuse to issue a license when in his opinion, based on facts of which he has knowledge or reliable information, the applicant (a) is not sufficiently reliable and experienced to be authorized to manufacture or handle explosives and ingredients; or (b) is disloyal or hostile to the United States, or if the applicant is a firm, association, society, or corporation, its officers, directors, or controlling shareholders or members are disloyal or hostile to the United States.

[When the Director has reason to believe on like grounds that any licensee is disloyal or hostile to the United States, he may revoke all licenses issued to such licensee. If after notice and an opportunity to be heard, the Director finds that a licensee has violated any of the provisions of this Act or of the regulations issued hereunder, the Director may revoke all licenses issued to such licensee.

[An applicant to whom a license is refused by the Director or any licensee whose license is revoked by the Director may within thirty days after notification of the rejection of his application or the revocation of his license apply to the Council of National Defense for such license or the cancelation of such revocation. The Council shall make its order upon the Director either to grant or to withhold the license, or shall affirm or reverse the revocation.

[An applicant to whom a license is refused by a licensing agent may within thirty days after notification of the rejection of his application apply to a regional officer for such license and the officer shall grant or withhold the license. The Director shall designate officials of the Bureau of Mines stationed in the field to pass on such appeals. If a regional officer upholds a licensing agent, the applicant may appeal to the Director.

[SEC. 9. Unless the explosives and ingredients are to be purchased or accepted pursuant to section 4, any person desiring to manufacture, distribute, store, sell, issue, give, possess, purchase, accept, receive,

acquire, or use explosives or ingredients shall make application for a license under this Act. The applicant under oath shall state his name; place of birth; whether a citizen of the United States, whether native-born or naturalized citizen of the United States; if a naturalized citizen, the date and place of naturalization; if a firm, association, society, or corporation, the names, nationality, and addresses of its officers and directors, and the nationality of the controlling stockholders or members; business in which engaged; the amount and kind of explosives or ingredients which during the past six months have been acquired, disposed of, or used by him; the amount and kind of explosives or ingredients now on hand; whether sales, if any, have been made to jobbers, wholesalers, retailers, or consumers; the kind of license to be issued, and the kind and amount of explosives or ingredients which the license will authorize to be manufactured or handled; and such further information as the Director may from time to time require.

[SEC. 10. A licensee or an applicant for license under this Act shall furnish such information regarding himself and his business, so far as such business relates to or is connected with explosives or ingredients, at such time and in such manner as the Director or his authorized representative may request. Licensees and applicants who are regularly engaged in the manufacture of explosives or ingredients prior to the date upon which the provisions of this Act are made operative by a proclamation of the President shall not be compelled to disclose secret processes, costs, or other data unrelated to the distribution of explosives or ingredients.

[SEC. 11. No person shall represent himself as having a license issued under this Act, when he has not such a license, or as having a license different in form or in conditions from the one which he in fact has, or without proper authority make, cause to be made, issue intended to mislead any person into believing it is such a license, or intended to mislead any person into beliving it is such a license, or refuse to exhibit his license to any law-enforcement officer, Federal or State, or to a representative of the Bureau of Mines.

[SEC. 12. Every person licensed under this Act to manufacture or store explosives shall clearly mark and define the premises on which his plant or magazine mav be and shall conspicuously display thereon the words "Explosives—Keep Off."

[SEC. 13. No person, without the consent of the owner or his authorized agents, except law-enforcement officers, the Director and persons designated by him in writing, shall knowingly be in or upon any plant or premises on which explosives are manufactured or stored, or knowingly be in or upon any magazine premises on which explosives are stored. No person shall discharge any firearms or throw, or without the consent of the owner, place any explosives or inflammable bombs at, on, or against any such plant or magazine premises, or cause the same to be done. This section shall not be construed to prohibit the discharge of firearms by law-enforcement officers or others in the lawful performance of their official duties, or to prevent the proof-firing of weapons, projectiles, ammunitions, or explosives or the testing of fuses, detonators, or other materials upon the premises.

[SEC. 14. The Director is hereby authorized to investigate all explosions and fires which may occur in mines, quarries, factories, warehouses, magazines, houses, cars, boats, conveyances, and all places in which explosives or ingredients are manufactured, transported, stored, or used. The Director is authorized to investigate all explosions, accidents, or fires, in which there is reason to believe that explosives were involved. The Director may in his discretion report his findings in such manner as he may deem fit to the proper Federal or State authorities to the end that if such explosion has been brought about by a willful act the person or persons causing such act may be proceeded against and brought to justice; or, if the explosion has been brought about by accidental means, that precautions may be taken to prevent similar accidents from occurring. In the prosecution of such investigations the employees under the direction of the Director are hereby granted the authority to enter the premises where such explosion or fire has occurred, to examine plans, books, and papers, to administer oaths to, and to examine all witnesses and persons concerned, without let or hindrance on the part of the owner, lessee, operator, or agent thereof.

[SEC. 15. The Director shall exercise the authority conferred upon him by this Act under the supervision of the Secretary of the Interior. The head of any executive department or independent establishment of the Federal Government may cooperate with the Director in the administration and enforcement of this Act and may assign employees to operate under the direction of the Director. The officers and employees of the District of Columbia, and of the Territories and island possessions of the United States and of the municipalities and other political subdivisions thereof, shall cooperate with the Director in the administration and enforcement of this Act. The Director may cooperate with the officers and employees of the several States and of the municipalities and other political subdivisions thereof. When such officers and employees act under the direction of the Director, their acts done in the administration and enforcement of this Act shall be deemed to be fully authorized.

[SEC. 16. To administer this Act the Secretary of the Interior may employ such number of employees of the various classes recognized by the Classification Act of 1923 as may be appropriated for by the Congress. The Secretary may appoint as officers or employees persons who volunteer to serve without pay. The Secretary may delegate to subordinates the power to employ.

[SEC. 17. Without authority from the applicant for a license, from the licensee or from the Director no officer or employee or licensing agent engaged in the administration or enforcement of this Act shall divulge any information obtained in the course of his duties under this Act regarding the business of any licensee or applicant for a license.

[SEC. 18. The Director may issue rules and regulations to effectuate the purposes of this Act, subject to the approval of the Secretary of the Interior.

[SEC. 19. Any person violating any of the provisions of this Act or any rules or regulations made thereunder shall be guilty of a misdemeanor and shall be punished by a fine of not more than $5,000

or by imprisonment not more than one year, or by both such fine and imprisonment.

