Severance of both defendants and offenses under provisions like Rule 14 is a matter of discretion for the trial judge. The standard by which the court's discretion is guided is prejudice to the defendant.

One of the most common forms of potential prejudice arises when the prosecution wishes to admit a confession of a co-defendant that inculpates the defendant. Where one of two co-defendants confesses to participation in a joint crime, the confessor's out of court statement is inadmissible against his co-defendant and may not be used at trial, even with curative instructions.[610]

Another potential source of prejudice in a joint trial is a co-defendant witness whose attorney wishes to comment on the failure of the alleged accomplice to take the stand. As a general rule, such comment is prohibited.[611]

Closely related to the unfavorable comment situation is the desire to compel the testimony of a defendant joined with others for trial. He may maintain his silence even at the expense of testimony needed by his co-defendants.[612] At least one case has held that the need for such testimony is suffi-

---

[610] Bruton v. United States, 391 U.S. 123 (1968). The rationale for the rule is that it is unrealistic for a jury to ignore B's guilt in A's statement that "B and I committed Crime X." See, Note, "The Limiting Instruction and its Effectiveness and Effect," 51 Minn. L. Rev. 264 (1966).

[611] DeLuna v. United States, 308 F.2d 140 (5th Cir. 1962), reh. denied, 324 F.2d 375 (1963). The prohibition rests on the same theory as the rules prohibiting such comments on single defendants. Griffin v. California, 380 U.S. 609 (1965).

[612] United States v. Echeles, 352 F.2d 892 (7th Cir. 1965).

cient ground for separate trials.[613]

Just as the Federal Rules have been influential and have been adopted by many states, the ABA standards on joinder and severance have had significant impact.[614] For the most part, they parallel the Federal Rules, but there are differences.

The most important difference lies in the treatment of similar offense joinder. In contrast to the Federal Rules, which use the prejudice standard throughout, the ABA rules grant the defendant an absolute right to severance of offenses joined solely on the basis of their similar character.[615] Additionally, in place of the word "act," which can be narrowly read to exclude certain joinder situations, the ABA rules refer to "conduct," which more accurately describes the behavior that the rule ought to embrace.[616] A further change is the substitution of two standards for the severance of offenses (non-similar offense type) for one: the ABA plan calls for a greater showing of prejudice for severance during trial than

---

[613] Id. But see, Kolod v. United States, 371 F.2d 983 (10th Cir. 1967); United States v. Johnson, 426 F.2d 1112 (7th Cir. 1970), cert. denied, 400 U.S. 842 (1970).

[614] The following statutes track the ABA standards: 35 Ind. Code §§35-31-1-9 and 35-3-1-1-11 (Burns 1975); Vt. R. Crim. P. 8 and 14; Wash. Ct. R. (Cr. P.) 4.3 and 4.4 (1974). Some states combine the Federal Rules and the ABA standards. See, note 607, supra.

[615] ABA Standards, supra note 602 at §2.2(a). The ABA plan does, however, retain the right initially to join similar offenses on the theory that such joinder may be beneficial to the defendant. Id. at 11.

[616] Id. at 12.

for before trial.[617]

It turns out that those jurisdictions that have adopted either the Federal Rules, the ABA plan or have employed some other comprehensive scheme of codification permit, on the whole, more liberal joinder and less liberal severance than do the common law jurisdictions.[618]

4. Publicity

Trials of public officials for corruption are, of course, generally accompanied by much publicity. Safeguards to assure the right of a defendant to a fair trial are, therefore, usually required.[619]

Although the Supreme Court has not spoken to the issue of publicity in the context of a political corruption trial, between 1960 and 1965 the Court decided four major cases

---

[617]The language to compare is the "appropriate to promote a fair determination of defendant's guilt or innocence"-test used before trial, versus the "necessary to promote (the same)"-language applicable to motions made at trial. Id. at 33.

[618]This correlation is not purely accidental. The statutory movement is a fairly recent development, as is the notion that crime includes not only typical personal offenses (murder, robbery, rape), but also on-going plans to commit sophisticated crimes (bribery, extortion, securities fraud). Older procedural rules, which fail to adequately acknowledge the problems peculiar to conspiracy trials, are inadequate to deal with problems of organized crime and sophisticated schemes of corruption. The choice is one of either revising rules respecting joinder and severance to meet modern needs or struggling with outdated rules. In general, therefore, those jurisdictions that undertook substantial codification are those whose legislators are sensitive to the changing face of crime and who have tailored their laws accordingly. This usually results in free joinder, with severance informed by reason.

[619]See, generally, Note, "Prejudicial Publicity in Trials of Public Officials," 85 Yale L.J. 123 (1974).

involving publicity surrounding trials for murder[620] and fraud.[621] In one case, a conviction for murder was reversed, since eight of the twelve jurors before trial held the opinion that the defendant was guilty.[622] In two others, the televising of part of the criminal proceeding was prohibited.[623] In the fourth case, on its bizarre facts, the Court held that identifiable prejudice to the defendant need not be shown; the totality of the circumstances raised the probability of prejudice.[624]

The special issues raised when publicity surrounds the trial of a public official accused of corruption have been considered by the federal courts. With one exception,[625] the

---

[620] Irvin v. Dowd, 366 U.S. 717 (1960); Rideau v. Louisiana, 373 U.S. 723 (1962); Sheppard v. Maxwell, 384 U.S. 333 (1965).

[621] Estes v. Texas, 381 U.S. 582 (1964).

[622] Irvin v. Dowd, supra note 620. The Court did not, however, require that an impartial jury be completely ignorant. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. Id. at 723.

[623] In Rideau v. Louisiana, supra note 620, the defendant confessed at an interview with a sheriff; the interview was televised nation-wide and was seen by three members of the jury. In Estes v. Texas, supra note 621, the televising of defendant's trial over objection was held violative of due process.

[624] Sheppard v. Maxwell, supra note 620. There, the jury was exposed to considerable publicity. They were sequestered only during deliberation, and even then they were allowed to make unsupervised telephone calls. Further, most of the publicity during the trial concerned incriminating matter that was not subsequently introduced at trial.

[625] Delany v. United States, 199 F.2d 107 (1st Cir. 1952). Delaney was a collector of Internal Revenue in Massachusetts. He was removed from office by President Truman when a grand jury indicted him for bribery and falsifying tax certificates.

convictions have been upheld.[626] In these cases, the courts uniformly hold that compliance with the guidelines for jury selection found in the Reardon Report[627] is sufficient.

The Reardon Report was completed by the American Bar Association in 1968. It includes a series of four recommendations. The first set of recommendations relate to the conduct of attorneys regarding public discussion of pending or imminent criminal cases.[628] Attorneys are admonished to not release any information that reasonably may interfere with a fair trial. Such information would include, among other things, prior criminal records, existence or contents of confessions, identities of witnesses, and the possibility of a guilty plea. The second set of recommendations is directed to law enforcement

---

625(continued)
Before his trial, a House subcommittee investigated irregularities within the Internal Revenue Service (over protest of both prosecution and defense counsel) and many of the witnesses were called before the subcommittee, before Delaney's grand jury, and at his trial. Statements were made by the chairman of the subcommittee condemning the "shocking" and "deplorable" acts of Delaney and his "betrayal of trust." The hearings received overwhelming nationwide publicity. The Court of Appeals reversed Delaney's conviction, remanding for a new trial, specifically because the government caused and stimulated the publicity.

626 See, United States v. Addonizio, 451 F. 2d 49 (3d Cir.), cert. denied, 405 U.S. 936 (1972); United States v. Mazzei, 390 F.Supp. 1098 (W.D. Pa.), cert. denied, 423 U.S. 1014 (1975); United States v. Hall, 536 F.2d 313 (10th Cir. 1976).

The same is true of the Watergate cases. See, e.g., United States v. Liddy, 542 F.2d 76 (D.C. Cir. 1976); United States v. Chapin, 515 F.2d 1274 (D.C. Cir.), cert. denied, 423 U.S. 1015 (1975).

627 ABA Project on Minimum Standards for Criminal Justice, Fair Trial and Free Press, 2-15 (1968) (hereinafter cited as Reardon Report).

628 Id. at 2.

officers and judicial employees.[629] They are not to release information dealing with the criminal record of the defendant, the existence or contents of a statement or confession of the defendant, the performance or results of any tests, the identities of witnesses, or the possibility of a guilty plea. The third set of guidelines relate to the conduct of judicial proceedings in criminal cases.[630] They advise when to close pre-trial hearings to the public,[631] when to grant motions for a continuance[632] or change of venue,[633] standards to be adopted in choosing a jury, and standards to be maintained to ensure a fair trial. The fourth recommendation advises the proper use of the contempt power.[634]

Similar reports on trial publicity have been made by other

---

[629] Id. at 5.

[630] Id. at 8.

[631] Six states have statutes mandating the closing of preliminary hearings upon request of the accused. See, Ariz. R. Crim. P. §9.3 (1973); Cal. Penal Code §868 (West 1970); Idaho Code Ann. §19-811 (1947); Mont. Rev. Code Ann. §95-1202 (1968); Nev. Rev. Stat. §171.204 (1967); Utah Code Ann. §77-15-13 (1973).

[632] Continuance is treated in the Fed. Rules of Crim. Pro., Rule 8(b), 18 U.S.C. §3161 (1974).

[633] Change of venue is treated in Rule 21 of the Fed. Rules of Crim. Pro. Similar venue change statutes exist in several states. See, e.g., Ala. Code Cr. P., tit. 15, §267 (1959); Cal. Penal Code §1033 (West 1971); Conn. Gen. Stat. Ann §54-78 (West 1974); Mass. Gen. Laws Ann. §277-51 (West 1968); N.Y. Civ. Prac. Law (McKinney 1963).

[634] Reardon Report, supra note 627, at 14.

groups;[635] the Reardon Report, however, is most widely accepted by the courts. The policy of the Reardon Standards in official corruption cases is "...not [to] impinge in any way upon the freedom of the press to expose public corruption in the administration of public affairs."[636]

5. Statutes of limitations.

In a significant number of situations, the prosecution of official corruption will face issues of limitations, particularly where the vehicles of prosecution themselves have been the subject of corruption. Some discussion of statutes of limitations is therefore helpful.

---

[635] The Special Committee on Radio, Television and the Administration of Justice of the Association of the Bar of the City of New York, Freedom of the Press and Fair Trial, 20, 32-35 (1967) (Medina Report) sets forth similar guidelines for lawyers, the police and law enforcement agencies. The Medina Report, however, takes a strong position against "gag orders."

The Report of the Committee on the Operation of the Jury System on the "Free Press-Fair Trial" Issue, 45 F.R.D. 391 (1968), makes similar recommendations.

The Department of Justice set forth its own policy regulations regarding the release of information by department personnel. See, 28 C.F.R. 50.2 (1976).

Finally, a special Massachusetts Bar-Press Committee has formulated a guide for the bar and news media within the state. See, Reardon Report, supra note 627 at 262.

[636] 45 F.R.D. 391, 422 (1968). The Reardon Report explicitly states that:

> [t]here are numerous occasions on which the media have taken the lead in uncovering the existence of crime and seeing to it that the wrongdoers are duly prosecuted. . . . It is significant that in many of these cases, either the crimes were political in nature or there appeared to be political reasons for the failure to prosecute.

Reardon Report, supra note 627, at 47-48.

a. General

Criminal statutes of limitations limit the state's ability to prosecute criminals.[637] Judicial decisions usually characterize such statutes as acts of grace by the state, which surrender its power to prosecute after a period of time.[638]

The main rationale supporting criminal statutes of limitations is "assur[ing] fairness to defendants"[639] by protecting

---

[637] At common law, a criminal prosecution could be initiated regardless of the time that had passed since the crime's commission. This doctrine of nullum tempos occurrit regi (no lapse of time bars the King) has been acknowledged by many American courts. See, e.g., Bush v. International Alliance, Theatrical Stage E. & M.P.M.O., 55 Cal. App. 2d 357, 130 P.2d 788 (1942); United States v. Fraidan, 63 F.Supp. 271 (D.C. Md. 1946); State v. McCloud, 67 S.2d 242 (Fla. 1953).

The first American statute of limitation appeared in Massachusetts in 1652. W. Whitmore, Colonial Laws of Massachusetts 163 (1889). By 1789 a similar statute applied to federal crimes. 1 Laws of the United States, 113 §32 (1789).

The extent to which statutes of limitation succeed in foreclosing prosecution may be lessened through the use of doctrines of conspiracy, continuing offense, attempt and perjury. See, Note, "The Statutes of Limitations in Criminal Law: A Penetrable Barrier to Prosecution," 102 U. Pa. L. Rev. 630 (1954) (hereinafter cited as Limitations Note). See also Krulewich v. United States, 336 U.S. 440, 456 (1948) (continuing offense); Toussie v. United States, 397 U.S. 112 (1970) (continuing offense); United States v. Kissel, 218 U.S. 601 (1910) (conspiracy); United States v. Boyle, 338 F.Supp. 1028 (D.C. D.C. 1972) (conspiracy); Inholte v. United States, 226 F.2d 585 (8th Cir. 1955) (attempt); Beigal, "The Investigation and Prosecution of Police Corruption," 65 J. Crim. L. & C. 135, 143 (1974) (concerning perjury).

[638] See, People v. Ross, 325 Ill. 417, 419, 516 N.E. 303, 304 (1927). As an act of grace, there is no requirement that a state enact such a statute; a state is free to change or repeal the statute. Where the statutory time has already run as to a specific offender, however, the right to amnesty from prosecution becomes inalienable. Moore v. State, 43 N.J.L. 203, 208-210 (1881). See also, United States v. Haramie, 125 F.Supp. 128 (D.C. Pa. 1954).

[639] Burnett v. N.Y. Central R.R. Co., 380 U.S. 424, 428 (1965).

them "from having to defend themselves against charges when the basic facts may have become obscured by the passage of time."[640] Stale claims threaten the defendant's ability both to gather exculpatory evidence for trial[641] and to establish mitigating factors which might reduce a potential sentence.[642]

Other rationale supporting statutory limits include the prediction that, with the passage of time, the likelihood increases that the criminal reforms, and, therefore, the necessity of imposing a criminal sanction diminishes.[643] A related rationale is, that with the passage of time, the "retributive

---

[640] Toussie v. United States, 397 U.S. 112, 114-115 (1970). See also, United States v. Ewell, 383 U.S. 116, 122 (1966), where the Court characterized criminal statutes of limitations as "citizen's primary guarantee protecting him from having to answer overly stale crime charges." Despite this laudatory language, however, the Court has never held such statutes to be a necessary part of due process.

[641] Missouri, Kansas and Texas R. Co. v. Harriman, 227 U.S. 651, 672 (1913). The same concern is emphasized in Model Penal Code §1.07 (Tent. Draft No. 5, 1956).

[642] See, Limitations Note. Statutes of limitations are concerned only with the time during which an individual may have a prosecution begun against him, by indictment or otherwise. See, e.g., Col. Rev. Stat. Ann. §16-5-401 (1973). Once prosecution has commenced the statute stops running. These statutes do not, therefore, guarantee a speedy trial. Limitations on initiation of prosecution and limitations on trial raise separate issues. See, e.g., La. Code Crim. Pro. Ann. arts. 571-572 (West 1967); United States v. Marion, 404 U.S. 307, 320 (1971).

The argument that statutes of limitation protect defendants from having to rely on stale evidence is undercut. In fact, it may be argued that statutes of limitations work against fairness to defendants because courts tend to assume that indictments brought within the statutory time limit are immune from attacks of unreasonable delay. See, United States v. Marion, supra.

[643] Model Penal Code §1.07, Comment (Tent. Draft No. 5, 1956).

impulse which may have existed in the community is likely to yield place to a sense of compassion for the person prosecuted for an offense long forgotten."[644] While these rationales may support time limits on some prosecutions, they do not hold up as a reason underlying time limits in general; in every state except New Mexico, for example, there is no time limit on murder prosecutions.[645]

A last rationale supporting limitations on prosecutions stresses distrust of prosecutorial authority. The Supreme Court in Toussie v. United States,[646] for example, implied that law enforcement is not always vigorous in pursuing criminals and that statutory time limits help remedy this problem. Unless it is thought that in some cases law enforcement purposely delays investigation to gain advantage over the defendant, a better solution than time limits is more personnel and better resources. The Model Penal Code, on the other hand, envisions "less possibility of an erroneous conviction if prosecution is not delayed too long."[647] Given the government's burden of proof at trial, however, and the fact that stale evidence plagues the government's case as well as the defendant's, decisions to

---

[644]The Russian approach is cited in G. Dession, Criminal Law, Administration and Public Order 618 (1948) (passage of time lessens social threat).

[645]The nearly unanimous legislative wisdom is that with certain crimes the need and desirability to prosecute and punish never diminishes.

[646]397 U.S. 112 (1970).

[647]Model Penal Code §1.07 Comment (Tent. Draft No. 5, 1956).

prosecute on evidence so old as to be unreliable should be few in any event.[648]

b. Official corruption

All of the reasons offered in support of criminal statutes of limitations suffer from logical weaknesses. While generally the arguments opposing such statutes are even weaker,[649] when considered in the context of crimes by public servants, the arguments become strong. For example, some fear that limiting prosecutions encourages criminal activity, or at least, undermines the deterrent effect of the criminal law, because the offender knows that he will be immune from prosecution after a while. That argument makes sense only if it is assumed that criminal behavior is rational. But crimes committed by public servants are more rational and purposeful than most. Time limits may, therefore, be unwise. Consequently, it may be forcefully argued that the type of crime and the position of the person who commits it should weigh heavily in the balance in

---

[648]The Model Penal Code, id., also argues that "it is desirable to lessen the possibility of blackmail based on a threat to prosecute." This rationale certainly impugns the integrity of the prosecutorial process. Beyond this, with regard to crimes by public servants, time limits would make little difference in the ability of an unethical prosecutor to blackmail potential defendants. Because maintenance of their positions relies on public esteem, public officials will be injured as soon as an allegation of corruption is made. A defendant must actually go into court to quash the indictment in order to raise a statute of limitations defense. The proceedings and publicity are thereby prolonged. In some places, it is necessary to plead to the merits of the case in order to raise time objections. See, Ex Parte Ward, 470 S.W. 2d 684 (Tex. Cr. App. 1971).

[649]It has been remarked that commentators have offered no reasons for opposing statutes of limitations in the criminal law. See, Limitations Note at 634.

determining the appropriate time limit for prosecution.[650]

Nevertheless, this is generally not the case. Time limits are usually based on the relative seriousness of the crime.[651] Murder prosecutions, for example, are generally not subject to a time limit,[652] felonies are subject to limits ranging from two to six years, and misdemeanor limits range from one to two years.[653] The other usual basis for setting time limits, used

---

[650]The crime of embezzlement committed by a public official may be used to illustrate the considerations uniquely applicable to time limits in cases of official corruption.

The rationale for time limits which stresses a concern about the use of stale evidence is less forceful when "paper crimes," such as embezzlement are involved.

The argument that after time the criminal reforms and society does not need to deter him is wholly inapplicable here. A public official is often in a better position than the average criminal to keep his activities hidden. An official who embezzles a large amount of money and then becomes immune from prosecution because of time limits poses a continuous threat through the example he sets for other officials.

Finally, time limits do not encourage more vigorous law enforcement here since a clever and relatively powerful official can leave law enforcement with no clues.

[651]While this yardstick is supported by the rationale which looks to society's interests, see text accompanying notes 643 and 644, supra, it runs directly against the rationale supporting time limits as a means of protecting defendants. See, text accompanying notes 639-42, supra. Those crimes that have the greatest potential penalties are precisely the ones for which the statute of limitations affords no or little protection. Thus, the risk of having to answer old charges with stale evidence is greatest where one has the most to lose.

[652]New Mexico imposes a ten-year limit on all crimes, including murder.

[653]See, e.g., Col. Rev. Stat. Ann. §16-5-401 (1973); Ind. Stat. Ann. §35-1-3-4 (1975). Arson, rape, forgery, robbery, and kidnapping have no statute of limitations in some jurisdictions. See, e.g., Ill. Ann. Stat., ch. 38, §3-5 (Smith-Hurd 1971); Miss. Code Ann. §99-1-5 (1972).

in the Federal system,[654] relates time limits to the maximum available punishment for the crime.[655]

Some jurisdictions, however, have begun to single out crimes by public servants when determining time limits. A variety of methods of dealing with this situation can be found. In some states, the statute of limitations for embezzlement is extended when it concerns public funds,[656] or the embezzlement is committed by a public servant.[657] Only three states have specially addressed larger scale official corruption crimes. California[658] and Missouri[659] impose a time limit on bribery and corruption in office twice the length of the normal felony limit. Washington places a ten, as opposed to three, year limit on crimes committed by a "public officer in connection with the duties of his office" or constituting "breach of a public duty or violation of oath."[660] Many

---

[654] 18 U.S.C. §3281-3291 (1970).

[655] See, e.g., Conn. Gen. Stat. Ann. §54-193 (1960). Jurisdictions both with special offender statutes and which base time limits on maximum available prison sentences have special problems. See, e.g., State v. LaSelva, 163 Conn. 229, 303 A.2d 721 (1972).

[656] See, Ala. Code, tit. 15, §220 (1966); S.D. Compiled Laws Ann. §23-8-2 (1967); Ariz. Rev. Stat. Ann. §13-106(A) (Com. Supp. 1973); Cal. Penal Code §799 (West 1970); Utah Code Ann. §76-1-301 (Com. Supp. 1975); P.R. Laws Ann., tit. 33, §231 (Com. Supp. 1975); V.I. Code Ann. §3541 (a)(1) (1967).

[657] See, Tex. Penal Code §12.01(2)(b) (Com. Supp. 1975).

[658] Cal. Penal Code §800 (West 1970).

[659] Mo. Rev. Stat. §541.200 (1969).

[660] Wash. Rev. Code Ann. §10.01.020 (1961).

jurisdictions follow the advice of the Model Penal Code[661] in adding extensions to the normal limits when the crimes involved are easily concealable by the criminal.[662] Public servants, of course, not only often have greater ability to maintain a coverup of a crime, they are often the very people charged with enforcing the law. Still other states deal with time limits on crime by public servants by basing time at which the statute begins to run on discovery of the crime.[663] Finally, many statutes have tolling provisions that have special relevance to crimes involving public servants. First, several states do not permit the time limit to run so long as the offender of offense is unknown,[664] or the fact of the crime is concealed.[665] Second,

---

[661]Model Penal Code (Proposed Official Draft, 1962).

[662]These states include Delaware, Florida, New Hampshire, Ohio, Oregon, Pennsylvania, and Utah.

[663]See, e.g., Ill. Ann. Stat., ch. 38, §3-6 (1961).

This method, however, produces a strange anomaly regarding crimes by public servants. In Taylor v. State, 160 S.E. 667 (Ga. Ct. App. 1931), for example, it was held that the statute of limitations barred prosecution of the defendant for offering a bribe to a city councilman. The court emphasized that the councilman (who rejected the bribe) was also a member of the police committee, a deputy sheriff, and a member of the grand jury that sat several times between the offering of the bribe and the defendant's indictment seven years later.

On these facts, the court concluded that the offense was known to one with a duty to report it and that such knowledge should be imputed to the state. The crime, therefore, was discovered as of the time the bribe was offered.

[664]See, e.g., Ga. Code Ann., tit. 27, §601 (1972).

[665]See, e.g., Kan. Stat. Ann. §21-3106(3)(c) (1974).

some states[666] toll "during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office." Louisiana has tolling provisions that take account of the full range of public servant criminality.[667] The constitutionality of such different limitation on crimes by public servants has been upheld in state courts.[668]

E. Civil Aspects

A public prosecutor who only looks at the criminal aspects of official corruption is myopic. Uniquely, in the area of official corruption, legal action offers promise of remedy broader than punishment. Removal from office, even where criminal punishment is not possible, protects against further crimes. Recovery, too, of ill gotten gains is often possible.

1. Dismissal and disqualification

Traditionally, police department rules[669] or statutes[670]

---

[666] See, Ill. Stat. Ann., ch. 38 §3-7 (1961); Mont. Rev. Code Ann., tit. 94, §107 (1973).

[667] La. Code Crim. Pro. §573 (1967). The statute of limitations does not run for the offenses of misappropriation of monies by one who by virtue of his office has been entrusted with them, extortion or false accounting in one's official capacity, or bribery. The statute is tolled both as to the brige offerer and the public servant, as long as the public servant is in office.

[668] See, State v. Devine, 84 Wash.2d 467 . 527 P.2d 72 (1974); State v. Howell, 317 Mo. 330, 296 S.W.2d 370 (1927).

[669] See, e.g., Drury v. Hurley, 339 Ill. App. 33, 88 N.E.2d 728 (1949); Christal v. Police Comm. of City and County of San Francisco, 33 Cal. App. 2d 564, 92 P.2 . 416 (1939); Scholl v. Bell, 125 Ky. 750, 102 S.W. 248 (1907); Souder v. City of Philadelphia, 305 Pa. 1, 156 A.245, (77 A.L.R. 610) (1931);

in many jurisdictions said that if a police officer, or other person holding a position of public trust, was suspected of misconduct, he could be called to account for his behavior; if he refused to waive immunity from prosecution on the basis of what he said, he could be discharged from his office and disqualified from holding future office. The Supreme Court

669(continued)
Moretti v. Civil Service Board of Chicago Park District, 2 Ill. App.2d 89, 118 N.E.2d 615 (1954).

These cases stand for the proposition that when a police officer is called to account and refuse to talk and refuses to waive immunity, such refusals constitute "conduct unbecoming an officer" and are, therefore, grounds for dismissal. Concerning the captain of police and his refusal to testify, the court in Sovder, supra, said:

> He should have held himself above suspicion. Instead of so doing, when charges of the gravest nature were brought against him by the grand inquest of the county, he answered before them in a way not to establish his freedom from wrong by full explanation, but in a manner calculated to confirm his complicity in crime, and, when summoned by his superior on specific charges before the tribunal charged by the law with the duty of inquiring into them, he answered not at all. This in itself was conduct unbecoming an officer.

Id. at 3.

670See, e.g., N.Y. Const., art. 1 §6 (1939), which for many years provided:

> Any public officer who, upon being called before a grand jury to testify concerning the conduct of his office or the performance of his official duties, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such grand jury, shall be removed from office by the appropriate authority or shall forfeit his office at the suit of the attorney-general.

See also a New York City Charter provision, of similar import, held unconstitutional in Slochorver v. Board of Higher Education of the City of New York, 350 U.S. 551 (1956). Louisiana had a constitutional provision similar to that of New York. For a case dismissing a police officer under that provision, see Fallon v. New Orleans Police Department, 238 La. 531 115 So.2d 844 (1959).

in Garrity v. New Jersey[671] in 1967 held, however, that such a procedure violated the Fifth Amendment privilege against self-incrimination of public employees. Justice Douglas, writing for the majority, explained that

> [t]he choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent.[672]

Thus, the Court laid down a rule that statements made by anyone, under the compulsive dilemma of self-incrimination or loss of livelihood, are constitutionally inadmissable at trial. While the dissenting Justices felt that the standard should be whether the statements were "voluntary in fact,"[673] Justice Fortas, in his concurrence to Garrity's companion case, presaged the first three refinements of the Garrity rule.

The companion case, Spevach v. Klein,[674] involved the

---

[671] 385 U.S. 493 (1967).

[672] 385 U.S. at 497.

[673] Justice White in his dissent said the admissibility of statements so obtained should be determined according to the facts of each case. As to the Garrity case, he felt that the lower court's findings regarding the voluntariness of the officers' statements should not be overturned. 385 U.S. at 531.

Justices Harlan, Clark and Stewart saw the issue as "whether consequences may properly be permitted to result to a claimant after his invocation of the constitutional privilege and, if so, whether the consequence in question is permissible." 385 U.S. at 507. They then conclude that the issue comes down to whether the statement were voluntarily made in fact, and found that they were.

[674] 385 U.S. 511 (1967).

procedure used in Garrity in the context of disbarment proceedings brought against a lawyer. The procedure again was held unconstitutional. Justice Fortas' concurrence, however, focused on three issues for distinguishing among cases involving this kind of procedure: (1) whether the person called to testify concerning his job behavior is a public employee, (2) whether the questions asked relate specifically to the performance of his official duties, and (3) whether his testimony is to be used against him in a subsequent criminal proceeding.

> I would distinguish between a lawyer's right to remain silent and that of a public employee who is asked questions specifically, directly, and narrowly relating to the performance of his official duties as distinguished from his beliefs or other matters that are not within the scope of the specific duties which he undertook faithfully to perform as part of his employment by the State. This Court has never held, for example, that a policeman may not be discharged for refusal in disciplinary proceedings to testify as to his conduct as a police officer. It is quite a different matter if the State seeks to use the testimony given under this lash in a subsequent criminal proceeding.[675]

The next two Supreme Court cases on the subject proved these distinctions crucial, and they set out a procedural blueprint for prosecutors of official corruption. In Gardner v. Broderick,[676] a New York City patrolman was discharged solely for his refusal to waive his privilege against self-incrimination and to sign a waiver of

---

[675] 385 U.S. at 519-20.

[676] 392 U.S. 273 (1968).

immunity from prosecution. He had been called as a witness before a New York County grand jury investigating bribery and corruption of police officers. Justice Fortas now wrote for the majority

> ....[A]lthough a lawyer could not constitutionally be confronted with Hobson's choice between self-incrimination and forfeiting his means of livelihood, the same principle should not protect a policeman. Unlike the lawyer, he is directly, immediately, and entirely responsible to the city or State which is his employer. He owes his entire loyalty to it.[677]

The Court suggested a constitutional procedure by which that duty can be enforced.

> If appellant, a policeman, had refused to answer questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, Garrity v. New Jersey, supra, the privilege against self-incrimination would not have been a bar to his dismissal.[678]

Noting, however, that here a waiver of immunity had been sought, the Court ruled that the provision pursuant to which the officer had been discharged could not stand. In Gardner's companion case,[679] the Court reiterated that

> ...petitioners, being public employees, subject themselves to dismissal if they refuse to account for their performance of their public trust, after

---

[677] 392 U.S. at 277.

[678] 392 U.S. at 278.

[679] Uniformed Sanitation Men's Ass'n. Comm'r. of Sanitation of the City of New York, 392 U.S. 280 (1968).

> proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights.[680]

Thus, the prosecutor of official corruption may vindicate the public interest in honest public service by seeking either prosecutions or removal from office of public employees who are not rightfully performing their duties.[681]

Since these cases, the Court has dealt with the issue of who is included in the term "public employees," against whom the procedural formula may be used. In Lefkowitz v. Turley,[682] the Court held that architects who contracted with the city were "public employees" for purposes of the Gardner case. Consequently, the penalty of cancellation of their existing contracts and disqualification from further transactions with the State for five years could not be imposed solely because the architects, when called to testify before a grand jury concerning their contracts, refused to

---

[680] 392 U.S. at 285.

[681] Justice Harlan, in his concurrence to these two cases, applauded this procedural blueprint.

> I find in these opinions a procedural formula whereby, for example, public officials may now be discharged and lawyers disciplined for refusing to divulge to appropriate authority information pertinent to the faithful performance of their offices. I add only that this is a welcome breakthrough in what Spevack and Garrity might otherwise have been thought to portend.

392 U.S. 285. The majority opinion, however, retains the distinction between lawyers and public employees. Justice Harlan's assumption that the procedural formula applies also to lawyers is incorrect. Cf. Lefkowitz v. Turley, infra note 682.

[682] 414 U.S. 70 (1973).

sign waivers of immunity from prosecution. The court "fail[ed] to see a difference of constitutional magnitude between the threat of job loss to an employee of the state, and a threat of loss of contracts to a contractor."[683]

Under all of these decisions, then, a prosecutor can employ a wise strategy that will be both constitutional and effective in getting at official corruption.[684] Lower echelon officials, such as police officers, may be granted immunity and forced to testify, under threat of contempt, as to their knowledge of the corrupt scheme under investigation. Consequently, evidentiary cases can be made against corrupt upper echelon officials, such as district attorneys or judges, through their testimony. Although the lower echelon officials cannot be criminally prosecuted on the basis of

---

[683] Id. at 83.

[684] In Turley, supra, the States were encouraged to continue fighting corruption, bearing in mind the constitutional guidelines set forth in this line of cases.

> We should make clear, however, that we have said before. Although due regard for the Fifth Amendment forbids the State to compel incriminating answers from its employees and contractors that may be used against them in criminal proceedings, the Constitution permits that very testimony to be compelled if neither it nor its fruits are available for such use...
> Furthermore, the accommodation between the interest of the State and the Fifth Amendment requires that the State have means at its disposal to secure testimony if immunity is supplied and testimony is still refused. This is recognized by the power of the courts to compel testimony, after a grant of immunity, by use of civil contempt and coerced imprisonment.

414 U.S. at 84.

their testimony through this strategy, they may be removed from their offices. Upper echelon officials may be brought to trial. All corrupt participants are thereby removed from the public service.

Although most state court[685] and lower federal court[686] cases apply the Supreme Court cases without variation, New York and the Second Circuit have cut back somewhat on the per se rule first announced in Garrity.

The New York Court of Appeals, in People v. Glucksman,[687] held that the rule--that the testimony of a public employee compelled under a forfeiture-of-office statute is inadmissible--is not a per se rule; the testimony may be admissible when there is a determination that the public employee's appearance and waiver of immunity are both voluntary.[688] The

---

[685] See, e.g. Silverio v. Municipal Court of the City of Boston, 355 Mass. 623, 247 N.E.2d 379 (1969); Seattle Police Officers' Guild v. City of Seattle, 80 Wash.2d 307, 494 P.2d 485 (1972); State v. Falco, 60 N.J. 570, 292 A.2d 13 (1972); People v. Goldman, 21 N.Y. 2d 152, 234 N.E.2d 174, 287 N.Y.S. 7, (1967); People v. Avant, 33 N.Y. 2d 265, 307 N.E. 2d 230, 352 N.Y. 2d 969 (1973); Kammerer v. Board of Fire and Police Commissioners of the Village of Lombard, 44 Ill. App. 500, 256 N.E. 2d 12 (1970).

[686] See, e.g., Luman v. Tanzler, 411 F.2d 164 (5th Cir. 1969); Clifford v. Schoultz, 413 F.2d 868 (9th Cir. 1969); Grabinger v. Conlisk, 320 F.Supp. 1213 (N.D. Ill. 1970); Bowes v. Comm. to Investigate Allegations of Police Corruption and the City's Anti-Corruption Procedures, 330 F.Supp. 262 (S.D.N.Y. 1971).

[687] 35 N.Y.2d 341, 320 N.E.2d 633, 361 N.Y.S.2d 892 (1974).

[688] Id. In that case, an Assistant Attorney General of the State, then under investigation, became aware that he had been charged with attempted extortion. He went uninvited to the District Attorney and voluntarily disclosed his version of the facts

court noted that Garrity distinguished "the situation where one who is anxious to make a clean breast of the whole affair volunteers information."[689]

The Second Circuit also has looked to the particular facts of the cases before it in holding Garrity inapplicable. In one case,[690] Garrity did not compel exclusion of the defendant's testimony because the court found (1) the economic sanction involved, i.e., the loss of a "menial" job that had been held for only two days, was insufficient to render the statement involuntary, and (2) under all the circumstances the statement was voluntary in fact.[691]

688(continued)
and asked to appear before the grand jury. He signed the waiver of immunity "willingly"and testified.
The lower court found that the threat or apprehension that he would forfeit his official position was not the reason for his testifying or executing the waiver of immunity.

689Garrity v. New Jersey, 385 U.S. 493, 499 (1967). This distinction, seized upon by the Court of Appeals, is crucial and the fact that it was seized upon may indicate the court's preference for the rationale of Garrity's dissents, discussed supra, note 673, over that of the majority opinion. If this is true, the approach would allow use of the condemned forfeiture-of-office compulsion, changing such "compulsion" from a per se rule of law to a question of fact.

690Sanney v. Montanye, 500 F.2d 411 (2d Cir. 1974).

691The unusual facts are that Sanney, who had been with a murder victim on the night of his murder, became the leading suspect in the murder investigation and was questioned, but not arrested. Two months later, Sanney applied for a job as a driver's assistant and was hired. His boss administered a polygraph examination to Sanney, as part of normal pre-employment testing. During the exam, Sanney stated that he had been a suspect in a murder case and had not told the police the full story. His boss told this to the police and at their request the boss conducted a second polygraph exam with Sanney; the boss transmitted the conversation to the police in the next

In another case,[692] the court held Garrity inapplicable because there was insufficient state responsibility for the economic coercion.[693] Judge Friendly, speaking for the majority said

> ... Garrity's interpretation of the privilege applies only when the interrogator has the power to compel testimony against which the privilege would be a shield by the threat that raising it will involve consequences as devastating as in that case [Garrity].[694]

Consequently, while Garrity's per se rule, repeated in Gardner and Turley, still prevails, for that rule to

---

691(continued)
room. At this exam, Sanney admitted to killing the murder victim. Sanney was arrested and pled guilty to second degree man-slaughter.

Sanney argued that his second statement was inadmissible under Garrity as the product of economic coercion imposed by an agent of the state (his boss), since Sanney's continued employment was conditional on his submitting to the second polygraph exam.

The court assumed the state was responsible for the economic coercion.

> The controlling factor is not the public or private status of the person from whom the information is sought but the fact that the state has involved itself in the use of a substantial economic threat to coerce a person into furnishing an incriminating statement.

500 F.2d at 413.

692 United States v. Solomon, 509 F.2d 863 (2d Cir. 1975).

693 In that case, Solomon, an officer of a brockerage firm, was interrogated by the New York Stock Exchange; his testimony was compelled under pain of expulsion from the Exchange by Article 14 of the N.Y.S.E. Constitution. The Securities Exchange Commission subpoenaed this testimony and Soloman was indicted and found guilty of creating and maintaining false books and records.