[SEC. 20. The provisions of this Act and the regulations issued hereunder shall become operative only upon a declaration of war or of the existence of a state of war by the Congress, or upon the issuance by the President of a proclamation declaring that there exists a state of war or a national emergency requiring the application of the provisions of this Act to provide for the national defense and security and shall remain operative until the termination of the war, or until such proclamation is revoked by the President.

[SEC. 21. This Act shall be known as the Federal Explosives Act.]

## ADDITIONAL VIEWS OF HON. ROBERT W. KASTENMEIER AND HON. DON EDWARDS ON S. 30

In committee the undersigned voted to report S. 30 favorably in its present form and we expect to vote for the measure on the floor of the House. This does not mean that we favor all its provisions. On the contrary, several aspects of the measure give us grave concern. On balance, however, we believe the legislation is needed and that we will do well to enact it into law.

There is one element of S. 30, however, as to which we can neither join our committee colleagues nor remain silent. We refer to the three instances in title XI of the bill, dealing with penalties for intentional misuse of explosives from which death results (section 844(d) (f) and (i)), for which the death penalty is added as an alternative penalty.

Concededly, the death penalty is not the most important element of the bill. By the same token, however, reason does not support its gratuitous injection here, especially as there appears to be an undeclared national moratorium in executions underway. The death penalty should be abolished, not extended to new situations and new Federal crimes.

The arguments against capital punishment are well known and we have no new or different arguments to offer. Still, we believe that there may be some value in reviewing these arguments once more in this statement of views. We should know what we are doing when we legalize and authorize the snuffing out of human life.

The case against capital punishment starts with the hypothesis that human life is sacred. Everyone pays lipservice to this principle; even so, it is not absolute. The question is whether some valid and meaningful purpose is served by the execution of wrongdoers before which the mandate "Thou shalt not kill" must yield. Certainly, executions carried on by civilized nations cannot be condoned unless they are somehow rendered necessary—either as a deterrent to crime or to protect the people against a heinous offender by his permanent removal. In the circumstances, the burden of proving that capital punishment is justified would seem clearly to lie with its supporters.

Actually, the supporters have not met this burden. Extensive statistical studies including the monumental study of the death penalty made by Thorsten Sellin for the American Law Institute in 1959, indicate that capital punishment has utterly failed as a deterrent: (1) that it has not rendered murder less frequent in States that have the death penalty; (2) that it has not increased the incidence of murders when the death penalty is abolished or decreased such incidence when it is restored; (3) that no discernible pattern indicates that deterrence results from executions within a community, and (4) that law-enforcement officers are no safer from murderous attack in States that have the death penalty.

To the failure of statistics to afford a basis for believing that the death penalty is a meaningful deterrent to capital crime, there may be

added the views of some psychologists to the effect that irrational persons are not only not deterred, but may indeed be induced to capital crime by the presence of the death penalty.

When the death penalty is examined in its role as a protector of society by the permanent removal of the offender, we are confronted by the fact that experts say that persons who commit capital crimes often turn out to be the best behaved prisoners. Thus, the late Warden Lawes of Sing Sing Prison has stated:

> Murderers make the best prisoners. They are least troublesome to any warden, and often they accomplish a great deal behind bars. I know of none released during my wardenship at Sing Sing who reverted to crime. Furthermore, it is not true—at least in New York State—that a murderer whose death sentence is commuted to life imprisonment can easily obtain his freedom. The average period of incarceration among those who receive the second commutation is about 20 years. Granted that other States are too lenient, that would be an argument for a better administration of justice, not for putting people to death.

Apparently, also, the behavior of paroled murderers is better than that of other paroled prisoners.

In the absence of persuasive evidence that capital punishment protects society against murder, or is superior for such purpose to life imprisonment, it can only be concluded that the actual function of the death penalty is to serve as an outlet for man's desire for vengence. As legislators we have an obligation carefully to consider whether, and to what extent this is so, and whether, indeed, vengence is an acceptable legislative purpose.

In addition to the foregoing, of course, is the fact that mistakes leading to capital punishment cannot be rectified. The further fact that our laws are not always enforced with strict impartiality also contributes to rendering the death penalty a sometimes caprecious punishment.

A separate reason for refraining from engrafting death penalty provisions onto S. 30 at this time is that the Supreme Court has important aspects of the problem before it, with prospects of decisions at an early date in the fall term. So, too, the National Commission on Reform of Federal Criminal Laws has the question of the death penalty before it, with a report due shortly. It might be well to receive the judgments of the Court and the recommendations of the Commission before committing further areas to capital punishment. We believe that had the issue of capital punishment been separately and dispassionately submitted to the members of the committee, rather than as part of the high-pressure package that S. 30 had become, the result would have been different.

In the Harvard Law Review of June 1970 (*Declaring the Death Penalty Unconstitutional*, 83 Harv. L. Rev. 1773), former Justice Arthur J. Goldberg and Prof. Alan M. Dershowitz point out that the last execution in an American jurisdiction occurred in June of 1967, and that there are over 500 persons waiting in death row. The article persuasively argues that the death penalty is a cruel and inhuman punishment within the prohibition of the eighth amendment. The con-

clusion of this learned article may profitably be reproduced at the conclusion of these, our separate views:

CONCLUSION

In sum, we believe that (1) the death penalty is now unconstitutional under the principles of the eighth amendment adumbrated by the Supreme Court. (2) The Court, consistently with its institutional responsibility to respect principle and precedent, could and should declare the death penalty unconstitutional. (3) But if the Court elects not to do so, it should not legislate capital punishment, but continue to chip away at it by enforcing strict procedural safeguards in capital cases. (4) And if the Court does follow the latter course, then the other departments—State and Federal legislatures and executives as well as State courts—should apply the principles of the eighth amendment and declare the death penalty unconstitutional.

In practical terms, it may well be that the final responsibility will lie with State Governors and legislators. More than 500 people are now confined in death row awaiting the outcome of our great national debate over capital punishment. If the Supreme Court declines either to declare the death penalty unconstitutional or to question the procedure by which it was imposed on these 500 men, then their fate rests with the Governors and legislatures. If these 500 people—or any substantial proportion of them—are sent to their deaths, capital punishment will have been revived as active penal policy in the United States. The spectre of mass execution—after a moratorium of more than 2 years—threatens to further brutalize a nation already saturated with war, riot and crime. This generation of Americans has experienced enough killing. Official execution must be ended. And it can be ended, even if the Supreme Court does not intervene in these cases. The Governors and legislatures of those States whose death rows are now occupied have the power to affect the future course of our history. Legislatures could abolish the death penalty in their respective States, an action which would obviously apply to men already on death row. Alternatively, Governors could commute all current death sentences. The sparing of these 500—a continuation of the moratorium on executions—could not help but affect our national attitude toward the death penalty. No Governor should be deterred from commuting a death sentence by the notion that the Constitution, the Court, or any other principles of fundamental law somehow command that defendants sentenced to death be executed. Fidelity to constitutional principle certainly permits—indeed, in our view, it requires—commutation of all death sentences.