694 509 F.2d at 870.

apply in the Second Circuit, at least, the court must determine that there is (1) sufficient governmental responsibility for the "compulsion," (2) "significant" economic sanction compelling the testimony, and (3) testimony involuntary in fact.[695]

2. Civil remedies

Case law provides three avenues for the public's recovery of funds taken through official corruption. All are founded on the concept that because of the principal-agent relationship existing between the government and the public official the government may recover officials' illegal profits and gains.[696]

---

[695]For the procedure through which those with authority to dismiss public employees for refusing to testify learn of the employees' refusal, see In re Grand Jury Transcripts, 309 F. Supp. 1050 (S.D. Ohio 1970); Special 1971 Grand Jury v. Conlisk, 490 F.2d 896 (7th Cir. 1973).

[696]For a discussion of this fiduciary relationship, see Lenhoft, "The Constructive Trust as a Remedy for Corruption in Public Office," 34 Colum. L. Rev. 214, 215 (1954):

> According to Anglo-American legal principles there is no separation between public and private law as in systems based on Roman law: fundamental to our law is the conception that an agent's position, whether a private office or public, is of a fiduciary character. Three well-settled rules apply to the activities of such a fiduciary. First, anyone acting as an agent must not use his position for his own profit, regardless of his motives, regardless of whether the principal suffers actual loss. His attention must be given undivided to the stern demands of loyalty.' Second, the agent, if he does act for his own advantage, must surrender the profits to his principal, and this even though the transaction could not have been impeached if no fiduciary relation had existed. Third, the

First is the constructive trust[697] theory under which the official's illegal profits are deemed to be held by him in trust for the government. For example, in United States v. Carter,[698] the illegal profits made by an army captain from dealings with contractors in government projects were deemed held on constructive trust on behalf of the United States. The government was allowed to recover these profits even absent a showing of actual loss on the government's part.

> It would be a dangerous precedent to lay down as law that unless some affirmative fraud or loss can be shown, the agent may hold on to any secret benefit he may be able to make out of his agency. The larger interests of public justice will not tolerate, under any circumstances, that a public official shall retain any profit or advantage which he may realize through the acquirement of an interest in conflict with his fidelity as an agent.[699]

The constructive trust remedy may also be used in actions by citizens against corrupt public officials.[700] The

---

696 (continued)

> agent's profits are 'traced' through the agent's subsequent dealings. They can be reached in whatever form they may be and in whosoever possession they are found--except, of course, if they have passed through the hands of a bona fide purchaser. Constructively a trustee for the benefit of the public, the disloyal public servant can never safely count the illicit profits his own.

697 See G. Bogert, The Law Of Trusts, §77 at 287 (5th ed. 1973).

698 217 U.S. 286 (1910).

699 Id. at 306.

700 See Fuchs v. Bidwell, 31 Ill. App. 3d 567, 334 N.E.2d 117 (1975).

existence of a remedy at law does not preclude the use of this equitable remedy.[701] Further, even though the government never owned or had any right to any of the funds obtained by the official, the government is not precluded from imposing on a fiduciary liability to hold the funds in trust; the conflict of interest alone is sufficient to justify imposition of a constructive trust.[702] Thus, a government poultry inspector, who for five years was also engaged as a "consultant" by one of the businesses that he inspected, could be made to account for the money he earned as a consultant.[703] A finding of "conflicting loyalties" is sufficient to impose a trust. The constructive trust theory has also been used against public officials who accepted bribes.[704]

The second avenue for public recovery of official's illegal gains is through recission and cancellation of leases and contracts procured through fraud.[705] Again, the Supreme Court has not required the government to show that

[701] City of Boston v. Santusuosso, 298 Mass. 175, 10 N.E.2d 271 (1937).

[702] Fuchs v. Bidwell, supra note 700.

[703] United States v. Drunim, 329 F.2d 109 (1st Cir. 1964).

[704] See e.g. County of Cook v. Barrett, 36 Ill. App. 3d 623, 344 N.E. 2d 540 (1975).

[705] See Pan American Co. v. United States, 273 U.S. 456 (1927) (a case arising out of the Teapot Dome Scandal); Mammoth Oil Co. v. United States, 275 U.S. 13 (1927).

it suffered loss.[706]

> It was not necessary to show that the money transaction between Doheny and Fall constituted bribery as defined in the criminal code or that Fall was financially interested in the transaction or that any financial loss or disadvantage as a result of the contracts and leases. It is enough that these companies sought and corruptly obtained Fall's dominating influences in furtherance of the venture.[707]

Consequently, when a public official uses his influence in connection with a government contract, and he is privately compensated for that action, the contract is unenforceable at the government's option, and this is the law regardless of whether the company engaged in the contract is aware of any wrongdoing on the part of one of its agents.[708]

The third avenue of public recovery is in actions to recover money illegally obtained and tort actions for

---

[706]The court observed:

> The complaint did not allege bribery; and, in the view we take of the case, there is no occasion to consider, and we do not determine, whether Fall was bribed in respect of the lease or agreement. It was not necessary for the government to show that it suffered or was liable to suffer loss or disadvantage as a result of the lease or that Fall gained by or was financially concerned in the transaction.

275 U.S. at 53.

[707]273 U.S. at 500.

[708]See Crocker v. United States, 240 U.S. 74 (1916), where a contract was held unenforceable because of a secret agreement made between agents of a corporation and the superintendent of the government mail delivery service. See also Dougherty v. Alentian Homes, Inc., 210 F.Supp. 658 (D. Or. 1962); City of Findlay v. Pertz, 66 F. 427 (6th Cir. 1895).

damages. For instance, in Williams v. State,[709] the state of Arizona sued to recover money illegally obtained by its public official, Williams. As land commissioner, Williams illegally acquired land for himself. The court recognized the relationship between a state official and the state as one of principal and agent; due to the official's conflict of interests, the state was allowed to recover the official's profits.[710]

The government may also sue in tort for damages. In City of Boston v. Simmons,[711] for example, the city was successful in seeking damages from defendant, chairman of the Boston Water Board, in the amount the city was forced to pay for land, beyond what it would have paid absent the defendant's breach of duty. When a fiduciary is not acting in that capacity, however, he may not be liable. Thus, in Yuma County v. Wisener,[712] the court distinguished between excessive fees obtained under color of office (recoverable by the county), and money collected outside regular office hours (not recoverable by the county). The

---

[709] 83 Ariz. 34, 315 P.2d 981 (1957).

[710] See also City of Boston v. Dolaw, 298 Mass. 346, 10 N.E. 2d 275 (1937), where the city recovered from the official the amount gained in breach of his fiduciary duties.

[711] 150 Mass. 461, 23 N.E. 210 (1890).

[712] 45 Ariz. 475, 46 P.2d 115 (1935).

Federal government may also recover bribe money on a showing of the fact and amount of the bribe.[713] In addition, a a federal statute now provides a means of voiding contracts and recovering money illegally obtained by federal officials in violation of federal bribery laws.[714] Massachusetts, too, has enacted legislation providing government remedies for political misconduct,[715] and New York has legislation prohibiting conflict of interests by municipal officers and employees; it provides for cancellation of contracts made when such a conflict exists.[716]

CONCLUSION

Robert F. Kennedy once wrote, "If we do not on a national scale attack organized criminals with weapons and techniques as effective as their own, they will des-

[713] Continental Management v. United States, 527 F.2d 613 (Ct. Cl. 1975).

[714] 18 U.S.C. §218 (1970).
Federal statutes also now allow recovery of kickbacks paid by subcontractors to prime contractors who have contracts with the government. There is a statutory presumption that the cost of the kickback is included in the subcontract price. 41 U.S.C. §51 (1970). This statute has been constructed to allow cancellation of a contract. United States v. Acme Process Equipment Co., 385 U.S. 138 (1966).

[715] Mass. Gen. Law Ann., c. 268A, §15 (1956).

[716] N.Y. Gen. Mun. Law. §§800-809 (McKinney 1974).

troy us."[717] He later added that without those weapons and techniques that "all we are going to do is have articles written, stories written and hearings, and not really get the job done."[718] Appropriately discounted for political rhetoric, what Kennedy said of organized crime was true then and remains true now.

But if what Kennedy said of organized crime is true, it is more true of official corruption - connected with organized crime or not. Mr. Justice Brandeis in his classic dissent in Olmstead v. United States rightly suggested that, "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example."[719] Mr. Justice Brandeis spoke in the context of lawless law enforcement. What he said of such law enforcement may just as easily be applied to official corruption. Official corruption tears at the very heart of our democratic society. As the President's Crime Commission observed of organized crime in 1967, it "Preach[es] a sermon that all too many Americans heed: The government is for sale; lawlessness is the road to wealth; honesty is a pitfall and morality a trap for

---

[717] R. Kennedy, The Enemy Within at 265 (1960).

[718] Quoted in Organized Crime and Traffic in Narcotics, S. Rep. No. 72, 89th Cong. 1st Sess. 53 (1965).

[719] 277 U.S. 438, 485 (1928).

suckers."[720] There is little doubt, therefore, that the first priority of every prosecutor's office should be the investigation and prosecution of official corruption, particularly as it touches the criminal justice system itself.

As these materials have shown, the investigation and prosecution of official corruption, however, is no mean task. It requires a wide understanding of the processes of government and their interactions with business and private life. It requires a special understanding of the dark side of the criminal justice system itself. Mastery must be obtained of a complicated body of substantive law and its relation to the most sophisticated aspects of the evidence gathering and trial processes. History has seemingly created for the investigator and prosecutor of official corruption a mine field of technical trip wires in which there is all too often only one way to do things right, but a hundred ways to do things wrong. The important point, however, is that there is a right way to do things. None of the legal obstacles described in these materials is insuperable. In sharp contrast to what is required for a direct attack on organized crime, too, no single legal tool can be said to be indispensable.

---

[720] The Challenge of Crime in a Free Society, Report of the President's Commission on Law Enforcement and the Administration of Justice at 209 (1967).

The job can be done with the legal tools that most prosecutors already have. In some situations, it may be harder than in others, but the job can be done. All that is required for getting on with the job, therefore, is courage and hard work.

APPENDICES: BRIBERY, EXTORTION AND GRAFT STATUTES OF THE STATES--NOTE

The following charts exhibit state laws on bribery, extortion and graft, analyzed into elements to facilitate structural comparison. The analyses incorporate no case law. In New Jersey, for example, which retains as misdemeanors offenses at common law, under N.J. Stat. Ann. §2A:85-1, corrupt officials are often prosecuted for misconduct in office, among other offenses--but this common law offense does not appear in these appendices.

Concepts used in the charts are standardized, while statutory concepts vary widely among the states. Extortion appears in two forms: threatening with intent to obtain another's property, and demanding an unauthorized fee under color of office. Not all states have statutes covering both forms. Some states call the first form blackmail or coercion. Some states include in the second form the receiving of unauthorized fees under color of office, an offense here analyzed as graft. Extortion in these appendices requires the presence of threat, or at least some measure of coercion, and so it includes as conduct demanding, but not merely asking or receiving. Some statutes appear in both extortion and graft appendices, and some in both bribery and graft appendices.

Similarly, concepts referring to mental states have been standardized. Where intent is defined for attendant

circumstances, in some statutes, it has the meaning normally conveyed by the word knowledge, which has been used here. Where a bribery statute, however, requires an agreement that the bribe is to influence an official act, either knowledge or intent with respect to the agreement may be implied. This has been shown on the charts by agreement or understanding among the attendant circumstances and (agreement) or (understanding) as the corresponding mental state.

Various states define public servant differently. Here it includes public officers and employees, but not jurors or witnesses. Where a state defines public servant to include jurors the appendices show the inclusion. Many states define public servant to include persons who have been appointed or elected to office but have not yet taken office. This variation has not been shown. Nor have the phrases to another (indicating the involvment of two persons in the crime) or directly or indirectly (indicating that the bribe may be given to a person for another). Corruptly has been included as an attendant circumstance; it has been read to mean not lawfully. Maliciously, the meaning of which is seldom clear from the face of the statute, has been treated similarly.

Most states provide for fines and imprisonment as punishment for felonies and misdemeanors. A felony usually is distinguished by a sentence of more than a year in a state facility. Fines have not been indicated separately here. Constitutional provisions barring

from office persons convicted of bribery, or in some states of any felony, have been exhibited only in the bribery appendix.

The appearance of "(N)" following the name of a state indicates the presence of a new penal code.

APPENDIX A: BRIBERY STATUTES OF THE STATES

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
ALABAMA						
§63 (§65)(§76)	offers, gives or promises	public officer (juror)(witness) gift or thing of value corruptly	---	intent to influence official act pending or possible	---	felony, bar to office
§64 (§67)(§77)	accepts or agrees to accept	public officer (juror)(witness) gift, thing of value or promise agreement corruptly	accepts or agrees	---	--- (agreement)	felony, bar to office
Note: See also, e.g., §70 (compounding), §72 (legislator demanding bribe). Constitution Art. 4 §§79-81 prohibits bribery of public officers.						
ALASKA						
§11.30.040	offers, gives or promises	public officer gift or valuable consideration or thing corruptly	---	intent to influence official act pending or possible	---	felony
§11.30.050	accepts or receives	public officer gift, valuable consideration or thing, or promise agreement corruptly	receives	---	--- (agreement)	felony
Note: See also §11.30.190 (compounding).						
ARIZONA						
§13-281 (§13-287) (§13-289)	offers or gives	public officer (judicial officer, juror, referee, arbitrator or umpire)(witness) bribe	---	intent to influence official act	---	felony, bar to office

ARIZONA continued §13-282 (§13-288) (§13-290)	asks, receives or agrees to receive	public officer (judicial officer, juror, referee, arbitrator or umpire)(witness) bribe agreement	---	---	--- (agreement)	felony, bar to office

Note: See also, e.g., §13-283 (bribery of councilman, commissioner or board member), §13-285 (bribery of legislator), §13-286 (legislator seeking bribe).

ARKANSAS (N) §41-2703 (§41-2613)(§41-2608)	offers, confers or agrees to confer	public servant (juror)(witness) benefit as consideration for official act	---	not explicit[1]	not explicit[1]	felony, bar to office
§41-2703 (§41-2613)(§41-2608)	solicits, accepts or agrees to accept	public servant (juror)(witness) benefit as consideration for official act	---	not explicit[1]	not explicit[1]	felony, bar to office

Note: See also §41-2807 (compounding). Constitution Art. 5 §§9, 35 bars from office and provides for punishment as felons those convicted of bribery.

[1]Per §41-204(2): purposely, knowingly or recklessly.

CALIFORNIA §67 (§92)(§137)	offers or gives	executive officer (judge or juror)(witness) bribe	---	intent to influence official act	---	felony, bar to office
§68 (§93)	asks, receives or agrees to receive	executive or ministerial officer, employee or appointee (judge or juror) bribe agreement	---	---	--- (agreement)	felony

Note: See also, e.g., §§85, 86 (legislators), §153 (compounding), §95 (jury tampering), §165 (bribery of councilman).

COLORADO (N) §18-8-302 (§18-8-606)(§18-8-602)	offers, confers or agrees to confer	public servant (juror)(witness) pecuniary benefit	---	intent to influence official act	---	felony, bar to office
§18-8-302 (§18-8-607)(§18-8-603)	solicits, accepts or agrees to accept	public servant (juror)(witness) pecuniary benefit agreement	---	---	--- (agreement)	felony, bar to office

Note: Constitution Art. 12 §4 bars from office those convicted of bribery. Per §18-8-302(2) it is no defense that the person sought to be influenced was not qualified. §§18-1-502 and 18-1-503 refer to culpability.

CONNECTICUT (N) §53a-147 (§53a-152)(§53a-149)	offers, confers or agrees to confer	public servant (juror)(witness) benefit as consideration for official act	---	---	---	felony
§53a-148 (§53a-153)(§53a-150)	solicits, accepts or agrees to accept	public servant (juror)(witness) benefit as consideration for official act	---	---	---	felony

Note: See also, e.g., §22-399 (meat and poultry inspectors). §53a-5 refers to culpability.

DELAWARE (N) §1201 (§1264)(§1261)	offers, confers or agrees to confer	public servant (juror)(witness) personal benefit agreement	---	not explicit[1]	not explicit[1] (agreement)	felony, bar to office
§1203 (§1265)(§1262)	solicits, accepts or agrees to accept	public servant (juror)(witness) personal benefit agreement	---	not explicit[1]	not explicit[1] (agreement)	felony, bar to office

Note: Constitution Art. II §21 and Art. VI §2 provides for removal and disqualification from office of those convicted of bribery. Per §1202 coercion is a defense to a prosecution for offering or conferring a bribe; under §1204 coercion is not a defense to a prosecution for receiving a bribe. Per §1208 it is no defense that the person sought to be influenced was not qualified.

[1]Per §251: intentionally, knowingly or recklessly.

FLORIDA §838.015	offers, gives or promises	public servant benefit corruptly	---	intent to influence official act pending or possible	---	felony, bar to office
	solicits, accepts or agrees to accept	public servant benefit for himself or another corruptly	---	intent to be influenced in official act pending or possible	---	felony, bar to office

Note: See also, e.g., §§914.14, 918.14 (bribery and tampering with witnesses), §918.12 (tampering with jurors). Constitution Art. 6 §4 bars from office those convicted of bribery; but see §112.011 (removal of disqualification). Per §838.015(2) it is no defense that the public servant had not assumed office or was not qualified.

GEORGIA (N) §26-2301	offers or gives	public servant unauthorized benefit	---	intent to influence official act	---	felony, bar to office

GEORGIA (N) continued						
§26-2301	solicits or receives	public servant unauthorized benefit given with purpose to influence official act	---	not explicit[1]	---	felony, bar to office

Note: Constitution §2-801 bars from office those convicted of bribery.

[1]Per §§26-601 to 26-605 a criminal act must have an intention or criminal negligence.

HAWAII (N)						
§710-1040(1)(a) (§710-1073)(§710-1070)	offers, confers or agrees to confer	public servant (juror)(witness) pecuniary benefit	---	intent to influence official act	not explicit[1]	felony
§710-1040(1)(b) (§710-1073)(§710-1070)	solicits, accepts or agrees to accept	public servant (juror)(witness) pecuniary benefit	---	intent to be influenced in official act	not explicit[1]	felony

Note: See also §710-1013 (compounding) and, e.g., §159-28 (meat inspectors). Per §710-1040(2) coercion or extortion is a defense to a prosecution for bribery. Per §710-1001 property offered or conferred in violation of bribery laws can be forfeited to the state.

[1]Per §§702-204, 702-207: knowledge or recklessness.