We would add that the Congress ought to be in the vanguard of the abolition movement. Let us not turn back the clock.

ROBERT W. KASTENMEIER.
DON EDWARDS.

## INDIVIDUAL VIEWS OF MR. DAVID W. DENNIS OF INDIANA

The Organized Crime Control Act of 1969 is a seriously conceived and long-overdue legislative attempt to deal with the important problem of successful prosecution of organized crime, and, basically, I support it.

The innovative approaches contained in this measure, however, raise a number of important and interesting legal questions, the thrust of which are important to the criminal law in general, and the effects of which are not necessarily confined to the field of organized crime.

Time does not permit and I shall not attempt to discuss all of these questions here, or any of them in depth; but a just recognition of their importance requires a brief mention of at least one or two of them.

### TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

This title permits the U.S. district attorney to file a notice specifying that the defendant is a "dangerous special offender" as that term is defined in the act; and in such cases, if the defendant is convicted of the primary offense charged, the court, after a special hearing on the question of whether the defendant is in fact a "dangerous special offender"—shall, if this status is established "by a preponderance of the information," sentence the defendant "to an appropriate term not to exceed 25 years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony."

The special sentence so imposed may be appealed either by the defendant or by the Government, but the sentence may be made more severe on the appeal "only on review of the sentence taken by the United States and after a hearing."

The title presents difficult questions of constitutional law, dealing with double jeopardy, equal protection, and due process, as well as important questions of policy.

The proponents of title X contend that its provisions are to be equated to the ordinary sentencing procedure, where no formal hearing is required and the court relies on all sorts of probation reports, general repute, hearsay, and so forth; and they cite *Williams* v. *New York 337 U.S. 241 (1949)* in this connection, and point out that title X requires far more in the way of a hearing and of procedural safeguards than Williams required for the sentencing process.

It seems to me equally valid, however, to refer to *Specht* v. *Patterson 386 U.S. 605 (1967)* where it was held that a formal hearing was required in order to sentence one, convicted of a felony, to the special indeterminate sentence provided in the Colorado Sex Offenders Act.

Specht held that due process requires that the defendant "be present with counsel, have an opportunity to be heard, be confronted with witnesses against him, have the right to cross-examine, and to offer evidence of his own."

Title X purports to grant most of these rights; but it permits use of a probation report without production of the individual informants—which is not unlike the psychiatric report of Specht—and a right to cross-examine an anonymous probation report may be little practical value. The special status of "dangerous special offender" (entailing up to 25 years incarceration), moreover, is established merely "by a preponderance of the information".

Is this really merely a sentencing procedure, or are we—in view of the broad scope of the definition of "dangerous special offender" ("a pattern of conduct which was criminal * * * which constituted a substantial source of his income, and in which he manifested special skill or expertise") really giving certain defendants, so classified, an additional and more severe punishment, upon conviction of a crime than we give to others convicted of the same crime; this extra punishment being based upon reports and repute as to a great many other alleged and unrelated acts for which they have never been tried and of which they have never been found guilty.

And if this is what we are doing, do the needs of the situation warrant this action—assuming that the Constitution will permit it?

These are fundamental questions and considerations which confront us.

A word is in order also, as to increased special sentences upon an appeal of the sentence, which can be imposed when appeal is undertaken by the Government.

It has been held that the Government cannot appeal and obtain a conviction and punishment, following a lower court acquittal of a defendant. This violates constitutional prohibitions against double jeopardy. *Kepner* v. *United States, 195 U.S. 100 (1904)*.

It was held very early that "* * * the Constitution was designed as such to prevent the criminal from being twice punished for the same offense as from being twice tried for it." Ex Parte Lange 18 Wallace 85 U.S. 163 (1873).

Again, a court, during the same term, may amend a sentence once given to mitigate it but not to increase it. *United States* v. *Benz 282 U.S. 304 (1930)*.

Despite the recent holding of *Pearce* v. *North Carolina 23 L. Ed. 656 (June 1969)*, that there is no absolute constitutional prohibition against the imposition of a greater punishment on a second trial, following a successful appeal by a defendant, than that meted out on the first conviction, provided credit is given for time already served, I am not satisfied that all constitutional questions raised by the sentencing procedure of title X are necessarily resolved; and even if they are, this does not necessarily answer the question of the coercive possibilities inherent in the power of the Government to appeal with the possibility of an enhanced sentence as a result.

Here, too, are many imponderables.

## Title XI

Title XI, added to the bill in our committee, deals with the importation, manufacture, distribution, and storage of explosive materials.

The section is needed and salutary, and the committee amendment extending the criminal penalties for malicious destruction of Govern-

mental property to property on federally assisted college campuses meets my full approval.

I do have one serious personal reservation. Over many years I have come to a considered and conscientious objection to the infliction of the death penalty as a part of the normal provisions and procedure of a civilized penal code.

This title permits infliction of the death penalty if loss of life results from certain illegal uses of explosives. There are many reasons for opposition to the death penalty, such as the lack of any satisfactory proof of deterrence by use of the death penalty, its debasing effect upon society, and its relatively infrequent and, generally, quite arbitrary imposition; but really only one objection is necessary. We are human, we are fallible, our justice is subject to error; occasionally we make mistakes. A mistaken conviction, with the death penalty imposed and carried out, is a mistake we cannot correct—and even one such mistake is one too many. Men ought not to play at being God.

I would agree that if anyone deserves the death penalty, it is a man who uses a bomb to blow up a building and kills a human being, or even more so, the man who transports an explosive with intent to kill, and death results, and, in view of this measure's over all importance, I shall support this bill, even if this death penalty clause remains in the act as passed, as I presume that it will.

But an offense involving explosives is no different in principle from any other. A fatal error of justice here is just as bad as elsewhere; and in view of my long-held and strongly held views on this subject, I cannot fail to express my disagreement with, and my dissent from, the death penalty provisions in this bill.

DAVID W. DENNIS.

## DISSENTING VIEWS OF REPRESENTATIVE JOHN CONYERS, JR., REPRESENTATIVE ABNER MIKVA, REPRESENTATIVE WILLIAM F. RYAN, ON THE ORGANIZED CRIME CONTROL ACT

This bill is another dreary episode in the ponderous assault on freedom. It employs the spirit of repression extant in some quarters as a substitute for the Constitution, custom, and reason. And if all that were not enough, it won't work: it is more likely to catch poachers and prostitutes than it is to catch pushers and pimps.