IDAHO						
§18-2701 (§18-4703)(§18-1301)	offers or gives	executive officer (legislator, or another for him)(juror or judicial officer) bribe	---	intent to influence official act pending or possible	---	felony
§18-2702 (§18-4704)(§18-1302)	asks, receives or agrees to receive	executive officer (legislator, or another for him) (juror or judicial officer) bribe agreement	---	---	--- (agreement)	felony

Note: See also §18-1601 (compounding) and, e.g., §18-1309 (bribery of municipal or county officer).

ILLINOIS (N)						
§33-1	promises or tenders	public servant, or person believed to be a public servant (or person) unauthorized benefit, or benefit which a public servant would be unauthorized to accept	promises or tenders	intent to influence official act (or intent to cause person to influence official act)	not explicit[1]	felony, bar to office
	receives or agrees	unauthorized benefit given with intent to cause recipient to influence official act	receives or agrees	not explicit[1]	knowledge of other's intent to cause recipient to influence official act	felony, bar to office

ILLINOIS (N) continued						
§33-1	solicits	unauthorized benefit agreement	---	not explicit[1]	not explicit[1] (agreement)	felony, bar to office

Note: See also §32-1 (compounding). Constitution Art. 13 §1 bars from office convicted felons.

[1]Per §4-3: intent, knowledge or recklessness.

INDIANA (N)						
§35-44-1-1(a)(1)	offers, confers or agrees to confer	public servant unauthorized property	---	intent to control official act	knowledge	felony
§35-44-1-1(a)(2)	solicits, accepts or agrees to accept	public servant unauthorized property	---	intent to be controlled in official act	knowledge	felony

Note: See also, e.g., §35-44-1-1(a)(7) (bribery of witness), §33-2.1-8-9 (bribery of judicial officer). Per §35-44-1-1(b) it is no defense that the person sought to be influenced was not qualified.

IOWA (N)*						
§2201	offers, gives or promises	public servant, juror or witness benefit	---	intent to influence official act	---	felony, bar to office
§2202	solicits or receives	public servant, juror or witness benefit or promise given with intent to influence official act	---	---	---	felony, bar to office

*Code effective January 1, 1978.

Note: See also §2001 (compounding) and, e.g., §§2003, 2004 (tampering with witness, juror).

KANSAS (N)						
§21-3901(a)	offers, gives or promises	public servant benefit to which he is not entitled	---	intent to influence official act	---	felony, bar to office
§21-3901(b)	requests, receives or agrees to receive	public servant benefit given with intent to influence official act	---	not explicit[1]	---	felony, bar to office

Note: See also, e.g., §21-3815 (attempting to influence a judicial officer).

[1]Per §21-3201: intentionally or recklessly.

KENTUCKY (N)						
§521.020(1)(a) (§524.060)	offers, confers or agrees to confer	public servant (juror) pecuniary benefit	---	intent to influence official act	---	felony

KENTUCKY (N) continued						
§521.020(1)(b) (§524.070)	solicits, accepts or agrees to accept	public servant (juror) pecuniary benefit agreement	---	---	--- (agreement)	felony

Note: See also, e.g., §§524.020, 524.030 (bribery of witness). Per §432.350 executive, legislative and judicial officers are barred from office on conviction of bribery. Per §521.020(2) and (3) extortion or coercion is a defense, but failure of the person sought to be influenced to be qualified is not a defense, to a prosecution for bribery.

LOUISIANA (N)						
§118	offers or gives	public servant, juror or witness thing of apparent value	---	intent to influence official act	---	felony
	offers to accept or accepts	public servant, juror or witness thing of apparent value given with intent to influence official act	---	---	---	felony

Note: See also, e.g., §§129, 130 (jury tampering), §131 (compounding). Constitution Art. 19 §12 and Art. 3 §30 bars from office those convicted of bribery.

MAINE (N)						
§602(1)(A)	offers, gives or promises	public servant or party official pecuniary benefit	---	intent to influence official act	knowledge	felony
§602(1)(B)	solicits, accepts or agrees to accept	public servant, party official or candidate pecuniary benefit given with intent to influence official act	---	knowingly	knowledge	felony
	fails to report	offer or promise of pecuniary benefit which violates (1)(A)	---	knowingly	knowledge	felony

MARYLAND						
§23	bribes or attempts to bribe	public servant	---	intent to influence official act	---	felony, bar to office
	demands or receives	public servant bribe, fee, reward or testimonial given with purpose to influence official act	---	---	---	felony, bar to office

Note: See also, e.g., §26 (embracery). Constitution Art. III §50 bars from office those convicted of bribery.

MASSACHUSETTS						
C. 268A §2	offers, promises or offers to give to another	public servant or witness thing of value corruptly	---	intent to influence official act or violation or to commit or aid fraud	---	felony, bar to office
	asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive	public servant or witness thing of value given in return for being influenced in official act or violation or to commit or aid fraud corruptly	---	---	---	felony, bar to office
Note: See also, e.g., C. 268A §3. Constitution §93 bars from office or legislature those convicted of bribery.						
MICHIGAN						
§28.312 (§28.314)	offers, gives or promises	public servant (juror, appraiser, trustee, etc.) gift, money, property or other thing of value corruptly	---	intent to influence official act pending or possible	---	felony
§28.313 (§28.315)	accepts	public officer (juror, etc.) gift or promise (for official act) agreement corruptly	accepts	---	--- (agreement)	felony
Note: See also, e.g., §28.316 (bribery by contractors), §27A.1347 (bribery of juror).						
MINNESOTA (N)						
§609.42(1)	offers, gives or promises	public servant unauthorized benefit or reward	---	intent to influence official act	knowledge	felony, bar to office
§609.42(2)	requests, receives or agrees to receive	public servant unauthorized benefit or reward understanding	---	---	--- (understanding)	felony, bar to office
See also, e.g., §609.42(3), (4) (bribery of witness), §609.42(5) (compounding).						
MISSISSIPPI						
§97-11-11	offers, gives or promises	public or private officer, agent or trustee, or wife of same, or candidate money, goods, right in action or other property	---	intent to influence official act pending or possible	---	felony, bar to office

MISSISSIPPI continued						
§97-11-13	accepts (or consents to wife's acceptance)	public or private officer, agent or trustee, or candidate money, good, right in action or other property	accepts (or consents)	--- (knowingly consents)	---	felony, bar to office

Note: See also, e.g., §97-7-53 (bribery of legislator), §97-9-5 (bribery of juror, arbitrator, referee). Constitution Art. 4 §§44, 50 bars from office legislators convicted of bribery, and provides for impeachment of governor or civil officers for bribery.

MISSOURI						
§558.010	gives	public servant money, goods, right in action or other valuable consideration	gives	intent to influence official act pending or possible	---	felony or misdemeanor
§558.020 (§558.090)	accepts or receives (asks, solicits or offers to take)	public servant money, goods, right in action or other valuable consideration agreement	receives	---	--- (agreement)	felony or misdemeanor

Note: See also, e.g., §§558.030 to 558.070 (bribery to obtain office), §§557.100 to 557.130 (bribery of juror).

MONTANA (N)						
§94-7-102	offers, confers or agrees to confer	public servant or party official pecuniary benefit as consideration for official act or violation of duty	---	purposely or knowingly	knowledge	felony, bar to office
	solicits, accepts or agrees to accept	public servant or party official pecuniary benefit as consideration for official act or violation of duty	---	knowingly	knowledge	felony, bar to office

Note: See also, e.g., §23-4723 (bribery of candidate), §23-4756 (inducement to accept or decline nomination). Per §94-7-102 it is no defense that the person sought to be influenced was not qualified.

NEBRASKA						
§28-706 (§28-708)	gives (offers or attempts to bribe)	public officer money or other bribe or promise unlawfully	gives	intent to influence official act	---	felony
	receives (solicits or agrees to receive)	public officer money or other bribe or promise given with intent to influence official act unlawfully	receives	---	---	felony

Note: See also, e.g., §28-703 (bribery of juror), §28-705 (compounding).

NEVADA						
§197.010 (§199.010) (§218.590)(§197. 020)	offers, gives or promises	executive or administrative officer (judicial officer, juror, arbitrator, referee, etc.)(legislator)(other public officer) compensation, gratuity or reward	---	intent to influence official act	---	felony
§197.030 (§199.020, §199.030)(§218.600) (§197.040)	asks or receives	executive or administrative officer (judicial officer, juror, arbitrator, referee, etc.)(legislator)(other public officer) compensation, gratuity, reward or promise agreement	---	---	--- (agreement)	felony
Note: See also §199.290 (compounding) and, e.g., §§199.240, 199.250 (bribery of witness), §293.584 (election bribery).						
NEW HAMPSHIRE (N)						
§640:2(I)(a)	offers, gives or promises	public servant, juror or party official pecuniary benefit	---	intent to influence official act	knowledge	felony
§640:2(I)(b)	solicits, accepts or agrees to accept	public servant, juror or party official pecuniary benefit given with intent to influence official act	---	knowingly	knowledge	felony
	fails to report	offer of pecuniary benefit which violates (I)(a)	---	knowingly	knowledge	felony
NEW JERSEY						
§2A:93-1 (§2A: 93-2)(§2A:93-6)	offers, gives or promises	judge or magistrate (legislator) (person) money, real estate, service or other value as bribe or reward	---	intent to influence official act	---	felony
	receives or accepts	judge or magistrate (legislator) (person) money, real estate, service or other value given with intent to influence official act	receives	---	---	felony
Note: See also, e.g., §2A:93-4 (soliciting reward for official vote), §2A:105-2 (officer taking fee).						

NEW MEXICO (N)						
§40A-24-1	offers or gives	public servant thing of value	---	intent to influence official act pending or possible	---	felony
§40A-24-2	solicits or accepts	public servant thing of value	---	intent to be influenced in official act pending or possible	---	felony

Note: See also, e.g., §40A-24-3 (bribery of witness), §11-2-53 (bribery of public treasurer). Constitution Art. IV §§39, 40 concerns bribery of and by legislators.

NEW YORK (N)						
§200.00 (§215.15)	offers, confers or agrees to confer	public servant (juror) benefit agreement	---	---	--- (agreement)	felony
§200.10 (§215.20)	solicits, accepts or agrees to accept	public servant (juror) benefit agreement	---	---	--- (agreement)	felony

Note: See also, e.g., §§200.45, 200.50 (bribery for office). Per §200.05 extortion or coercion is a defense to a prosecution for conferring a bribe, but per §200.15 it is no defense to a prosecution for receiving a bribe that by reason of the same conduct the defendant also committed extortion or coercion or attempted these.

NORTH CAROLINA						
§14-218	offers	bribe	---	---	---	felony
§14-217	receives or consents to receive	official thing of value, personal advantage or promise not in payment of legal salary or fees understanding or given for performance or omission of official act	receives or consents	---	--- (understanding)	felony

Note: See also, e.g., §14-219 (bribery of legislator), §14-220 (bribery of juror).

NORTH DAKOTA (N)						
§12.1-12-01	offers, gives or agrees to give	public servant thing of value as consideration for official act or violation of duty	---	knowingly	knowledge	felony
	solicits, accepts or agrees to accept	public servant thing of value as consideration for official act or violation of duty	---	knowingly	knowledge	felony

NORTH DAKOTA (N) continued

Note: See also, e.g., §12.1-12-03 (unlawful compensation for assistance), §12.1-09-01 (tampering with witness). Constitution §§40, 81 concerns bribery of governor and legislators. Per §12.1-12-01(2) it is no defense that the recipient was not qualified.

OHIO (N)						
§2921.02	offers, gives or promises	public servant or party official (witness) valuable thing or benefit	---	intent to corrupt or influence official act (testimony)	---	felony, bar to office
	solicits or accepts	public servant or part official (witness) valuable thing or benefit to corrupt or influence official act (testimony)	---	knowingly	---	felony, bar to office

Note: See also, e.g., §3599.01 (election bribery).

OKLAHOMA						
§381 (§383)	offers, gives or promises	public servant (judicial officer, juror, arbitrator, etc.) gift or gratuity corruptly	---	intent to influence official act pending or possible	---	felony or misdemeanor
§382	requests or accepts	public servant gift, gratuity or promise for official act corruptly	---	---	---	felony or misdemeanor, bar to office
§384	asks, receives or agrees to receive	judicial officer, juror, arbitrator, etc. bribe agreement	---	---	---	felony (agreement)

Note: See also, e.g., §§265, 266 (bribery of executive officer), §308 (bribery of legislator). Per §402 monies, etc. used in violation of bribery laws can be forfeited to the state.

OREGON (N)						
§162.015	offers, confers or agrees to confer	public servant or juror pecuniary benefit	---	intent to influence official act	knowledge	felony
§162.025	solicits (accepts or agrees to accept)	public servant or juror pecuniary benefit (agreement)	(accepts or agrees)	intent that official act shall be influenced	knowledge (agreement)	felony

Note: See also, e.g., §162.265 (witness), §162.335 (compounding). Per §162.035 it is no defense that the person sought to be influenced was not qualified.

PENNSYLVANIA (N)						
§4701	offers, confers or agrees to confer	public servant, juror or party official pecuniary benefit as consideration for official act	---	recklessly	recklessness	felony, bar to office
	solicits, accepts or agrees to accept	public servant, juror or party official pecuniary benefit as consideration for official act	---	recklessly	recklessness	felony, bar to office

Note: See also, e.g., §§4907, 4909 (bribery of witness). Constitution Art. 2 §7 bars from office those convicted of bribery. Per §4701(b) it is no defense that the person sought to be influenced was not qualified.

RHODE ISLAND						
§11-7-4	offers or gives	public servant gift or valuable consideration as inducement or reward for official act, omission or favor corruptly	---	---	---	misdemeanor
§11-7-3	obtains or attempts to obtain, accepts or agrees to accept	public servant, for himself or another gift or valuable consideration as inducement or reward for official act, omission or favor corruptly	---	---	---	misdemeanor

Note: See also §11-7-5 (compounding) and, e.g., §11-7-1 (bribery of judicial officer or juror). Per §11-7-6 injured person may recover double damages.

SOUTH CAROLINA						
§16-211	offers, gives or promises	public officer gift or gratuity corruptly	---	intent to influence official act pending or possible	---	felony
§16-212	accepts	public officer gift or gratuity or promise agreement corruptly	accepts	---	--- (agreement)	felony, bar to office

Note: See also §1-360.52 (compensation to influence--state ethics commission) and, e.g., §16-217 (corruption of juror), §16-558.1 (bribery to obtain office).

SOUTH DAKOTA (N)						
§22-12A-6 (§22-12A-11)	offers or gives	public servant (juror or judicial officer) bribe	---	intent to influence official act	---	felony

SOUTH DAKOTA (N) continued						
§22-12A-7 (§22-12A-11)	asks, receives or agrees to receive	public servant (juror or judicial officer) bribe agreement	---	---	--- (agreement)	felony, bar to office
Note: See also, e.g., §§22-12A-4, 22-12A-5 (bribery of legislator).						
TENNESSEE						
§39-801 (§39-805)	offers, gives or promises	public officer (juror) thing of value corruptly	---	intent to influence official act pending or possible	---	felony, bar to office
§39-802. (§39-806)	accepts or agrees to accept (takes)	public officer (juror) thing of value or promise (gift, gratuity or anything to influence verdict) agreement corruptly	accepts or agrees (takes)	---	--- (agreement)	felony, bar to office
See also §39-3103 (compounding) and, e.g., §§39-803, 39-804 (bribery of peace officer).						
TEXAS (N)						
§36.02	offers, confers or agrees to confer	public servant or party official pecuniary benefit as consideration for official act	---	intentionally or knowingly	---	felony
	solicits, accepts or agrees to accept	public servant or party official pecuniary benefit as consideration for official act	---	intentionally or knowingly	---	felony
Note: See also, e.g., §36.05 (tampering with witness), §4476-7 (bribery of meat or poultry inspector). Per §36.02(b) it is no defense that the person sought to be influenced was not qualified.						
UTAH (N)						
§76-8-103	offers, gives or promises	public servant or party official pecuniary benefit	---	intent to influence official act	---	felony
	solicits, accepts or agrees to accept	public servant, party official or candidate pecuniary benefit given with purpose to influence official act	---	---	--- knowledge of other's purpose to influence official act	felony
Note: See also, e.g., §76-8-308 (bribery to prevent prosecution), §76-8-508 (bribery of witness).						

VERMONT						
§1101	offers, gives or promises	public officer gift or gratuity corruptly	---	intent to influence official act	---	felony
§1102	accepts	public officer gift or gratuity or promise understanding corruptly	accepts	---	--- (understanding)	felony, bar to office
Note: See also, e.g., §1103 (bribery of trier of cause).						
VIRGINIA (N)						
§18.2-447	offers, confers or agrees to confer	public servant or juror pecuniary or other benefit as consideration for official act	---	---	---	felony
	solicits, accepts or agrees to accept	public servant or juror pecuniary or other benefit as consideration for official act	---	---	---	felony, bar to office
Note: See also §18.2-462 (compounding) and, e.g., §18.2-438 (bribery of officers and candidates), §18.2-441 (bribery of commissioners, etc.) Per §18.2-448 it is no defense that the person sought to be influenced was not qualified.						
WASHINGTON (N)						
§9A.68.010	offers, confers or agrees to confer	public servant or juror pecuniary benefit	---	intent to secure particular result in official act	---	felony, bar to office
	requests, accepts or agrees to accept	public servant or juror pecuniary benefit agreement	---	---	--- (agreement)	felony, bar to office
Note: See also §9A.76.100 (compounding), §§9A.68.040, 9A.68.050 (trading in office or influence). Per §9A.68.010(2) it is no defense that the person sought to be influenced was not qualified. §9A.20.030 provides for restitution to victim of amount not exceeding double damages.						
WEST VIRGINIA						
§61-5A-3	offers, confers or agrees to confer	public servant or juror pecuniary benefit as consideration for official act or violation of duty	---	---	---	felony, bar to office
	solicits, accepts or agrees to accept	public servant or juror pecuniary benefit as consideration for official act or violation of duty	---	---	---	felony, bar to office
Note: See also, e.g., §61-5A-7 (trading in public office). Per §61-5A-8 it is no defense that the person sought to be influenced was not qualified.						

WISCONSIN (N)						
§946.10	transfers or promises	unauthorized property or personal advantage	---	intent to influence public servant in official act pending or possible or to induce violation of duty	---	felony
	accepts or offers to accept	public servant unauthorized property or personal advantage understanding	---	---	--- (understanding)	felony
Note: See also §946.67 (compounding) and, e.g., §946.61 (bribery of witness).						
WYOMING						
§6-156	offers, gives or promises	public servant money, beneficial act or valuable thing corruptly	---	intent to influence official act pending or possible	---	felony
	solicits or accepts	public servant money or valuable thing given to influence official act pending or possible	---	---	---	felony
Note: See also §6-158 (compounding) and, e.g., §6-157 (bribery of juror, witness, etc.).						
DISTRICT OF COLUMBIA						
§22-701	offers, gives or promises, or causes to be offered, given or promised	public servant, juror, witness or any person acting in official function thing of value	---	intent to influence official act	---	felony
Note: See also, e.g., §22-704 (corrupt influence).						

APPENDIX B: EXTORTION STATUTES OF THE STATES

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
ALABAMA §§49, 50 (Blackmail)	threatens to injure, accuse, expose or publish libel	orally or in writing	threatens	intent to extort money or property, or to influence action of public officer, or to abet illegal or wrongful act	---	misdemeanor
ALASKA §11.20.345	obtains by threat to injure, cause official action, etc.	property of another	obtains	---	---	felony
Note: See also, e.g., §11.15.300 (blackmail). Per §11.20.345(d) honest claim for restitution is a defense to a prosecution for extortion.						
ARIZONA §13-401	obtains by use of force or fear induced by threat to injure, accuse, expose or by color of office	property of another wrongfully	obtains	---	---	felony
Note: See also, e.g., §13-403 (attempted extortion by verbal threat).						
ARKANSAS (N) §§41-2202, 41-2203 (Theft by)	obtains by threat	property of another	obtains	knowingly and with intent to deprive another of property	knowledge[1]	felony
Note: See also, e.g., §41-2705 (influencing public servant), §41-2614 (intimidating juror). [1]per §41-204.						
CALIFORNIA §§518, 519	obtains by use of force or fear induced by threat to injure, accuse, expose or by color of office	property of another with his induced consent, or official act of public officer wrongfully	obtains	---	---	felony
Note: See also §524 (attempt to extort) and, e.g., §85 (menacing legislator), §95 (intimidation of juror, arbitrator, umpire or referee).						

COLORADO (N) §18-8-306	attempts to influence by deceit or threat of violence or economic reprisal	public servant	---	intent to influence official act pending or possible	---	felony, bar to office

Note: See also, e.g., §§18-8-604, 18-8-608 (intimidation of witness, juror). §§18-1-502, 18-1-503 refer to culpability.

CONNECTICUT (N) §53a-119(5)	compels or induces delivery by fear of injury, damage to property, accusation, exposure, official act, testimony, strike, etc.	property of another wrongfully	delivery fear	intent to deprive another of property	knowledge[1]	felony

[1]per §53a-5.

DELAWARE (N) §846	compels or induces delivery by fear of injury, damage to property, accusation, exposure, false testimony or official act	property of another wrongfully	delivery fear	intent to deprive another of property	not explicit[1]	felony

Note: Per §847(a) claim of right is a defense to a prosecution for extortion.

[1]Per §251: knowledge or recklessness.

FLORIDA §836.05	threatens to injure, accuse or expose	verbally or in writing maliciously	threatens	intent to extort money or pecuniary advantage, or to compel person to act against his will	---	felony, bar to office

GEORGIA (N) §26-1804 (Theft by)	obtains by threat to injure, expose, act officially, etc.	property of another unlawfully	obtains over $50	not explicit[1]	---	felony
§§89-9909, 89-9910	demands and receives, or takes	public officer fee not allowed by law under color of office	receives or takes	---	---	misdemeanor

Note: Per §26-1804(c) honest claim of right is a defense to a prosecution for extortion.

[1]Per §§26-601 to 26-605 a criminal act must have an intention or criminal negligence.

HAWAII (N) §708-830(3) (Theft by)	obtains by threat to injure, damage property, accuse, expose, confine, act officially, testify, cause a strike, etc.	property or service of another	obtains	intent to deprive another of property	knowledge	felony

Note: See also, e.g., §710-1074 (intimidation of juror). Per §708-834(4) belief in claim as restitution is a defense to a prosecution for extortion.

IDAHO §18-2801	obtains by use of force or fear induced by threat to injure, accuse, etc. or by color of office	property of another wrongfully	obtains	---	---	felony

Note: See also §18-2808 (attempt to extort), §18-2806 (extortion not otherwise provided for) and, e.g., §18-1353 (political threats).

ILLINOIS (N) §16-1	obtains control by threat	property of another	obtains control over $150	knowingly and with intent to deprive owner of property	not explicit[1]	felony

Note: See also, e.g., §24-3-14-5 (oppression in office).

[1]Per §4-3: intent, knowledge or recklessness.

INDIANA (N) §35-43-4-2(1)(6) (Theft by)	exerts control by threat to injure, damage property or impair rights	property of another	controls	intent to appropriate	knowledge	felony
§17-2-44-7	charges, demands or takes	officer fee other than provided by law for official act	---	---	---	misdemeanor

Note: Officer convicted under §17-2-44-7 shall be liable on his official bond to injured party for five times illegal fees charged, demanded or taken.

IOWA (N)* §1104	threatens to injure, accuse, expose, inform, damage property, etc.	---	threatens	intent to obtain thing of value	---	felony
	threatens to take or withhold official action	public servant	threatens	intent to obtain thing of value	---	felony

*Code effective January 1, 1978.

Note: See also, e.g., §714.37 (use of telephone to extort). Per §1104 belief in right to threaten in order to recover is a defense to a prosecution for extortion.

KANSAS (N)						
§21-3701(c) (Theft by)	obtains control by threat	property of another unauthorized	obtains $50 or more	intent to deprive	---	felony
§21-3902(b)	demands	public servant illegal fee or reward for official act under color of office	---	intentionally	--- knowledge of illegality	misdemeanor
Note: See also, e.g., §21-3428 (blackmail), §21-4401 (racketeering).						
KENTUCKY (N)						
§514.080	obtains by threat to injure, accuse, expose, etc.	property of another	obtains over $100	intentionally	knowledge	felony
Note: See also, e.g., §524.040 (intimidation of witness), §524.080 (intimidation of juror), §524.120 (intimidation of judicial officer). Per §514.020(1) claim of right is a defense to a prosecution for extortion.						
LOUISIANA (N)						
§66	communicates threats to injure, accuse, expose, etc.	---	communi-cates	intent to obtain thing of value	---	felony
MAINE (N)						
§355	extorts by threat to injure or harm	property of another	obtains over $100	intent to deprive another of property	knowledge	felony
MARYLAND						
§561 (§§562, 563)	sends or delivers letter threatening to injure or accuse (threatens to injure, accuse or accuse falsely)	letter (verbally)	--- (threatens)	knowingly and with intent to extort money or valuable thing (intent to extort)	---	felony
§23 (part of Bribery)	demands or receives	public servant bribe, fee, reward or testimonial given for influence on official act	---	---	---	felony, bar to office
Note: See also, e.g., §562A (coercion to contribute).						

MASSACHUSETTS						
C. 265 §25	threatens to injure person or property or to accuse	verbally or in writing maliciously	threatens	intent to extort money or pecuniary advantage, or to compel person to act against his will	---	felony
	uses or threatens to use authority against person	police officer or officer of licensing authority verbally or in writing maliciously and unlawfully	uses or threatens	intent to extort money or pecuniary advantage, or to compel person to act against his will	---	felony
C. 268A §2 (part of Bribery)	demands	public servant or witness thing of value given in return for being influenced in official act or in commission or aid of fraud or in violation of duty	---	---	---	felony, bar to office

Note: See also, e.g., C. 268 §13B (intimidation of witness or juror), C. 268A §3 (includes demand for anything of value for official aid), C. 265 §26 (kidnapping to extort), C. 55 §17 (coercion of public servant to contribute).

MICHIGAN						
§28.410	threatens to injure, accuse, etc.	orally or in writing maliciously	threatens	intent to extort money or pecuniary advantage, or to compel person to act against his will	---	felony
§28.411	demands and receives	fee or compensation greater than provided by law, for performance of official duties corruptly	receives	willfully	---	misdemeanor

Note: See also, e.g., §28.315(1) (intimidation of juror).

MINNESOTA (N)						
§609.27 (Coercion)	threatens to harm, confine, injure, damage property, accuse, expose, etc. and causes another to act against his will	orally or in writing	threatens causes act	---	---	felony

MISSISSIPPI						
§97-3-77 (Robbery)	takes by threat to injure person, family or property	property of another, delivered from fear in presence feloniously	obtains fear	---	---	felony

MISSISSIPPI continued						
§97-11-33	demands, takes or collects	judge, justice of the peace, sherrif or other officer money fee or reward not authorized by law under color of office	---	knowingly	---	misdemeanor

Note: See also, e.g., §§97-7-53, 97-9-55 (intimidation of legislator, juror, witness, attorney, judge), §97-23-83 (threat against business), §97-29-51 (procuring prostitutes by threat).

MISSOURI						
§560.130 (Robbery)	accuses or threatens to injure or accuse, and extorts	verbally or in writing money or property	extorts	intent to extort	---	felony
§558.140	exacts, demands or receives	officer fee or reward greater than or before due, for official act done or to be done under color of office unlawfully	---	willfully	---	misdemeanor

Note: See also, e.g., §558.110 (oppression in office), §30.420 (extortion by state treasurer).

MONTANA (N)						
§94-6-302 (Theft by)	obtains control by threat to injure, accuse, take or withhold official action, etc.	property of another	obtains over $150	purpose to deprive another of property	knowledge	felony

NEBRASKA						
§28-441 (§28-444) (§28-445) (Blackmail)	threatens to injure or accuse (or expose) (obtains or seeks to obtain by threat property or to compel acts or to induce surrender of valuable thing or right)	orally or in writing maliciously	threatens	intent to extort money or pecuniary advantage, or to compel person to act against his will	---	felony
§28-714	demands or receives	public officer fee or reward, not authorized by law, to perform duties	---	knowingly	---	misdemeanor

NEVADA §205.320	threatens to injure, accuse, expose or publish libel	---	threatens	intent to extort money or property, or to compel act, or to influence public officer, or to abet illegal or wrongful act	---	felony
§197.170	asks, receives or agrees to receive	public officer fee or compensation greater than provided by law	---	---	---	felony
Note: See also, e.g., §207.190 (coercion), §197.200 (oppression under color of office).						
NEW HAMPSHIRE (N) §637:5 (Theft by)	obtains or controls by extortion through threat to injure, confine or take or withhold official action	property of another	obtains or controls over $100	intent to deprive another of property	knowledge	felony
NEW JERSEY §2A:105-4	threatens, or demands on a threat, to injure or kill, kidnap, etc.	money or other valuable thing	---	intent to extort money or other valuable thing	---	felony
NEW MEXICO (N) §40A-16-8	communicates threats to injure, accuse, expose, kidnap, etc.	---	communicates	intent wrongfully to obtain thing of value or to compel person to act against his will	---	felony
NEW YORK (N) §155.05(2)(e) (Larceny by)	compels or induces delivery by fear through threat to injure, accuse, expose, take or withhold official action, etc.	property of another	delivery fear	intent to deprive another of property	knowledge	felony
NORTH CAROLINA §14-118.4	threatens or communicates a threat	---	threatens or communicates	intent wrongfully to obtain thing of value	---	felony
Note: See also, e.g., §14-226 (intimidation of juror), §14-118 (blackmail).						
NORTH DAKOTA (N) §12.1-23-02 (§12.1-23-03)	obtains by threat	property of another (service available only for compensation)	obtains over $150 or by public servant	knowingly and with intent to deprive owner of property (intentionally)	knowledge	felony

OHIO (N) §2905.11	menaces, exposes, utters calumny or threatens to commit felony or violent offense or to expose or utter calumny	---	menaces, etc., or threatens	intent to obtain valuable thing or benefit, or to induce unlawful act	---	felony

Note: See also, e.g., §2905.12 (coercion), §2903.21 (menacing), §2921.03 (intimidation).

OKLAHOMA §1481	obtains by use of force or fear induced by threat to injure, accuse, expose or by color of office	property of another with his induced consent	obtains	---	---	felony

OREGON (N) §164.075 (Theft by)	compels or induces delivery by fear from threat to injure, accuse, damage property, etc.	property of another	delivery fear	intent to deprive another of property	knowledge	felony

Note: Per §164.035(1) honest claim of right is a defense to a prosecution for extortion; per §164.035(2) so are belief in truth of threat and purpose to compel making good and igignorance that property taken was that of another.

PENNSYLVANIA (N) §3923	obtains or withholds by threat to harm, expose, take or withhold official action, etc.	property of another	obtains or withholds over $200	intentionally	knowledge	felony
65 §133 (not penal code)	charges, demands or takes	public officer fee greater than provided by law or for service not performed	---	---	---	misdemeanor

Note: Per §3923(b) honest claim for restitution is a defense to a prosecution for extortion.

RHODE ISLAND §11-42-2	threatens to injure person or property or to accuse	verbally or in writing maliciously	threatens	intent to extort money or pecuniary advantage, or to compel person to act against his will	---	felony
§11-42-1	exacts or extorts (levies, demands or takes)	state officer fee for service (bond) greater than provided by law under color of office corruptly	exacts or extorts	---	---	felony

SOUTH CAROLINA §16-566.1 (Blackmail)	accuses, exposes or compels person to act against his will, or attempts or threatens any of these	verbally or in writing	---	intent to extort money or other valuable thing	--	felony
SOUTH DAKOTA (N) §22-30A-4 (Theft by)	obtains by threat to injure, accuse, take or withhold official action, etc.	property of another	obtains over $200	intent to deprive another of property	---	felony
Note: Per §22-30A-16 honest claim of right or ignorance that the property taken was that of another is a defense to a prosecution for extortion.						
TENNESSEE §39-4301	threatens to injure person, property or reputation, or to accuse	---	threatens	intent to extort money, property or pecuniary advantage, or to compel person to act against his will	---	felony
TEXAS (N) §§31.01, 31.03 (Theft by)	appropriates by threat to injure, accuse, expose, harm or take or withhold official action	property of another unlawfully	appropriates over $200	intent to deprive owner of property	---	felony
UTAH (N) §76-6-406 (Theft by)	obtains or controls by extortion through threat to injure, accuse, reveal or take or withhold official action, etc.	property of another	obtains or controls over $250	purpose to deprive another of property	---	felony
Note: Per §76-6-402(3) honest claim of right is a defense to a prosecution for extortion.						
VERMONT §1701	threatens to injure person or property or to accuse	---	threatens	intent to extort money or pecuniary advantage, or to compel person to act against his will	---	felony
VIRGINIA (N) §18.2-59	threatens to injure or accuse and extorts	money, property or pecuniary benefit	threatens and extorts	---	---	felony
§18.2-470	demands and receives	public officer fee greater than provided by law for performance of official duties	receives	knowingly	---	misdemeanor

WASHINGTON (N)						
§9A.56.110	obtains or attempts to obtain by threat to injure, accuse, take or withhold official action, etc.	property or services of owner	---	knowingly	---	felony
§42.18.210	uses power of office	state employee not in course of duties	---	intent to induce or coerce person to provide thing of economic value	---	misdemeanor
Note: §9A.20.030 provides for restitution to victim of violation of §9A.56.110 of amount not exceeding double damages. §42.18.290 provides for civil recovery of damages by victim of violation of §42.18.210.						
WEST VIRGINIA						
§61-2-13	threatens to injure or accuse and extorts	money, pecuniary benefit, etc.	threatens and extorts	---	---	felony
§61-5-20	demands and receives	public officer fee greater than provided by law for performance of official duties	receives	knowingly	---	misdemeanor
WISCONSIN (N)						
§943.30(1)	threatens to injure person, property, etc. or to accuse	verbally or in writing maliciously	threatens	intent to extort money or pecuniary advantage, or to compel person to act against his will	---	felony
Note: See also, e.g., §943.30(3) (attempt to influence witness), §943.31 (threats to expose).						
WYOMING						
§6-147 (Blackmail)	demands with menaces of injury, or accuses or threatens to injure or accuse, or sends or delivers letter which accuses or threatens to injure or accuse	verbally or in writing chattel, money or other valuable thing	---	intent to extort or gain chattel, money or other valuable thing or pecuniary advantage, or to compel person to act against his will letter sent or delivered knowingly	---	felony
§6-180	asks, demands or receives	public officer fee unauthorized or greater than authorized under color of office	---	---	---	misdemeanor
DISTRICT OF COLUMBIA						
§22-2305 (Blackmail)	accuses or threatens to accuse or expose	verbally or in writing	accuses or threatens	intent to extort thing of value, or to compel person to act against his will	---	felony

APPENDIX C: GRAFT STATUTES OF THE STATES

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
ALABAMA §221	asks or receives	public officer compensation, gratuity, reward or promise, not allowed by law, for official act or omission or service not actually rendered	---	---	---	misdemeanor
Note: See also, e.g., §160 (public officer receiving illegal fee).						
ALASKA §11.30.230	charges, takes or receives	public officer (excluding governor and supreme court judges) fee not authorized by law, for official act	receives	willfully and knowingly	---	misdemeanor, dismissal
ARIZONA §38-444	asks or receives	compensation or promise, not authorized by law, for official act	---	knowingly	---	misdemeanor
Note: See also, e.g., §13-546 (judicial officer).						
ARKANSAS (N) §41-2702	solicits, accepts or agrees to accept; offers, confers or agrees to confer	public servant at time of act benefit for past official act	---	not explicit[1]	not explicit[1]	misdemeanor
Note: See also, e.g., §41-2704 (soliciting unlawful compensation). Per §41-2702(2) it is no defense that the official act was otherwise proper. [1]Per §41-204(2): purposely, knowingly or recklessly.						
CALIFORNIA §70	receives or agrees to receive	executive or ministerial officer or state employee or appointee emolument, gratuity, reward or promise, not authorized by law, for official act	receives or agrees	knowingly	---	misdemeanor

COLORADO (N) §18-8-303	solicits, accepts or agrees to accept; offers, confers or agrees to confer	public servant at time of act pecuniary benefit for past official act	---	---	---	felony

Note: §§18-1-502, 18-1-503 refer to culpability.

CONNECTICUT (N) NO GENERAL STATUTE ON GRAFT. But see, e.g., §29-9 (gifts to police officers).

DELAWARE (N) §§1205; 1206	solicits, accepts or agrees to accept; offers, confers or agrees to confer	public servant personal benefit, not authorized by law, for official act	---	knowingly	knowledge	misdemeanor

Note: See also §1211 (official misconduct).

FLORIDA §838.016(1)	solicits, accepts or agrees to accept; offers, gives or promises	public servant pecuniary or other benefit, not authorized by law, for past, present or future official act or omission corruptly	---	---	belief (offerer's) that act or omission within competence of public servant	felony, bar to office

Note: See also §839.25 (official misconduct). Per §838.016(3) it is no defense that the official act was not performed, or not within the competence of the public servant sought to be rewarded.

GEORGIA (N) §§89-9909, 89-9910 (Extortion)	takes	public officer fee not allowed by law under color of office	takes	not explicit[1]	---	misdemeanor, dismissal

[1]Per §§26-601 to 26-605 a criminal act must have an intention or criminal negligence.

HAWAII (N) §84-11 (not penal code)	solicits, accepts or receives	legislator or public employee money, service or other valuable thing or promise, reasonably inferrably intended to influence or reward an official act	---	---	---	dismissal, action voidable, fee forfeit[1]

[1]Per §84-19 any favorable state action obtained in violation of these standards is voidable and fees, gifts, compensation or profit received as a result of such violation may be forfeited to the state.