The statement that opposition to the Organized Crime Control Act can in no way be equated with softness on crime is so obvious that it virtually belies utterance. But given the climate of national vituperation in which this bill was bred, it merits iteration. We all react with outrage to the massive assault being leveled on decent citizens by both organized crime and by street criminals. We all are determined to defeat that assault. In fact, we, more than many of our colleagues, have particular knowledge of the depradations of crime: we all represent major metropolitan areas—the loci of crime in America. It is our constituents who are, with far more frequency than the citizens of the farms and towns and small cities of the Nation, the victims of violent crime—of muggings, robberies, extortion, and murder.

We are dismayed that this oversold bill does so little to redress this situation, even as it rips off large chunks of the Constitution. We are committed to the maintenance of constitutional liberties, and to the cultivation of a system of law enforcement which maximizes effectiveness and efficiency, rather than a repressive shotgun which shoots down innocent and guilty with equal diffidence. We think our Constitution and the needs of law enforcement need not be—and cannot be—at odds.

In opposing this bill, we act with a special sense of the needs of our constituents and with a particular awareness of the severity of crime in the streets. We believe that our constituents—and all Americans—are entitled to receive from their representatives cures and not placebos—particularly placebos wrapped in the coating of the offensive and even unconstitutional trappings that accompany the Organized Crime Control Act bill.

We want to make several points immediately clear about the Organized Crime Control Act bill.

This bill is not the answer to crime in the streets—the muggings, the robberies, the rapes.

This bill is not an answer to the complex problem of juvenile crime.

This bill is not an answer to the destructive penal system which breeds criminals.

This bill is not an answer to the massive backlog of cases besetting the courts—a backlog which in such large measure accounts for criminals roaming free.

In sum, the Organized Crime Control Act is no answer to the hundreds of thousands of criminal acts which are terrorizing this country. It is aimed—at least ostensibly—at organized crime, and any person who sees in its passage the turning of tide against the street crime which is the vital, immediate concern of every American family suffers faulty vision.

Even so, were this bill an intelligent, reasonable approach to the problem of organized crime, we would gladly support it. As Government officials, we are especially offended at the frequent links between organized crime and politics; and we are deeply concerned about infiltration of legitimate business by organized crime. But, intentionally or otherwise, this bill directly assaults the liberties and rights of all Americans, while only ineptly flailing out at organized crime.

We commend the committee for having consideraby improved upon the Senate version of this bill by modifying and deleting at least some of the offensive provisions of that piece of legislation. The result, however, is a "scissors and paste" cosmetizing job that cannot overcome the basic defects of the bill. As Mr. Justice Brandeis wrote in *Olmstead* v. *United States*, 277 U.S. 438, 485 (1928):

> Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example * * *. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means— to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution * * *.

Four titles of this bill are particularly egregious: Title I—Special Grand Jury, title VII—Litigation Concerning Sources of Evidence, title IX—Racketeer Influenced and Corrupt Organizations, and title X—Dangerous Special Offender Sentencing. Several other titles also raise serious problems.

## Title I

Title I authorizes special grand juries to be created at the instance of the Attorney General. These special grand juries have the power not only to indict, but also to submit to the court of their district reports when the evidence is insufficient to warrant an indictment. These reports are to be issued

> (1) Concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by an appointed public officer or employee as the basis for a recommendation of removal or disciplinary action; or (2) regarding organized crime conditions in the district. (emphasis added)

In brief, this title proposes to create official bodies bedecked with the power to accuse, while leaving the accused bereft of any effective means of rebuttal. This is hardly less than sanctified calumny. And in case anyone might quarrel with our characterization of these special grand jury reporting powers, he might first ponder why the Senate version of this bill was amended by the House committee to exclude elected officials from the reach of these mini-star chambers.

Title I purports to erect procedural safeguards to protect the noncriminal accused—such as the right to appear before the grand jury and to bring witnesses; a right to respond, and a right to appeal. Anyone familiar with the way grand juries operate knows that these protections are illusory. The nature of the special grand jury makes this even more so.

Firstly, the district court is required to make an unchallenged report (or one sustained on appeal) public if it finds the report is supported by a "preponderance of the evidence." Presumably, any appeal which a named party can take will be adjudicated on this standard and on procedural regularity. In fact, this means that both the initial district court and the appellate court control over the reports is going to be practically nonexistent.

This is so because the bill does not require that only credible, or relevant, or legally admissible evidence be considered. The evidence can be made up of hearsay, unconstitutionally obtained evidence, opinions, unsubstantiated slander, and prejudicial casuistry. So a standard ostensibly geared to some appreciation of the rights of the noncriminal accused is really completely nebulous.

Moreover, the whole reason for providing the right of appeal is to quash smear campaigns. Yet, grand jury proceedings are notorious for the ease with which the press gains access to their conclusions. And even if the press should miss at that point, the taking of an appeal virtually will insure public disclosure that the appellant has been accused.

Still another procedural flaw—but again, one with very severe substantive ramifications—lies in the supposed safeguard of allowing the person whom the grand jury has decided to name as being guilty of noncriminal misconduct to appear and produce a "reasonable" number of witnesses. By the time this occurs, the jury has already made up its collective mind and so the accused carries the burden of convincing it to change its conclusion. Yet, he cannot confront the witnesses against him and subject them to cross-examination. Nor does it appear that he even has the right to be apprised of the evidence on which the special grand jury has based its conclusion that he is guilty of noncriminal misconduct. "Prove to us that you're not guilty of anything no matter what anyone has told us" seems to be the ground-rule of this frightening version of the game "I've Got a Secret."

No particular prescience is needed to forecast the public's reaction to a special grand jury's report that an appointed official—though official, but not criminal—misconduct has been helping organized crime. He is going to be branded as an accomplice of organized crime. As the New York court of appeals said in *Wood* v. *Hughes*, 9 N.Y. 2d 144, 154, 173 N.E. 2d 21, 26 (1961):

> In the public mind, accusation by report is indistinguishable from accusation by indictment and subjects those against whom it is directed to the same public condemnation and opprobrium as if they had been indicted.

The ordinary grand jury is permitted to sidestep many due process procedural guarantees—representation by counsel, confrontation, public hearing, and the like. But this is because it is only the start of the legal proceedings against a person. The regular grand jury can only

return an indictment; the "grand jury merely investigates and reports. It does not try." *Hannah* v. *Larche*, 363 U.S. 420, 449 (1960). Mr. Justice Frankfurter, concurring in Hannah wrote:

> Were the Commission exercising an accusatory function, were its duty to find that named individuals were responsible for wrongful deprivation of voting rights and to advertise such finding or to serve as part of the process of criminal prosecution, the rigorous protections relevant to criminal prosecutions might well be the controlling starting point for assessing the protection which the Commission's procedure provides. *Id.*, 488.