IDAHO §18-1354	solicits, accepts or agrees to accept; offers, confers or agrees to confer	public servant at time of act pecuniary benefit for past official act	---	---	---	misdemeanor

Note: See also, e.g., §18-1356 (gift to public servant).

ILLINOIS (N) §33-3(d)	solicits or accepts	public servant in official capacity fee or reward not authorized by law	---	knowingly	not explicit[1] knowledge of illegality	felony, bar to office

[1]Per §4-3: knowledge or recklessness.

INDIANA (N) §4-2-6-5 (not penal code)	solicits or accepts	state officer or employee compensation, other than provided by law, for performance of duties	---	---	---	sanction determined by ethics commission
§2-2.1-3.8 (not penal code)	pays or offers to pay	state officer, employee or legislator compensation, other than provided by law, for performance of duties, by person other than authorized paymaster	---	---	---	sanction determined by ethics commission, legislator expelled

Note: See also, e.g., §33-2.1-8-9 (compensation to judicial officer).

IOWA (N)* §2102	requests or receives	public servant compensation, other than provided by law, for performance of duties under color of office	---	knowingly	---	misdemeanor

*Code effective January 1, 1978.

Note: This statute also prohibits demands and other misconduct. See also, e.g., §68B.5 (gifts).

KANSAS (N) §21-3902(b) (part of Extortion)	receives	public servant illegal fee or reward for official act under color of office	receives	intentionally	--- knowledge of illegality	misdemeanor, dismissal

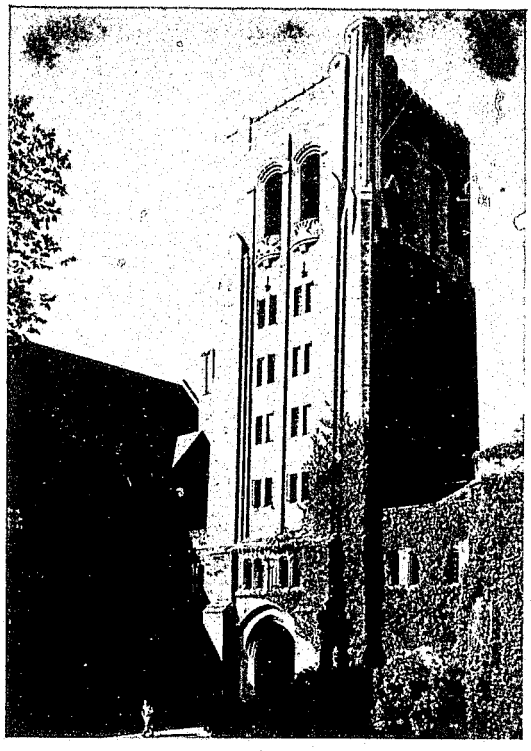
KANSAS (N) continued						
§21-3903	gives or offers	public servant benefit, reward or consideration for past official act (excludes personal or trivial gifts)	---	intentionally	---	misdemeanor
Note: See also §§46-235 to 46-237 (official graft).						
KENTUCKY (N)	NO GENERAL STATUTE ON GRAFT. But see, e.g., §61.310 (gratuities to peace officers).					
LOUISIANA (N)	NO GENERAL STATUTE ON GRAFT. But see, e.g., §§140, 141 (public contract fraud).					
MAINE (N)						
§604 (§605)	solicits, accepts or agrees to accept; offers, gives or promises	public servant pecuniary benefit for past official act (from person likely to be interested in official act pending or possible)	---	--- (knowingly)	--- (knowledge)	misdemeanor
Note: See also §606 (improper compensation).						
MARYLAND	NO GENERAL STATUTE ON GRAFT. But see, e.g., Agriculture §7-325 (gifts to tobacco inspectors).					
MASSACHUSETTS						
C. 268A §3	asks, solicits, receives or agrees to receive, etc.; offers, gives or promises	public servant valuable thing, other than as provided by law, for official act performed or to be performed	---	---	---	felony
Note: See also, e.g., C. 268A §§4-5, 11-12, 17-18 (compensation to state, county and municipal employees or former employees).						
MICHIGAN	NO GENERAL STATUTE ON GRAFT. But see, e.g., §4.1700(52) (conflict of interest in contract).					
MINNESOTA (N)						
§609.45	asks, receives or agrees to receive	public servant fee or compensation greater than provided by law under color of office	---	intentionally	knowledge	misdemeanor

MISSISSIPPI §97-11-33	collects	judge, justice of the peace, sheriff or other officer money fee or reward not authorized by law under color of office	collects	knowingly	---	misdemeanor
Note: See also, e.g., §67-1-33 (gratuity to alcoholic beverage control commissioner).						
MISSOURI §§558.020; 558.010 (part of Bribery)	accepts or receives; gives	judge, legislator or public officer money, goods, right in action, promise or other valuable thing in consideration for past official act	receives; gives	---	---	felony or misdemeanor
§558.140 (part of Extortion)	receives	officer fee or reward greater than or before due, unlawful, for official act done or to be done under color of office	receives	willfully	---	misdemeanor
MONTANA (N) §94-7-104 (§94-7-105)	solicits, accepts or agrees to accept; offers, confers or agrees to confer	public servant pecuniary benefit for past official act favorable to giver (from person interested in official act)	---	knowingly	knowledge	misdemeanor
Note: See also §94-7-401 (official misconduct).						
NEBRASKA §28-706 (§28-708) (part of Bribery)	receives (solicits or agrees to receive); gives (offers)	public officer money, reward or promise for past official act unlawfully	receives; gives	---	---	felony
§28-714 (part of Extortion)	asks or receives	public officer fee or reward, not authorized by law, for performance of duty	---	knowingly	---	misdemeanor
Note: See also, e.g., §§49-1103, 49-1104 (legislators and employees receiving unlawful compensation).						
NEVADA §197.170 (part of Extortion)	asks, receives or agrees to receive	public officer fee or compensation greater than provided by law	---	---	---	felony

CONTINUED

3 OF 4

Cornell Institute on Organized Crime
1977 Summer Seminar Program



The Investigation and Prosecution of Organized Crime and Corrupt Activities

Official Corruption: Background Materials

G. ROBERT BLAKEY • RONALD GOLDSTOCK

THE INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME AND CORRUPT ACTIVITIES

OFFICIAL CORRUPTION: BACKGROUND MATERIALS

by

G. Robert Blakey

Ronald Goldstock

August 1977
Ithaca, New York

The research in these materials was supported by the Law Enforcement Assistance Administration, United States Department of Justice, Grant Number 76-PT-99-0003. The viewpoints expressed in them, however, do not necessarily represent the official position or policies of the United States Department of Justice.

TABLE OF CONTENTS

Official Corruption: The Investigation and Prosecution of Bribery, Extortion, and Graft

Page

Page

Official Corruption

by G. Robert Blakey
Ronald Goldstock*

> Now on the investigation. You know, the Democratic break-in thing. We're back in the problem area because the FBI is not under control . . . . Their investigation is now leading into productive areas. Because they've been able to trace the money. Not through the money itself, but through bank sources, the banker. And, and it goes in some directions we don't want it to go.
>
> H.R. Haldeman to Richard Nixon
> June 23, 1972[1]

INTRODUCTION

In September, 1776, John Adams complained that a certain gun powder supplier had been granted an "exorbitant" contract by the Continental Congress.[2] The supplier, "without any risk at all, will make a clear profit of 12,000 pounds, at least," Adams declared. What bothered this Founding Father--and others--was the identity of the favored firm: the trading house of Willing, Morris & Co. Both Mr. Willing and Mr. Morris, as luck would have it, were members of the so-called Secret Committee of the Congress, which had authorized the contract. It seems, therefore, that official corruption

*The assistance of the student researchers on the Institute staff, particularly Patricia Burman, and the students in the Seminar on Organized Crime Control is hereby acknowledged.

[1] New York Times, August 6, 1972, p.1, col. 8.

[2] See G. Amick, The American Way of Graft 4 (1976).

was part of the picture of the landscape of 1776. Little has apparently changed in the succeeding years.

At the turn of the century, Lincoln Steffens, the muckraker, wrote his influential Shame of the Cities,[3] in which he surveyed and attacked the municipal corruption of his time. Were Steffens to write today, the material available would be even more volumious. In recent years, a President left office in disgrace; a Vice-President was convicted of abuse of position; and a Supreme Court Justice resigned under a cloud of suspicion. In turn, two Cabinet officers, two U.S. Senators, eight Congressmen, a federal judge, five governors and Lt. governors, several state judges (44) and various and assorted mayors (43), state legislators (60), and sheriffs and police officials (266) have been indicted or convicted of some form of official corruption.[4] Were Steffens to write a new book today, he would have to entitle it the Shame of the Nation.

---

[3] L. Steffens, The Shame of the Cities (1st American Century ed. 1969).

[4] The U.S. Department of Justice keeps an unofficial and incomplete listing of public officials indicted over the past seven years. The figures, although incomplete, are sobering. Since 1970, 1551 public officials have been indicted; 1,034 have been convicted. Other trials are pending. Letter of Leonie M. Brinkema, Attorney, U.S. Department of Justice, to Professor G. Robert Blakey, Professor of Law, Cornell Law School, dated February 8, 1977. See N.Y. Times, Feb. 11, 1977 p. 1, col. 4. The Acting Deputy Attorney General observed "[These data do] not mean that there is more corruption now than in years past, just that some prosecutors are making more attempts to prosecute official corruption." Id. He also observed: "These were not break down the door investigations, but were mostly long, laborious paper chases." Id.

PATTERNS OF OFFICIAL CORRUPTION

A. Legislative

The advantages of influencing governmental action in the law-making stage are obvious. Favorable legislative treatment is more effective than trying to frustrate the enforcement of unfavorable laws. The forms that legislative corruption take, moreover, are well known. Bribery is the most common. Bribes may be used to buy votes,[5] to sponsor private bills,[6] and to influence the outcome of criminal proceedings.[7] Extortion, too, may be practiced. Legislators have been charged with extorting money from persons or companies who could receive preferential or adverse treatment

---

4(continued)

Corruption, too, is apparently not a wholly modern phenomenon. Livy, the Roman historian, lamented:

> Rome was originally, when poor and small, a unique example of austere virtue, then it corrupted, it rotted, it slowly absorbed vices. . .

T. Livy, History of Rome I.v. See D. Rapport, "The Corrupt State: The Case of Rome Reconsidered," 16 Pol. Studies 411-32 (1968).

[5] See, e.g., United States v. Brewster, 408 U.S. 501 (1972) (senator charged with taking money to vote favorably on postal rate legislation).

[6] See, e.g., the Chilean immigrants scheme of former Congressman Henry Helskoski's aide, Albert De Falco, who was charged with and found guilty of taking money to sponsor private immigration legislation. New York Times, April 27, 1967, p.75, col.1.

[7] See, e.g., the scheme of State Senator Eugene Rogriguez of New York, who was convicted of 24 counts of bribery in connection with an attempt to fix narcotics cases. New York Times, January 14, 1967, p.1, col.2.

at their hands;[8] they have even been charged with taking salary kickbacks from their own staffs.[9] Misappropriation of public funds is sometimes present. Legislators have been known to pad payrolls with friends, relatives, and cronies.[10] Conflicts of interest are equally disturbing, but often not illegal. Ostensibly, a legislator is "bound by honor" not to participate in decisions raising a conflict of interest. The illegality of such behavior is in doubt. Usually, the legislative body or the voters themselves must act.[11] Corruption of the legislator, therefore, is limited only by the imagination of its membership.

B. Executive

It is of little significance whether the executive is at the heart of corruption or merely shuts his eyes. The result is the same: corruption can flourish through sins of omission as well as by sins of commission. But few stories of federal, state, or city corruption equal or exceed

[8] See, e.g., United States v. Craig, 528 F.2d 773 (7th Cir. 1976) (three Illinois House of Representatives members indicted under Federal extortion statute).

[9] See, e.g., New York Times, September 24, 1976, p.3, col.1 (indictment of Representative Hastings).

[10] See, e.g., New York Times, June 4, 1976, p.1, col.3 (Elizabeth Ray).

[11] Here, the case of Representative Robert Sikes is instructive. Accused of using his position as chairman of the House Military Construction Subcommittee to further the fortunes of a company in which he was a stockholder and to increase the value of his own landholdings, Sikes was censored by Congress, removed from his chairmanship, but re-elected at the polls. See New York Times, April 8, 1976, p.13, col.1; July 27, 1976, p.1, col. 7; July 30, 1976, p.1, col.5.

those of Newark, New Jersey or Baltimore County, Maryland, in the late 1960's. The Newark and Baltimore stories are textbook examples of city and county governments where virtually everyone and everything could be bought -- if the price was right.[12] They also typify both old and new patterns of official corruption in the executive.

Although the mob has always been active in Newark,[13] it did not really "run" the city until the election in 1962 of Hugh Addonizio as mayor.[14] Addonizio and his mob cronies, led by Richie Boiando, a Mafia leader, would probably be stealing still, were it not for the Newark riots of 1967. After the riots, which left 28 dead, Governor Hughes of New Jersey established a Select Commission on Civil Disorders to investigate the cause of the riots. One factor, the report concluded, was corruption; when the dust had settled, Addonizio and 70 other executive branch employees had been indicted

---

[12]The sad story of Newark is outlined in F. Cook, "Who Rules New Jersey," in S. Gardiner and D. Olson, Theft of the City 80 (1974). The Baltimore story is told in J. Witcover, A Heartbeat Away: The Resignation of Spiro Agnew (1974).

[13]F. Cook, supra note 12, at 77.

[14]The flavor of the Addonizio era has been conveyed by one writer in a restrained, but accurate manner:

> [Corruption spread] from the highest executive office, to the City Council, to most administrative offices. . .even the corporation counsel [had the] job [of] mak[ing] the dirty work legal.

R. Perambi, "An Autopsy of Newark," in J. Gardiner and D. Olson, Theft of the City 88 (1974).

for corrupt activities.[15] Addonizio himself was convicted of extortion in connection with a quarter million dollar city contract; he was sentenced to 10 years in prison and fined $25,000.

The mess in New Jersey cities -- and especially in Newark -- illustrates the common pattern of "old style" big-city corruption; public officials in Newark were bribed to overlook criminal activity, although as the saga of Mayor Addonizio himself illustrates, some of the bribes were paid in order to gain positive benefits from the city. If the type of corruption seen in Newark is traditional,[16] the corruption of Baltimore

---

[15] The Governor's Select Commission concluded that Newark was characterized by "a persuasive feeling of corruption." Quoted in United States v. Addonizio, 451 F.2d 40, 57 n.6 (3rd Cir.) cert. denied, 405 U.S. 936 (1972). Seven of the seventy officials were eventually acquitted. Three of the officials, including a former mayor named DeRov, plea bargained and turned state's evidence. New York Times, April 1, 1972, p.20, col.4. Of course, Newark was only the most obvious example of the connection between crime, corruption and politics in New Jersey. By 1972, a total of 130 New Jersey public officials had been indicted. New York Times, January 29, 1972, p.31, col.1.

[16] One aspect of the corruption scandals in New Jersey was not traditional. It was in New Jersey that Herbert Stern, former U.S. Attorney for New Jersey developed the successful technique of the corruption audit: going into a community cold and subpoenaing books and records and combing through them for traces of graft and corruption. See P. Hoffman, Tiger in the Court, at 7 (1974). Mr. Stern put it, "The weakness in every.....[corruption] scheme is that, in the end, [the payoff] ....must come out in cash. Find that cash coming out and you're half way home." Id. at 39. He describes the technique:

> The first step was to find out from the businessmen whether they had to pay off. But we didn't know who the businessmen were. The first thing we did was subpoena all the records from Jersey City Hall and the Hudson Courts Administration Building for public work for the past five years. From

County, Maryland probably illustrates the corruption characteristic of the future.[17]

The scandals in Baltimore County are noteworthy for two reasons. First, they led to the resignation of a sitting Vice-President. Second, the motivations of the corruptors and the pattern of corruption in Baltimore County illustrate the operation of the "new" suburban corruption. The opportunity for corruption in Baltimore County resulted from the enormous growth the county experienced after World War II. Growth in turn led to increased demands for governmental services, particularly highways. Suburban voters were willing to pay almost any price to get to work, and contractors were willing to do almost anything to get a piece of the action. Moreover, the absence of any legal requirement that low bidders get governmental contracts placed enormous power over the contractors in the hands of the man responsible for making the contract awards--the Baltimore County Executive. When greedy contractors encountered a soulmate in a greedy county executive, the results were predictable.

The Baltimore County episode can also be usefully com-

16 (continued)

> these records we determined who the successful bidders were and we subpoenaed all these records. Then we had teams of accountants and assistants analyzing their records, looking for that one critical thing--the cash coming out. Id. at 127.

The corruption audit finds its analogue in art, too. Puzo has the Godfather observe: "A lawyer with his briefcase can steal more than a hundred men with guns." M. Puzo, The Godfather, p.52 (Fawcett ed. 1970).

17 See generally J. Witcover, A Heartbeat Away: The Resignation of Spiro Agnew (1974).

pared with the shame of Newark. In Newark, the corruptors were primarily organized crime figures who wished to protect their illegal operations and profit from the operation of the city; in Baltimore County, the corruptors were respectable businessmen, who wished to influence the exercise of discretion by a responsible official. The involvement of respectable citizens in corruption is not new, but the lucrative opportunities for the respectable business man, particularly the respectable contractor, are now in the suburbs rather than the cities. Thus, it is not surprising that suburban corruption has often involved attempts to influence such issues as the awarding of contracts and the granting of zoning variances, rather than the protection of the operation of illicit enterprises.[18] Such suburban crime, too, is highly "organized," and although connections to the mob exist, just as often the corrupt official himself solicits his own sales of influence and eliminates the middle man's role played in Newark by the mob figure, Richie Boiando. In the modern suburban community, it is not unusual, therefore, for the mayor to meet with contractors to extort kickbacks for school or highway contracts.[19] Here, too, the patterns of official

---

[18]Here, again, credit must be given where credit is due. New Jersey suburban officials have also pioneered in the new forms of corruption. One of the more recent zoning scandals occurred in Gloucester Township, New Jersey. Two former mayors and several other township officials were convicted of having received bribes in return for making favorable zoning decisions. See New York Times, April 8, 1971, p.45, col.3.

[19]The mayor of Revere, Massachusetts and several confederates are, for example, under indictment in state court for allegedly extorting kickbacks on a high school construction contract. The Boston Globe, April 28, 1977, p.1, col.1.

corruption vary and are limited only by the imaginations of the greedy.

C. Corruption Within the Criminal Justice System

Corruption in the criminal justice system occurs at many points. A defendant wishing to buy his way out of a prosecution can potentially apply pressure at any stage of the proceeding. The arresting officer, may be bribed, either before or after arrest[20] by the defendants or their attorneys.[21] The district attorney may be paid to sabotage the case in front of the grand jury,[22] or he may be bribed never to bring a case at all.[23] The trial judge may be paid

---

19 (continued)
The mayor of Menasha, Wisconsin was also bribed by the president of the Del Chemical Co. to have the city purchase its industrial and maintenance chemicals from Del. Organized Crime Control Newsletter, vol.2 no.2, Feb. 21, 1975, p.13. Similarly, the mayor of Honolulu, Hawaii, has been indicted for soliciting bribes and campaign contributions from a developer seeking selection as head contractor on the Honolulu urban renewal project. Organized Crime Control Newsletter, vol.4 no.4. April 22, 1977, p.4. This list, seemingly without end, could be extended.

[20] See, e.g., The Pennsylvania Crime Commission, Report on Police Corruption and the Quality of Law Enforcement in Philadelphia, p.13,(1974).

[21] See, e.g., where two New York City policemen were charged with soliciting bribes from defense attorneys of suspects they had arrested. New York Times, May 10, 1969, p.28, col.4 and October 25, 1969, p.25, col.4.

[22] In United States v. Archer, 486 F.2d 670 (2nd Cir. 1974) a Queens district attorney, George Archer, sabotaged the indictment of Salvatore Barrone (a simulated offender planted by the B.N.D.D.) by minimizing his offense in front of the grand jury.

[23] Jim Garrison, the flamboyant former New Orleans district attorney, was allegedly paid $2,000-$3,000 every two months, as protection money, from New Orleans gambling-pinball operators. Investigators turned the bagman, and marked money

for favorable rulings, or jurors for favorable votes.[24] After conviction, appeals judges might be bought.[25] If all else fails, there is the prison warden, or the parole board.[26]

1. Judicial and Prosecutive

The potential corruptor of judges and prosecutors seeks to exploit the discretion built into the criminal justice system. Because that discretion is seldom reviewable, and since judges and prosecutors often owe their success to politics or to the mob,[27] it is not surprising that many

---

23 (continued)
was found in Garrison's home upon Garrison's arrest. New Orleans Times Picayune, July 1, 1971, p.2, col.2. Mr. Garrison was, however, acquitted after trial.

[24] Frank Costello, the mob leader, once bought a juror who "hung" his case (11-1); he probably owned the judge as well in the same case. G. Wolf, Frank Costello, Prime Minister of the Underworld at 59 (Bantam ed. 1974).

[25] Justice John B. Swaiton of the Supreme Court of Michigan was allegedly bribed to influence a larceny appeal. He was acquitted on the substantive count, but convicted for perjury. United States v. Swaiton, 548 F.2d 657 (7th Cir. 1977).

[26] Raymond Patriarca, boss of the Rhode Island Mafia, was paroled, on his first hearing, after having served two and one half years of a ten year sentence for murder. In Patriarca's parole file was a letter from the speaker of the Rhode Island House of Representatives (now Chief Justice of the Rhode Island Supreme Court) Joseph Berilaqua, in which Berilaqua gave Patriarca a glowing character recommendation. Organized Crime Control Newsletter, Dec. 21, 1976, vol. 3 no. 12, p.8. The Providence Evening Bulletin is quoted: "The Patriarca parole stinks, and one would have to dig deep in the state history to discover a worse stench." Id. March 21, 1975, vol.2 no.3, p.9.

[27] Judge Thomas Aurielo pledged his "undying loyalty" to underworld figure, Frank Costello, for Costello's aid in securing Aurielo's judicial nomination. Kefauver Report 102-5; see also G. Wolf, supra, note 24 at 127-141.

instances of judicial and prosecutorial corruption exist and that organized crime figures or political leaders are frequently involved.[28]

Judges and prosecutors are bribed in order to influence cases[29] or in order to obtain appointments that the court has the power to make.[30] And judges have been known to attempt to fix cases in which they do not preside; often the judge who is contacted does not know that his brother justice has been bribed.[31] But other forms of judicial corruption exist--judges have allegedly been known to participate in kickback schemes,[32] or to practice law while

---

[28] See Johnson, "Organized Crime: Challenge to the American Legal System," Part I, 53 J. of Crim. Law, Criminology and Police Sci. 419 (1962).

[29] The bribes can be, and most often are, for the purpose of fixing "major" cases; but the bribery can breed just as much disrespect for the law if it is the small case--the traffic violation, for instance, that is fixed.

[30] For instance, the power of the surrogate to appoint administrators for the estate of a wealthy intestate creates a temptation for would-be administrators to bribe the judge in order to obtain the lucrative appointment.

[31] Here, the case of New York Supreme Court Justice James Keogh and his cohort Assistant United States Attorney Elliott Kahaner is instructive. Keogh and Kahaner had been paid $25,000 to influence the sentencing of two men convicted in federal court of bankruptcy fraud violation. When the federal judge who was to be "influenced" got wind of the plot, he used his sentencing powers to turn the bribers and as a result Keogh and Kahaner found themselves facing prison sentences. New York Times, Dec. 8, 1961, p.1, col.8; Aug. 3, 1962, p.1, col.5; United States v. Kahaner, 317 F.2d 459 (2nd Cir.) cert. denied, 315 U.S. 836 (1963).

[32] Judge Richard Gorden and two of his former law partners were convicted of participating in a kickback scheme involving a garage project. New York Times, April, 17, 1963, p.11, col.1.

in office.[33]

Prosecution of the corrupt judge or prosecutor is difficult; conventional evidence gathering techniques are often insufficient. As duly elected or appointed officials, judges and prosecutors are also figures of stature within a community.[34] Since bribery is a private act with willing participants, the prosecution of a bribery charge usually depends primarily on the testimony of an accomplice, a witness whose credibility can be easily impeached; and the involvement of organized crime figures guarantees that witnesses, if any, to the successful bribe are likely to be fearful of testifying.[35] Nevertheless, significant

---

[33] New York Supreme Court Justice Michael D'Aurio resigned after he was accused of demanding legal fees from a client for services performed after his elevation to the bench. New York Times, July 3, 1970, p.23, col.1; July 30, 1971, p.37, col.1.

[34] Pressures may, therefore, be applied prior to prosecution by friends and admirers of the judge or prosecutor under suspicion. For instance, the pressure applied to the Washington Post to drop its investigation of the corruption of John Mitchell is well known. See, e.g., R. Woodward and C. Bernstein, All the President's Men (1974). Perhaps the most memorable bon mot of the otherwise humorless ex-Attorney General involved his threat to put certain portions of the anatomy of the Post's publisher through a wringer. More importantly, influential friends may testify as character witnesses at trials of the allegedly corrupt official. For instance, at the bribery trial of Judge Ralph DeVita: "A score of prominent New Jersey lawyers and businessmen [took] the witness stand on his behalf." New York Times, April 11, 1970, p.40,col.1. DeVita was ultimately convicted on the strength of a tape recording of a conversation between DeVita and a county prosecutor in which DeVita offered a bribe to the prosecutor to drop a case against an organized crime figure. New York Times, April 16, 1970, p.49, col.3.

[35] Witness poor John Wholen, who testified in the bribery and conspiracy trial of Michigan State Supreme Court Justice John Swainson. One month after the indictment of Swainson,

indictments and convictions have been obtained,[36] if only for perjury rather than the substantive offense.[37]

2. Police[38]

There are three kinds of men in the department

35(continued)
Wholen was kidnapped and shot in the leg. He managed to escape; fortunately, his kidnapper was later arrested. New York Times, Oct. 22, 1975, p.26, col.5; Nov. 3, 1975, p.16, col.4; Nov. 8, 1975, p.54, col.2; Dec. 20, 1975, p.25, col. 2; Jan. 3, 1976, p.11, col.2.

[36]The Oklahoma Supreme Court surely holds the national record. Between 1964 and 1966 five members of the Oklahoma Supreme Court were accused of corruption. This saga began with the indictment of one Justice on five counts of tax evasion. New York Times, Apr. 9, 1964, p.10, col.7. Another Justice then pled nolo contendere to charges of Federal Income Tax evasion; he allegedly failed to note the receipt of $150,000 in bribes on his 1966 tax returns. New York Times, July 19, 1964, p.44, col.1. The first Justice was then convicted of tax evasion (New York Times, Oct. 20, 1964, p.20, col.3) and impeached for corruption along with another Justice. Both had allegedly shared part of the bribe received by still another Justice. One Justice resigned; the other was successfully impeached. New York Times, May 14, 1965, p.40, col.1. A fourth Justice, by then deceased, was linked to the first bribery. New York Times, May 8, 1965, p.62, col.6. Finally, a fifth Justice resigned from the bar after charges of conspiracy to bribe his fellow justices were levelled against him. New York Times, Feb. 18, 1966, p.65, col.1. As far as can be determined, the Oklahoma Supreme Court was the only court ever to sit in America that had a majority that could be linked not by their judicial philosophy, but rather by their common dedication to the dollar.

[37]Judge Martin Ginsberg, for example, was convicted for perjury while acquitted of charges that he received a $7500 bribe from two businessmen. New York Times, Feb. 14, 1975, p.41, col.1. Without engaging in too much speculation, one can guess that jurors may see conviction for perjury as a "compromise verdict" when the defendant is a respected public official who has abused his office; it may be less difficult to label a good bourgeois citizen a liar than a thief. Exactly the same substantive-acquittal, perjury-conviction also occurred in United States v. Swainson, 548 F.2d 657 (7th Cir. 1977) where a justice of the Supreme Court of Michigan convicted of perjury in a case involving the attempted fix of a larceny appeal.

[38]Much of the data reported in this section is drawn from studies conducted in New York City and Philadelphia. While local

> . . . I call them the birds, the grass eaters, and the meat eaters. The birds just fly up high. They don't eat anything either because they are honest or because they don't have any good opportunities. You've got to figure that half the force is in jobs--the Tactical Police Force and the Safety Division, for example--where there are little or no pick-ups. The grass-eaters, well they'll accept a cup of coffee or a free meal or a television set wholesale from a merchant, but they draw a line. The meat-eaters are different. They're out looking. They're on a pad with gamblers, they deal in junk, or they'd compromise a homicide investigation for money . . . .[39]

---

38 (continued)
conditions and problems may differ, "the pressures upon policemen, the nature of the job, and the inevitable temptations are similar enough in any large municipal police department at any time to give rise to ....[similar]....problems." The Knapp Commission Report on Police Corruption 64 (1972) [hereinafter Knapp Commission.]

Support for this proposition may be found in newspaper reports from the last fifteen years. Indictments or arrests of police for corruption have been reported by the New York Times during that period in the following cities: New York City, Jan. 14, 1977, p.3,col. 1; Detroit, August 23, 1976, p.20, col.3; Lawside, N.J., May 15, 1976, p.55, col.7; East St. Louis, Ill., April 19, 1976, p.23, col.1; Cincinnati, Ohio, Dec. 19, 1975, p.20, col.5; Hoboken, N.J. Feb. 15, 1975, p.63, col.1; Mount Vernon, N.Y., Dec. 4, 1974, p.46, col.2; Jersey City, N.J., April 26, 1974, p.79, col.1; Indianapolis, Ind., Mar. 15, 1974, p.34, col.1; Ecorse, Michigan, Dec. 13, 1974, p.30, col.6; Mullica Township, N.J., May 2, 1973, p.94, col.7; Newburgh, N.Y., Nov. 18, 1973, p.33, col.1; Albany, N.Y., Nov. 29, 1973, p.46, col.2; Washington, D.C. 18, 1973, p.55, col.6; Chicago, Ill., Oct. 11, 1973, p.42, col.3; Baltimore, Md., Jan. 28, 1973, p.39, col.3; Boston, Mass., Nov. 22, 1973, p.27, col.1; Patterson, N.J., June 29, 1973, p.78, col.5; Atlantic City, N.J., Aug. 23, 1970, p.51, col. 3; Newark, N.J., April 24, 1970, p.71, col.2; Seattle, Washington, July 20, 1970, p.12, col.1; Columbus, Ohio, June 4, 1969, p.27, col.1; Dallas, Texas, Dec. 6, 1966, p.20, col.7; Pittsburgh, Penn., July 2, 1965, p.31, col.4; Kansas City, Mo., May 5, 1961, p.15, col.4; Miami, Fla., Oct. 13, 1960, p. 21, col.4. Only the most recent report for any city is listed.

Most newspaper reports deal with indictments or other charges. Convictions or other dispositions do not seem to be as well reported. The illustrations given in these materials will, therefore, rely to a large extent on reports of indictments, not convictions. Despite this, it is felt that their validity is not thereby undermined, since the criminal justice system seldom moves against one of its own unless the case is airtight.

39 T. Buckley, "Murphy Among the Meat Eaters," New York Times

The term "soliciting" fairly describes the actions of policemen who aggressively misuse their police power for personal gain. The activities of such policemen are partially conditioned by the opportunities their assignments present to them, e.g. plainclothesmen generally have more opportunities than uniformed police, and policemen entrusted with control of organized crime generally have more opportunities than those assigned to direct traffic. The kinds and sources of payoffs provide a convenient organizing principle for examination of the practices encompassed by the term "soliciting."

"Pads" or "steady notes" are names given to a regular payment of money to police for protection from serious harrassment for violations of the law.[40] A pad may be arranged under threat of arrest or complaint. Under some circumstances, a person starting an illegal operation will arrange beforehand to make his protection payments and thus improve his opportunites for bargaining over the size of the tribute.[41] Pads are typically cooperative ventures that protect intentionally unlawful activities. Thus, complaints are few and all participants have a vested interest in making their conduct

39(continued)
Magazine, p.44 (Dec. 19, 1971). For a somewhat different breakdown of the fact patterns of police corruption see T. Barker and J. Roebuck, An Empirical Typology of Police Corruption (1973) (hereinafter, Typology).

[40]Rubinstein notes that the different terms are, in fact, used in New York City and Philadelphia. J. Rubinstein, City Police 575 (1973) (hereinafter City Police).

[41]Knapp Commission at 80.

as hard to trace as possible. Pads are collected by a "bagman" and pooled for distribution to those in on the action. Shares are determined on the basis of rank and risks taken. Officers sometimes have separate pads, and when they participate in the general pad, it is usually on a multiple share basis.[42] The share per man or the amount paid by a briber is known as the "nut."[43] Understandably, long-term fixed-location enterprises are the most frequent source of pads.[44]

The numbers racket and other overt gambling operations present a clear opportunity for this kind of bribery.[45] The Knapp commission reported that the nut for protection of gambling operations in some New York City districts ran as high as $1500 per policeman per month.[46] Reassignment of entire plainclothes squads resulting from corruption investigations indicates that the practice was widespread and pervasive.[47]

---

[42] City Police at 396-397.

[43] Knapp Commission, p.75.

[44] Id. at 66.

[45] The following two examples are typical:

Sixteen of eighteen indicted New York City policemen were convicted of charges stemming from protection payments for gambling in New York City. Reportedly, payoffs totalling $250,000 per year were involved. New York Times, June 10, 1973, p.43, col.1.

Five top police officials in Ecorse, Michigan were arrested for accepting gambling protection payments of $2,000 per month. The police chief was among those arrested, New York Times, December 13, 1974, p.30, col.6.

[46] Knapp Commission at 75.

[47] A New York City Police Department Inspector, two lieutenants,

There is also some indication that gambling pads often involve supervisory police personnel.[48]

The pad in a gambling operation pays for protection from all but token police harrassment. The services being bought include freedom from arrest by officers on the pad and prevention of or warnings about impending raids by those not on the take. When arrests under pressure of a quota are needed, the gambler often is allowed to select an underling with a relatively clean record or a paid-off addict as a "stand-in."[49]

Heavily regulated legitimate industries are another lucrative source of police payoffs. The construction industry must deal with a maze of regulations concerning building techniques, specifications of practices, standards, and safety measures. A large construction project in New York City, for example, may be required to obtain as many as

---

47(continued)
and sixteen plainclothesmen of the 17th Division were reassigned for laxity in enforcing gambling laws; the inspector filed for retirement, New York Times, Apr. 20, 1961, p.1, col.3. An entire plainclothes squad was reassigned for the same reason. New York Times, Oct. 18, 1961, p.36, col.3.

48City Police at 397, 427. Several cases are illustrative: The Chief of Police of Miami was accused of protecting numbers of racketeers in return for $40,000 per month in protection money. New York Times, Oct. 13, 1960, p.21, col.4. The Assistant Police Superintendant of Pittsburgh was also dismissed for accepting $176,000 in numbers protection money. New York Times, June 10, 1965, p.18, col.4. Finally, the Police Chief of Patterson, N.J. was convicted of misconduct and conspiracy to protect illegal bookmaking. New York Times, Feb. 14, 1975, p.79, col.1.

49Knapp Commission at 83.

130 permits to achieve technical compliance with all regulations, a task which is virtually impossible to fulfill. Those charged with enforcement, including the police, have been for many years paid to ignore minor infractions.[50] The pads for police, usually solicited under threat of harrassment,[51] tend to be small since only minor penalties are imposed for building code violations.

Motels, hotels, restaurants, and most importantly, liquor stores and bars are licensed premises subject to regulation and periodic license renewal. The dependence of these businesses on the continuation of their licensed status has traditionally put them at the mercy of those persons charged with enforcing the regulations controlling such establishments, including the police.[52] The method of solitication is common:[53] the policeman finding a technical violation threatens to endanger the operation's license by filing an official report. The price for protection

[50]The Bronx District Attorney, for example, in 1966 dropped extortion charges against three New York City patrolmen on the condition that they resign from the force; they were charged with shaking down a building contractor for payments to prevent issuance of building site citations. One of the patrolman later pled guilty to extortion as a misdemeanor. New York Times, April 21, 1966, p.47, col.8.

[51]Knapp Commission at 128-131.

[52]For example, in 1966, seventeen patrolmen were indicted in Detroit for lying to a grand jury investigating bar shakedowns. New York Times, June 18, 1966, p.12 col.5. Two New York City police sergeants were dismissed after they were convicted of attempted extortion from a New York City bar. New York Times, April 8, 1961, p.1 col. 1 and May 19, 1961, p.19, col.7.

[53]Knapp Commission at 133-139, 40, 120-121.

from harrassment is agreed upon and regular collections are made. The money paid protects the licensed premises from harrassment, and in the case of bars, it may also pay for alteration of police reports concerning fights between patrons.[54] Since protection of the license is vital to continuation of the business, the tributes demanded are likely to be larger. The situation is exacerbated by the frequent use of bars by persons involved in other illegal conduct (e.g. prostitutes).

Other businesses seeking protection from enforcement of laws effecting them may also pay tribute. Where parking restrictions are strict, restaurants, cab and trucking companies, and manufacturers may pay to have violations overlooked.[55] Unlicensed bars and clubs may pay in order to continue in operation.[56] Pads may also be paid for non-enforcement of Sabbath laws and regulations concerning peddlers.[57] Prostitution, particularly in fixed locations such as brothels and massage parlors, is also a source of regular payments.[58]

---

[54] City Police at 424-425.

[55] Id. at 152-162.

[56] Id. at 140-145.

[57] New York City Police Department reassigned more than ninety-five patrolmen in the Wall Street area as a result of investigation of peddler shakedowns. One sergeant was dismissed for accepting a $300 bribe. New York Times, January 11, 1973, p. 1 col. 1.