We would particularly note the Court's opinion in *Greene* v. *McElroy*, 360 U.S. 474 (1959), which involved the validity of an inquiry conducted for the purpose of determining whether the security clearance of a particular person was to be revoked. A denial of clearance would shut him off from the opportunity of access to a wide field of employment, as well as causing him to lose his current job. The Court said:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirement of confrontation and cross-examination. This Court has been zealous to protect these rights from erosion. *It has spoken out not only in criminal cases . . . but also in all types of cases where administrative and regulatory actions were under scrutiny* . . . Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. *Id.*, 496–97 (emphasis added).

Title I is very properly concerned with official corruption. But the avenue it chooses to combatting this vice deprives both the innocent and the 'guilty' of basic rights of due process. Surely, we need not corrupt civil liberties in order to combat corruption in public office.

## Title VII

Title VII has been considerably improved over the version which was included in the bill which passed the other body. However, philosophically, it remains perhaps the most distressing provision of this bill. It demonstrates an antipathy toward, and impatience with, the exercise of constitutional rights which reflects another grim chapter in the attempts to uplift expediency to the level of constitutional legitimacy.

The title imposes a statute of limitations on the exercise of the right to challenge the admissibility of illegally obtained evidence. It does this by adding a new section to chapter 223 of title 18 of the United States Code which provides, in section 3504(3), that in any trial, hearing, or other proceeding,

> 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 occurring prior to June 19, 1968, if such event occurred more than 5 years after such allegedly unlawful act.

We are aware that, as a practical matter, this provision will not have great application, since it does not apply to acts involving the obtaining of evidence which occurred after June 19, 1968. But any essay at foreclosing the exercise of a constitutional right must be rejected, whether it is of wide applicability or otherwise. Both in terms of its own operation, and as precedent for subsequent efforts by the government, this encroachment is dangerous.

Statutes of limitations have validity because they bar stale claims; the provision here would bar defenses. As the report on the Organized Crime Control Act of the Association of the Bar of the City of New York states, at page 24:

> It may be reasonable to preclude the commencing of litigation after a given period of time—either because the defendant should not be forced to answer, nor the courts to hear, charges which can only be substantiated by evidence weakened by time, or because the plaintiff has been negligent in failing to bring suit earlier. It would be a novel application of this logic, however, to allow the defendant to be brought to trial and at the same time to hamper his defense by precluding him from raising constitutional issues which might otherwise be available to him.

Title VII represents the kind of insidious erosion of constitutional protections which is always justified by the contention that the diminution of liberty is negligible, or insignificant. We do not regard the fourth amendment as susceptible to characterization by either of these terms, nor do we regard this title as anything less than an invidious assault upon that amendment.

## Title IX

Title IX, entitled Racketeer Influenced and Corrupt Organizations, seeks to stymie organized crime's growing infiltration of legitimate business.

But it runs amuck. It embodies poor draftsmanship, and it employs penalties and investigative procedures which are both abusive and pregnant with the potential for abuse.

*Prohibited activities*

Section 1962 of title IX defines prohibited activities. Subsection (a) provides that:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of rack-

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> eteering 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.

Thus, as to racketeering, the following must be established for a prohibited activity to exist: two or more separate acts of racketeering activity, thereby establishing the "pattern," and the direct or indirect use or investment of the gains derived therefrom. This burden imposed upon the prosecution seems perverse, since the very reason why we have thus far been so unsuccessful in striking at organized crime lies in the difficulty of even securing one conviction. Here, the prosecution, absent any prior conviction, would have to prove beyond a reasonable doubt two illegal acts in order to establish the "pattern." Yet, if it could secure even one conviction, it would not need this section.
in section 1961(6) creates two problems. This section reads:

What is more, the massive infiltration by organized crime of legitimate business is a consequence of the difficulty of tracing the path from illegal gains to investment of them. Yet, this burden of tracing is also imposed upon the prosecution by section 1962(a)'s language. And, if this path could in fact be traced, then the investor could be prosecuted under existing Federal law, anyway, for income tax evasion, as well as for State offenses in many cases.

Thus, in their zealousness to get at organized crime, the drafters of this bill have employed language which may only succeed in erecting a procedure to insulate its operants from successful prosecution under this title.

*Unlawful debt*

Similar inept draftsmanship resides in the failure to provide a workable definition for one of the most important terms in title IX—"unlawful debt." Use or investment of funds collected on an unlawful debt constitutes a prohibited activity under section 1962, and is punishable under section 1963. But the definition of the term, as provided in section 1961(6) creates two problems. This section reads:

> (6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or politcal subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate; * * *

This provision, by employing the words "a State," raises both very difficult jurisdictional problems, and substantive problems arising

from the creation of a Federal law of gambling and of usury. For example, a transaction may have connections with two or more States; in one, it is legal, in another not. Innocent action in one State will be the premise for establishing the collection of an "unlawful debt" in another State under title IX. Which State's laws are to govern?

Then, there is also the problem that arises because the use of the words "a State" creates Federal laws of gambling and usury. The language implies a standard geared to the most stringent State law, and apparently will make collection and use of funds derived from a debt incurred in the business of gambling in Nevada the premise for establishing an unlawful act, because other States outlaw such businesses. Similarly, a loan at 12 percent interest may be legal in State Y, but because 6 percent is the maximum nonusurious interest rate in State X, collection of the debt in State Y by a citizen of State Y from a fellow citizen of that State will constitute collection of an "unlawful debt."

This inept draftsmanship give some indication of much of the quality of this bill. In observing the patchwork collection of these provisions—admirable in their intent to fight organized crime, but seriously compromised by virtue of the barriers they erect to effective implementation—we are reminded of Chief Justice Burger's admonition in his State of the Judiciary address on August 10. In noting the burdens the courts face, the Chief Justice said:

> The difficulty lies in our tendency to meet new and legitimate demands with new laws which are passed without adequate consideration of the consequences in terms of caseloads.

*Undue penalties*

Section 1962 opens the door to 20 years in prison, a $25,000 fine, and forfeiture of property, all because a man won $1,000 on two separate instances in a gambling game. It does so by prohibiting the use or investment of funds either directly or indirectly. The so-called racketeer need not directly use this $1,000 to buy a business in order to run afoul of the title. The mere fact that this $1,000 enabled him to utilize another, legally obtained $1,000 to buy the business, rather than necessary food and clothing, brings him within the ambit of "indirect" use.

The potential for abuse here by the most flimsy legal argumentation—abetted beforehand by newspaper notoriety that the defendant is an organized crime member—very seriously outweighs the benefits of convicting the man. Granted, we may welcome an organized crime member's conviction, but the title makes no discrete segregation of mobsters. It is a tool to be employed for all.

Indeed, another section of the title—section 1964(c)—provides invitation for disgruntled and malicious competitors to harass innocent businessmen engaged in interstate commerce by authorizing private damage suits. A competitor need only raise the claim that his rival has derived gains from two games of poker, and, because this title prohibits even the "indirect use" of such gains—a provision with tremendous outreach—litigation is begun. What a protracted, expensive trial may not succeed in doing, the adverse publicity may well accomplish—destruction of the rival's busines.

The erection of the penalty of forfeiture represents similar overreaching, made that much more severe by the "indirect use" bootstrap which can lift the prosecution into a conviction. The convicted offender is to be compelled to forfeit all interest, direct or indirect, in any enterprise which he has obtained, controls, or in which he participates, by use of funds derived from a "pattern of racketeering activity" or collection of an "unlawful debt."

Criminal forfeiture and corruption of blood were outlawed by the First Congress, in 1790. The present statute, 18 U.S.C. 3563, provides: "No conviction or judgment shall work corruption of blood or any forfeiture of estate." Under the broad gaged language of title IX, we leave that 180-year-old standard. We think the potential scope for deprivation of property by criminal forfeiture constitutes a threat to legitimate business far beyond what should be the ken of a bill aimed at organized crime.

Moreover, not only does criminal forfeiture unduly penalize the man who may simply have engaged in two separate poker games and thereby subjected himself to accusation for having engaged in a "pattern of racketeering activity." It also leaves far too uncertain the rights of entirely blameless citizens and organizations. A minor legislative bow in their direction is made in section 1963(c), which states that "The United States shall dispose of all such property (which has been forfeited to it) as soon as commercially feasible, making due provision for the rights of innocent persons." But the seizure and sale by the Government of property which was used as collateral by the offender for a legitimate loan may well leave an unsecured creditor out of luck, or sale by the Government of a forfeited business on a stagnant market may well undercut innocent competitors or customers.

Even the Justice Department's comment on this measure establishing criminal forfeiture—a measure which overturns an act of the same Congress which proposed to the States for ratification the Bill of Rights—is pallid endorsement, compared to its espousal of numerous other repressive features of this bill. By letter of August 11, 1969, from Richard Kleindienst, Deputy Attorney General, to the Honorable John L. McClellan, chairman, Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, U.S. Senate, the Justice Department's position was stated thusly:

> It is felt that this revival of the concept of forfeiture as a criminal penalty, limited as it is in section 1963(a) to one's interest in the enterprise which is the subject of the specific offense involved here, and not extending to any other property of the convicted offender, is a matter of congressional wisdom rather than a constitutional power.

We perceive little "wisdom" in reviving criminal forfeiture after its 180-year dormancy, particularly when it is couched in the loose language of title IX. We seem to fight corruption of business with corruption of blood, which is neither wise nor constitutional.

*Administrative fishing expeditions*

Finally, we find very significant potential for administrative abuse in section 1968 of title IX, which authorizes civil investigations. In effect, the Attorney General is given carte blanche to engage in fishing

expeditions, unfettered even by the controls of a grand jury's proceeding. This section opens the books of virtually every business to Government search, and makes the Attorney General the Grand Chatelain of American enterprise.

Specifically, the language of section 1968 reads:

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

It seems somewhat perverse that the widest type of faith in grand juries is reposed in title I's creation of special grand juries authorized to investigate noncriminal conduct, while, at the same time, this provision of title IX totally ignores the role of the grand jury.

The grand jury, adopted as a safeguard against hasty, malicious, and oppressive action, *Ex parte Bain*, 121 U.S. 1, 12, at least allows a citizen or enterprise which has opposed against it the power of the Federal Government to seek the protection of the supervising court. Section 1968 retracts that protection and makes every business subject to harassment and abuse. And, again, the so-called protective provisions of title IX are totally illusory.

Title IX should not be adopted. It both fails to do effectively what it sets out to do and succeeds in doing far too much what it should not do. The rights of property and person need not conflict with the effective combatting of crime, notwithstanding that title IX would have them do so.

## Title X

Title X deploys the powers of the government to seek incarceration of so-called dangerous special offenders for up to 25 years. In doing so, due process is denied. Were mobsters the only victims of this assault on the Constitution, we would still object. The fact that all defendants are the prey of its provisions makes the title even more indefensible, since even the overzealousness of the drafters to stem organized crime fails as the minimal justification of good intentions it might otherwise provide.

As the report of the association of the bar of the city of New York states, at page 34–35:

> (S)ince the effect of this title might be to increase a sentence from 2 to * * * (25) years in an individual case, due process demands adequate protection for the defendant subject to such penalties. * * * We think that it is unlikely that the proposed procedures would pass constitutional muster.
>
> It is unnecessary, however, to determine what constitutional protections are required in a proceeding such as this—whether a full adversary proceeding and jury trial or something less is required—because we believe that the safeguards contained in this title are patently inadequate.

The dangerous special offender procedure is initiated by the prosecutor filing with the court, a reasonable time before trial or acceptance of a plea of guilty or nolo contendere on a felony charge, notice specifying that the defendant is a dangerous special offender. This allegation is not an issue before the trial court. After the plea or a guilty verdict, the court is to hold a hearing, and at this juncture, the issue of the defendant's subjection to title X comes to the fore.

Section 3575 provides a two-step definition for dangerous special offender. First, special offender is defined in subsection (e) to be a defendant who (1) has been convicted of two or more offenses punishable by death or imprisonment for more than 1 year, one of which has occurred within the past 5 years, and for one of which he has been imprisoned; or (2) has committed the present felony as part of a criminal pattern of conduct which "constituted a substantial source of his income, and in which he manifested a special skill or expertise;" or (3) has committed the felony as part of a conspiracy with three or more to "engage in a pattern of conduct criminal under applicable law" and played some kind of active role, or used force or bribes in all of part of such conspiracy.

Then, a special offender may be deemed dangerous "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."

Despite the complexity of definitions in section 3575(e), and the complexity of verbiage in which the sentencing function of the court and the review function of the appellate court are couched, title X is, in blunt language, an end run around due process. Prof. Peter Low aptly stated the matter in his testimony before the Senate subcommittee on this bill:

> It may well be possible under this act to convict a defendant of a minor felony carrying only a 2-year maximum sentence, charge him at the same time with being a professional offender, find him to be such an offender on the basis of information to which he does not have access, and sentence him to * * * (25) years.
>
> * * * The whole proceeding smacks of one which is motivated by an inability to prove beyond a reasonable doubt to a jury in open court the facts on which the sentence is based.
>
> —Senate Hearings, 190–191.

The operative language for this grim gutting of liberty is provided in that portion of subsection (b) of section 3575 which reads:

> If it appears by a preponderance of the information submitted during the trial of such felony and the sentencing hearing and so much of presentence report as the court relies upon, that the defendant is a dangerous special, offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed 25 years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony.

To impose the special dangerous offender sentence, the judge will have to make a number of determinations—dangerousness, as deter-

mined by the need of the public for protection, and special offender status, as determined by any of the three definitions the title provides.

In doing so, the judge will in effect be ruling on a new charge leading to criminal punishment, *Specht* v. *Patterson*, 386 U.S. 605, 610 (1967), for far more is involved than the traditional assessment of whether the defendant engaged in a proscribed course of conduct. *Witherspoon* v. *Illinois*, 291 U.S. 510, 522 n. 20 (1968). The function of the judge in title X, although it may be disguised as a sentencing role, is in reality, to assess guilt. And this is the very function which is denied a judge acting outside the bounds of required rules of evidence. This eminently important point is explicated by a case which some have cited as support for title X's procedure—*Williams* v. *New York*, 337 U.S. 241 (1949)—where Mr. Justice Black delivered the majority opinion:

> In a trial before verdict the issue is whether a defendant is guilty of having engaged in certain criminal conduct of which he has been specifically accused. Rules of evidence have been fashioned from criminal trials which narrowly confine the trial contest to evidence that is strictly relevant to the particular offense charged. * * * A sentencing judge, however, is not confined to the narrow issue of guilt. His task, within fixed statutory or constitutional limits, is to determine the type and extent of punishment after the issue of guilt has been determined. * * *
>
> —*Id.*, 246–47.

It is, in fact, guilt which the judge determines under title X. For he is authorized—encouraged—to look at the defendant's past acts, to find a pattern of criminal conduct, and the only required nexus between the past acts and the present one need be "similar purposes, results, participants, victims, or methods of commission. * * *" He may take into account almost any past conviction—no matter how trivial—in reaching the conclusion that a pattern exists. He may consider the defendant's special skill and expertise—a phrase defined in the widest terms in section 3575(e)(3). He may take into account a conspiracy of which the felony was a part, even though the defendant may not have been convicted, or even charged with, that conspiracy.

This procedure might be less a parody of justice were the defendant accorded adequate due process rights. But he is not. A preponderance of the information is the standard by which the next 25 years of his life are to be geared. Again, the report of the association of the bar of the city of New York very precisely presents the problem, at page 35:

> The trial court is directed to base its findings on a "preponderance of the information," yet the sentencing decision may be far more critical than the initial determination of guilt or innocence which must be made on the basis of admissible evidence and beyond a reasonable doubt. "Information" of all kinds, not only hearsay and rumor but also, presumably, the fruits of unlawful searches or illegal wiretapping, could be used and the defendant sentenced to * * * (25) years without any of the real protections afforded by a jury trial.

To insure that the judge is aware that he may employ all sorts of data which would be inadmissible at trial, section 3577 provides that "no limitation shall be placed on the information concerning the background, character, and conduct" of the defendant.

The parody does not even stop at this point. For, despite the purported protections provided the defendant, the simple fact of the matter is that he may not even gain an opportunity to be apprised of the information on which the trial judge bases his conclusion that he is a dangerous special offender.

Granted, the defendant is accorded the rights of counsel, compulsory process, and cross-examination "of such witnesses as appear at this hearing." But, these are paper rights. Cross-examination of a probation officer who prepared a presentence report can hardly be equated with cross-examination of the sources of that report.

Finally, almost as a gratuitous final blow at due process, this title permits an inference of guilt to be drawn, by virtue of section 3575(e)(3), from the fact 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 (criminal) conduct." This clearly violates the fifth amendment privilege against self-incrimination by penalizing the defendant for refusing to testify. See, generally, *Marchetti* v. *United States*, 390 U.S. 39 (1968). Moreover, there is simply insufficient constitutional nexus between unexplained income and the presumption that it must have come from an illegal source. Cf., *Leary* v. *United States*, 395 U.S. 6 (1969); *United States* v. *Romano*, 382 U.S. 136 (1965).

Section 3576 authorizes the defendant and the Government to appeal both the imposition and the length of a "dangerous special offender" sentence. When the government appeals, the appeals court is empowered to impose any sentence which the trial court could have imposed, including both increases in the length of the sentence and reversal of the decision that the defendant was not a dangerous special offender.

We do not believe that the Government should be given the power to have sentences increased on appeal. We strongly agree with the recommendations of the advisory committee of the American Bar Association's Project on Minimum Standards for Justice which, while endorsing appellate review, recommended that the appellate court have no power to increase the sentence on appeal, no matter which side initiates the appeal. ABA Standards on Appellate Review of Sentences 3.4 (tentative draft 1967).

The procedure contained in title XI would raise serious constitutional problems of both due process and double jeopardy. Those who support title X cite *North Carolina* v. *Pearce*, 395 U.S. 711 (1969). We think they err.

The Court in Pearce did not hold that all sentence could be increased on appeal. It held only that:

> A judge is not constitutionally precluded * * * from imposing a new sentence, whether greater or less than the original sentence, in light of events subsequent to the first trial * * * The reasons for his doing so must affirmatively appear. Those reasons must be based on objective information concerning iden-

> tifiable conduct on the part of the defendant occurring after the time of the original sentencing.
>
> —*Id.*, 723, 726.

Thus, Pearce pointed to posttrial actions. Title X points to pretrial actions.

Moreover, the central thrust of the Pearce decision was that the defendant must not be penalized for seeking appeal. Ostensibly, the provisions in title X which limit increase to those cases in which the Government appeals and require the Government to file its appeal 5 days before the defendant's time for appeal expires, preclude the possibility of penalty. Pragmatically, they do not. The defendant will still be subject to Government pressure, for there is nothing to prevent the Government from routinely filing appeals to be pursued only if the defendant appeals—thus evading the protective time limit entirely. But even more important is the bargaining leverage which this power would give the Government over the defendant's decision whether or not to plead guilty and whether or not to appeal both his conviction and his sentence. As the ABA advisory committee put it in the commentary on the draft standards:

> The existence of such a power could well have the effect of preventing the defendant from appealing even on the merits of his conviction. The ability to seek an increase could be a powerful club, the very existence of which—even assuming its good faith use—might induce a defendant to leave well enough alone. ABA Standards on Appellate Review of Sentences 57 (1967).

In addition to authorizing the Government to seek an increase in the length of the original sentence, title X permits the Government to appeal the "imposition" of the sentence. This would permit the Government to seek appellate reversal of the trial court decision that the defendant is not a dangerous special offender. As we have pointed out, the decision that a defendant is a dangerous special offender constitutes in fact a guilty verdict on substantive criminal charges. Viewed in this light, the decision that a defendant is not such an offender cannot be distinguished in any meaningful way from an acquittal. It is crystal clear that the double jeopardy clause prohibits the Government from appealing an acquittal. *Kepner* v. *United States*, 195 U.S. 100 (1904) Cf., *Green* v. *United States*, 355 U.S. 184 (1957). The fact this whole proceeding has been disguised as "sentencing" should not permit the Government to do so here.

Again, the impact on the "bargaining" would be enormous. Almost every defendant could be frightened out of an appeal no matter how meritorious, if the Government agreed to avoid seeking review on the "dangerous special offender" charge.

Title X, were it not such a dangerous special offender itself, would be ludicrous, the product of a caveman's course on the Constitution. As it is, it contravenes the Constitution, it substitutes revenge for reason, and it flaunts the concept of fair treatment. It is parody of justice made tragic by the damage it will do—to individuals, and more important, to our system of rule by law.

## Other Titles

The titles we have discussed above appear to be the most objectionable portions of the Organized Crime Control Act. However, there are aspects of the other titles which also raise serious questions which mandate rejection of this bill.

We think these, too, reflect the regrettable result of an eager gesture toward combating crime, divorced from sufficient consideration of the problems of implementation.

*Title II*

Title II proposes to supplant the absolute immunity granted to those forced to sacrifice their fifth amendment right to remain silent, for transaction, or use, immunity. This departure is premised on the views of some attorneys and legal scholars that *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892) (which set the requirement at absolute immunity) has been overruled by *Murphy* v. *Waterfront Commission*, 378 U.S. 52 (1964).

Without arguing the merits of the dispute concerning the relationship of *Counselman* and *Murphy*, we seriously question the wisdom of legislative change in this field. The courts have fashioned the rules concerning immunity, and we feel the changes being molded should continue to reside within their purview.

Moreover, we question whether due regard has been given the constitutional protection of the fifth amendment in the fashioning of this title.

*Title VI*

Title VI likewise has a desirable aim—in this case, enabling the Government to preserve testimony in a criminal proceeding by authorizing the taking of pretrial depositions. However, as is so typical of much of this bill, inadequate regard for the defendant—and we emphasize that we are talking about the defendant who may well be innocent—is a hallmark. We think that the report of the Association of the Bar of the City of New York on the Organized Crime Control Act very aptly points out the problem:

> One of the most serious problems with title VI is that it fails to deal with the need of a criminal defendant, faced with cross-examining a Government witness in a deposition, for information as to the theory of the Government's case and some opportunity for pretrial discovery. We doubt whether a defendant can effectively cross-examine at a pretrial deposition with the limited discovery rights provided under the rules now governing criminal procedure. * * * At a minimum, the Government should be required to provide a statement of its theory and the expected testimony in sufficient detail to enable the defendant to appreciate the significance of the testimony. [Pp. 17–18.]

*Title XI*

Title XI reflects the deep distress that every member of the committee shares about the bombings shaking our streets and college campuses. These criminal acts have imperiled life and property, and must be stopped.

We can appreciate, then, the heat of emotion which has produced this title. However, we question whether it is wise or necessary. The limitation which burdens State and local authorities in their lack of adequate personnel and equipment. Instead of meeting this need, title XI proposes to erect another hierarchy of enforcement.

Rather than providing funds and training so that local authorities might possess the personnel and techniques safely and intelligently to curtail criminal bombings, the title opens the doors to prowling FBI agents, whether requested or not, and this encourages the aura of repression which provides the fuel upon which extremists feed and which they employ to solicit more moderate allies. Moreover, we think the September 24, 1970, editorial of the Los Angeles Times very correctly makes the point that, in fact, the FBI already has all the powers necessary in this area:

> We see no evidence that the local law enforcement authorities, with the considerable help that the FBI is now empowered to give them, are not as adequate to the task as the FBI. The FBI already furnishes local authorities valuable assistance in its fingerprint files and laboratories. Upon receiving a warrant from local authorities, the FBI can pursue a presumed fugitive, as it did in the recent fatal bombing at the University of Wisconsin. The FBI does not need more authority for more effective employment of its tools against terrorism—and must not be granted it unless the country wants the FBI to become a national police force usurping local law enforcement.

We also question very seriously the wisdom of adoption of the death penalty in title XI. We, like every reasonable citizen, condemn out of hand the violence of these criminal bombers. We find no conceivable condonation for the injuries and even deaths they have inflicted. But we are not led thereby to the conclusion that the death penalty will deter such violence. We would note, for example, that the general move in the Nation has been away from the death penalty. Title XI overrides that trend.

It is ironic that the death penalty is one of the very issues under consideration by the National Commission on Reform of Federal Criminal Laws—a Commission which is the creation of the Congress. Indeed, so are many other issues which this bill so summarily treats.

At the very least, we ought to await the conclusions—due in November of this year—of the very body we have created to "make a full and complete review and study of the statutory and case law of the United States which constitutes the federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the federal system of criminal justice." Instead, without any hearings whatsoever, the committee has dropped this title—which bears no relationship to organized crime—into the Organized Crime Control Act.

Laws born of the passion of the moment rarely merit the approval of time.

## Conclusion

Never has a bill masqueraded under false pretenses more than the Organized Crime Control Act. From its title all the way through title XI, on bombing, it promises succor to an anxious nation. It will not deliver, because it seeks easy answers to hard and expensive problems. Even in its draftsmanship it would rather equivocate than fight. Thus one searches the bill in vain for a definition of "organized crime." In a criminal statute where the term "organized crime" is an opeartive device, it is not defined. When asked about the omission, the drafters explained that it was impossible to define, but everybody knew what it was.

On such shoals has the crime fight come a cropper. Wherever the real effort is to be made to remove crime, organized and otherwise, from the everyday fears of the American citizen, one will not find it in the Organized Crime Control Act. Like the defining of "organized crime," the drafters of the bill found the task too hard.

We oppose this bill. It should not be enacted into law. We must conclude with Mr. Justice Stewart, writing in *Elkins* v. *United States*, 364 U.S. 206 (1960), that "nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence."

John Conyers, Jr.
Abner J. Mikva,
William F. Ryan.

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