[58] Acceptance of "sexual favors" from prostitutes in return for not making arrests is cited as a continuing corruption hazard

A "score" or "shakedown" is a one-time payment that buys the freedom of a person subject to arrest.[59] Particularly in narcotics cases, the payoffs can be startlingly large.[60] While narcotics-related bribery has been traditionally regarded as "dirty" money, changing mores and high profits are motivating increasing relaxation of the traditional inhibition against such bribery. In addition, lenient courts give police a rationalization for proceeding vigilante-style to "punish" drug offenders.

Motorists and tow-truck operators provide a steady source of small scores. When a motorist depends on a driver's license for his livelihood and can lose it for too many traffic citations, he may be tempted to offer a bribe for overlooking an infraction.[61] Tow truck companies often obtain repair business from the owners of vehicles they tow. This results in competition between towing companies for the opportunity to get the highly profitable repair business.

58(continued)
in New York City. New York Times, Jan. 14, 1977, p. 3 col. 1. Nothing apparently changes. See, e.g., The case where three New York City vice squad patrolmen were held for attempt to extort money from prostitutes seventeen years earlier, New York Times, May 7, 1960, p.1 col. 3.

[59]"Score" is the term used by New York City Police. The same practice is referred to as a "shakedown" in some other areas. See Knapp Commission at 66.

[60]See, e.g., where an undercover agent pled guilty to accepting $35,000 for not arresting narcotics suspect in New York City. New York Times, Sept. 18, 1975, p. 45 col. 1; four policemen were indicted for splitting a $40,000 bribe to release two narcotics suspects, New York Times, May 9, 1975, p. 16 col. 3.

[61]Typology, 27-29; City Police at 430.

The police may be paid to steer business to one company or another and to ignore the traffic violations committed on the way to the scene and coercive practices at the accident scene.[62]

Policemen on the take may also score any other target of opportunity that presents itself. Gambling, prostitution, bars, and construction sites may be scored if not protected by a pad.[63] Loansharks and fences may be scored at will.[64] A score is inherently a less cooperative venture than a pad. This limits to some degree the policemen on the take. Complaints are more frequent in score cases than in pad cases, particularly if the extorted party comes to believe that he could have avoided conviction without the payoff.

The illegal withholding of money or contraband seized while making an arrest is closely related to the score. Normally, money and contraband are held as evidence. Gambling

[62] Typology at 19; Knapp Commission at 158-163. The problem is long standing. See, e.g., where six policemen were indicted in tow truck kickback scandal in New York City in New York Times, August 17, 1961, p. 28 col. 1. In kind of a reverse twist, however, two New York City detectives were promoted the year before for not accepting bribes from tow truck operators, New York Times, Dec. 3, 1960, p. 24 col. 2.

[63] Knapp Commission at 34, 82-84, 127, 138-139. Some illustrations follow: in 1973, two N.Y.C. patrolmen were arrested for taking a bribe for not issuing a summons to a man who was illegally repairing his car in the street, New York Times, Feb. 26, 1973, p. 14 col. 3. In 1966, three Chicago detectives were also indicted for participation in a scheme to extort money from homosexuals, New York Times, August 19, 1966, p. 33 col. 1. Finally, the Assistant Police Chief of Seattle, Washington was convicted for participation in a scheme to extort money from businessmen caught gambling, New York Times, July 20, 1970, p. 12, col. 1.

[64] Knapp Commission at 183-184.

and narcotics arrests frequently involve confiscation of large sums of cash and large quantities of contraband.[65] These materials are sometimes withheld for personal use or for use in buying information from informants.[66] There have been reports of policemen-addicts and policemen-pushers who obtain their drugs in this manner.[67]

Police may use illegally withheld drugs for "padding" the quantity of drugs found in the possession of an arrested person, thus upgrading the offense with which the persons arrested will be charged. A related phenomenon in the planting of drugs on an innocent person is known as "flaking" or "farming."[68] Padding and flaking are sometimes motivated by arrest quota pressures, the desire to "get" someone whom the policeman "knows" is "guilty," or the desire to use the arrest situation for a score or for extorting information. A variety of other abuses of police authority and

[65] Typology at 26-27; Knapp Commission at 99-103. Two examples illustrate the practice. The Newburgh, N.Y. police chief was convicted of stealing money uncovered during drug raids in 1973. New York Times, Feb. 9, 1973, p. 39 col. 8. Twelve present and former members of the New York City police department were also charged with, inter alia, stealing cash from narcotics dealers, New York Times, March 9, 1974, p. 1 col. 2.

[66] City Police at 390.

[67] Knapp Commission at 104-110. Two ex-New York City policemen in 1969 were convicted of selling narcotics seized during drug raids. New York Times, March 1, 1969, p. 18 col. 6. In 1974, two lieutenants, two sergeants, and eight detectives were also indicted for selling heroin obtained in drug raids. New York Times, March 9, 1974, p.1 col. 2.

[68] See, e.g., where in 1973 the Newburgh New York Police Chief was convicted for, among other charges, planting narcotics at scene of drug raids, New York Times, February 9, 1973, p. 39 col. 8.

power may accomplish similar ends. Illegal searches and wiretaps may be used to set up a score or obtain information.[69] Perjured applications for search warrants are a common tool for obtaining incriminating evidence.[70] Policemen may extort information from reluctant informants. Rubinstein's study of the Philadelphia police department has led him to conclude that these illegal corruption-facilitating techniques are an unavoidable reality of vice law enforcement.[71]

Corrupt policemen are also sometimes paid for services they render. Sales of confidential information to unauthorized persons occur. The information sold may be as innocent as a list of vehicles held in police pounds (which could be sold to a finance company seeking to repossess the cars) or it may concern the time and location of a planned raid or the fact that a particular individual is under official investigation.[72] Policemen sometimes protect, actively or passively, planned illegal operations such as hijackings.[73] Some police

[69] See, e.g., where in 1975 three New York City Detectives were indicted for, among other things, using an illegal wiretap to set up a $3500 score, New York Times, March 6, 1975, p. 41, col. 4.

[70] City Police at 384-388. See also where in 1975 three New York City Detectives were indicted for, among other things, committing perjury to obtain a search warrant used in scoring $3500, New York Times, March 6, 1975, p. 41 col. 4.

[71] City Police at 375-400.

[72] See where one New York City detective was indicted for the sale of official information to protect an automobile theft ring. New York Times, July 23, 1975, p. 39 col. 1.

[73] Three instances will indicate the breadth of illegal activities

accept court-related payoffs. The money paid may buy a weakly written or technically deficient complaint that will result in a dismissal. Alternatively, evidence or testimony can be altered to assure suppression of key evidence, reduction of charges, or acquittal.[74] In 1960, a New York City grand jury probed alterations of police records.[75]

One last area of active corruption needs to be noted. When responding to a burglary report corrupt policemen have been reported to steal goods or merchandise in compound theft.[76] In a similar, if more grisly, vein corrupt policemen have been known to remove valuables from the body of a person who dies before arrival at a hospital. If the person is known

73(continued) involved: in 1966, two Dallas police detectives were charged with running a bookmaking operation, New York Times, December 6, 1966, p. 20 col. 7; in 1973, two New York City patrolmen were charged for receiving unlawful gratuities after cooperating with the transfer of a truckload of hijacked electrical supplies, New York Times, January 6, 1973, p. 17 col. 2; and in 1965, a New York City police lieutenant pled guilty to passing bogus $20 bills, New York Times, February 27, 1965, p. 11 col. 5.

74See, e.g., where two New York City policemen were charged with soliciting bribes from defense attorneys of suspects they had arrested, New York Times, May 10, 1969, p. 28 col. 4 and October 25, 1969, p. 25 col. 4; in 1974, a Jersey City, N.J. Deputy Police Chief was indicted for trying to fix an assault case, New York Times, Apr. 26, 1974, p. 79, col. 1, and finally, in 1975, two New York City policemen were indicted for conspiring to bribe a District Attorney to fix a narcotics case, New York Times, February 5, 1975, p. 41 col. 7.

75New York Times, April 16, 1960, p. 1 col. 1.

76City Police at 431-432. Typology at 35-36. See where three New York City detectives were indicted for stealing $3500 in cash from home of narcotics suspect they had just arrested, New York Times, March 6, 1975, p. 41 col. 4; and where two Brooklyn detective squads were under probe in stolen-goods investigation and the Head of Brooklyn detectives sought to retire as result of probe, New York Times, February 15, 1961, p. 27, col. 5.

to have lived alone, his apartment or home may be looted by the police.[77]

The patterns of behavior just described are what is most often called police corruption. These practices are restricted, in the view of most investigators, to a minority of the members of any particular police force.[78] There are other kinds of questionable activities that, albeit less objectionable, are far more widespread. These activities involve the acceptance of gratuities offered to a policeman by virtue of his official capacity. These corrupt practices are best described as "accepting." They are important because of their pervasiveness and the resultant climate in which a "code of silence" among policemen develops.[79] Policemen who are themselves vulnerable are less likely to expose other corrupt policemen for fear of endangering their own positions. It has also been theorized that the pervasiveness of "accepting" encourages those policemen with a predilection for engaging in more serious forms of corruption.[80] Finally, acceptance of gratuities may come to be regarded as a right that is enforceable by extortion.[81]

---

[77] Knapp Commission at 184.

[78] H. Goldstein, Police Corruption, A Perspective on its Nature and Control, pp. 13-15 (1975).

[79] City Police, p. 444.

[80] H. Goldstein, Police Corruption, a Perspective on its Nature and Control, p. 5; (1975) City Police, p. 402.

[81] Typology at 23-24.

The most widespread forms of accepting involve free meals, drinks, hotel rooms, and other day to day amenities. A restaurant or bar may decline to charge a policeman for food or drinks or may charge at a reduced rate. The establishment may be merely expressing good will or may be encouraging police presence in hopes of avoiding trouble from patrons. The establishment may be buying consideration, discretion, and quick response in the event of future trouble. Similarly, hotels will frequently give gratuities to policemen in the form of free or reduced-rate rooms and meals. The corner drugstore may donate an occasional pack of cigarettes and the grocery an occasional candy bar. Abuses of these "privileges" are possible. Policemen have become alcoholics because they checked liquor licenses too frequently;[82] the restauranteur who cuts out free meals to policemen may find himself harrassed with numerous citations.[83]

A slightly more suspect form of accepting parallels the familiar practice of Christmas tips to the newsboy, mailman, and garbage collector. Often voluntarily, local merchants and businessmen contribute to a Christmas pack that is divided between the policemen serving the area.[84] The acceptance of voluntarily offered tips may be formalized

[82] City Police at 421.

[83] See Typology of Police Corruption, p. 24 for an amusing, and typical anecdote.

[84] City Police at 412-413; Knapp Commission at 176-178.

into systematic shakedowns of local merchants. Investigation of such shakedowns may expose the participation of high ranking police officials.[85] These and similar voluntary payments sometimes simply represent expressions of gratitude by civilians for work done, as when the owner of a stolen car tips the policeman who recovered it. Policemen may even tip their fellows who are not in a position to obtain gifts from civilians to expedite the processing of routine clerical work.[86]

D. The Role of Organized Crime

It would be a mistake to overstate the role played by organized crime[87] in official corruption. Not every - or even most - corrupt officials are in the hip pocket of some mob figure. Indeed, it is not always clear that the mob figure is the moving force where such alliances exist. Nevertheless, it remains true that, as outlined above in part, organized crime has played a significant role in the

[85]Two typical examples follow: In 1960, 177 New York City police sergeants were reassigned just before Christmas to prevent their taking gratuities, New York Times, December 3, 1960, p. 15 col. 2; in 1961, a Bronx captain was suspended as a result of investigation of alleged shakedown of merchants at Christmas and the extortion of kickbacks by patrolmen, New York Times, December 27, 1961, p. 33 col. 6.

[86]Knapp Commission, p. 166.

[87]The concept of "organized crime" is much like the fictional crime portrayed in Akira Kurasawa's 1951 film, Rashomon, in which a ninth century nobleman's bride is raped by a bandit and the nobleman is killed. This double crime is then acted out in the film in four versions, as seen by the three participants and a witness. Each version is not quite like the others.

history of corruption in this country.

First to exist, then to increase its profits, organized

87 (continued)

The vision of those who have looked at "organized crime" has been much like that of the witnesses whose stories were told in Rashomon. Some have seen nothing and hence have decided that nothing is there. See, e.g., Hawkins, God and the Mafia, 14 The Pub. Interest 24-51 (Winter 1969). Compare the summaries of wiretaps reprinted in H. Zeiger, The Jersey Mob (1975). Others have looked only at press accounts and have seen little more than a public relations gimmick. See D. Smith, The Mafia Mystique (1975). Others have looked at it through the eyes of an organizational theorist, and have seen the special character of organized crime to be its functional division of labor. See D. Cressey, Theft of a Nation (1969). Some have examined the phenomenon from the perspective of an anthropologist and have seen not a "conspiracy" but a "social system." See, e.g., F. Ianni, A Family Business (1972). Others have examined it as a lawyer would, and have seen it as "conspiracy." See, e.g., Blakey, "Aspects of the Evidence Gathering Process in Organized Crime Cases: A Preliminary Analysis" in Task Force Report: Organized Crime, The President's Commission on Law Enforcement and Administration of Justice 80, 81-83 (1967) (hereinafter Task Force Report). The President's Crime Commission, too, adopted this view (La Cosa Nostra was recognized only as the "core" of organized crime. Id. at 6); the Crime Commission termed conspiratorial crime "organized crime" when its sophistication reached the point where its division of labor included positions for an "enforcer" of violence and a "corrupter" of the legitimate processes of our society. Id. at 8.

A good summary of this view of "organized crime" was composed by the Departments of Justice and Transportation in a study of cargo theft:

> [T]he predominant group and inner core of organized crime is . . . a Nationwide group divided into 24 to 26 operating units or "families" whose membership is exclusively men of one ethnic group and who number 5,000 or more. The Task Force [on Organized Crime of the President's Crime Commission] quoted the FBI's director, who evaluated this core group as 'the largest organization of the criminal underworld in this country, very closely organized and disciplined . . . it has been found to control major racket activities in many of our larger metropolitan areas, often working in concert with criminals representing other ethnic backgrounds.

crime has found it necessary to corrupt the institutions of our democratic society. Today's corruption is less

87(continued)

Heading each operating unit, or family, is the boss, whose authority is subject only to the rulings of a national advisory commission, which has the final word on organizational and jurisdictional disputes and is comprised of the more powerful bosses. Beneath each boss, in chain-of-command fashion, is an underboss, several captains (caporegime), who supervise lower-echelon soldiers, who in turn oversee large numbers of nonmember street personnel. One such family is said to number 1,000--half members, half nonmember street-level workers--with 27 captains and stretches from Connecticut to Philadelphia. Bosses have access to a variety of "staff men," including attorneys, accountants, business experts, enforcers, and corrupters. Many individuals, while not family members in a formal sense, work closely with these inner-core groups and may be called associates (to distinguish them from mere street workers) and, as is the case with street personnel, should be considered an integral part of organized crime. Some associates are highly respected by family members and are very powerful in their own right.

Through interceptions of phone conversations and other oral communications at different times and places between members and associates of this large criminal nucleus of the organized underworld, its existence, structure, activities, personnel, and such terminology as 'boss,' 'captain,' 'family,' 'soldier,' 'commission' have been confirmed and reconfirmed beyond rational dispute.

Loosely allied with this large criminal nucleus are several other organized crime syndicates or groups, those members can also be distinguished among ethnic lines--just as most neighborhoods, can, and probably for much the same sociological reasons. The various organized crime groups call upon the services as a loose confederation, a designation reflecting the absence of a boss of bosses at the top. Sometimes these groups are referred to individually or collectively as the 'outfit,' 'mob,' or 'syndicate.'

Taking into account the political organizations, unions, businesses, and other groups directly or indirectly under the thumb of organized crime, the manpower available to the confederation could conceivably run into the hundreds of thousands. Because they are relatively well organized and disciplined and because they possess the demonstrated superior ability to protect themselves

visible, often more subtle, and therefore more difficult to detect and assess than the corruption of an earlier time, particularly of the era of prohibition. Yet everything indicates that organized crime flourishes best only in a climate of corruption.[88] And as the scope of organized crime's activities has expanded, its need and desire to corrupt public officials at every level of government has grown.

87 (continued)

> from prosecution through corruption and other means, organized crime groups have a strength and permanency beyond the reach of conventional partners in crime.
>
> The difference to management between cargo theft committed under the direction of organized crime and cargo theft executed under the direction of non-member employees is analogous to the difference between a company's market share being challenged by a multi-billion conglomerate and being challenged by a three- or four-man partnership. Both the conglomerate and partnership are engaged in business, just as organized crime groups and other nonmember criminal elements are both engaged in organized criminal activity. But there is a world of difference between a conglomerate and a partnership, just as there is between organized crime and less organized and disciplined individuals who may cooperate in crime.

Cargo Theft and Organized Crime 23-24. The phrase "organized crime" is used throughout these materials to refer to this type of conspiratorial criminal behavior. For an analysis of the concept of "organized crime" that further breaks it into "enterprises," "syndicates," and "ventures," see Electronic Surveillance: Report of The National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance 189-92 (1976) [hereinafter Wiretap Report] (concurrence of Commissioner Blakey). See generally D. Cressey, Theft of the Nation (1969); R. Salerno & J. Tompkins, The Crime Confederation (1969); G. Tyler, Organized Crime in America (1962); M. Maltz, "Defining Organized Crime," 22 Crime & Delinquency 338 (1976).

[88] Chief Justice Earl Warren observed:

> [N]o crime syndicate can openly defy the law in any of its money-making activities if the community is determined that it shall not exist. . . . [C]orruption is the basis of organized crime.

At various times, organized crime has been a dominant political force in such metropolitan centers as New York, Chicago, Miami, New Orleans, and Newark. Smaller communities such as Cicero, Illinois and Reading, Pennsylvania have been virtual baronies of organized crime. Nevertheless, the chief impact of the corrupting influence of organized crime has fallen on the criminal justice system and those aspects of our government that are related to it.

Under our Anglo-American system of jurisprudence, effective law enforcement depends upon the coordinated actions and decisions of a number of closely interrelated individuals each occupying separate and independent positions in the law enforcement process. Legislators, citizen witnesses, police officers, prosecutors, and courts must all act affirmatively before the sanctions of the criminal law may be brought to bear on the activities of organized crime. Successfully corrupt any key individual in the process and the ultimate effect is the nullification of the entire process. Indeed, the situation is virtually the same as if the criminal sanctions did not exist.

The techniques of corruption are not terribly sophisticated. Some may be bought with votes or the funds with

88 (continued)

First National Conference on Crime Control Proceeding March 28-29, 1967 at 8. See also, A.B.A., Report on Organized Crime and Law Enforcement 16 (1952-53) ("largest single factor"); Task Force Report at 6; Organized Crime: Report of the Task Force on Organized Crime, National Advisory Committee on Criminal Justice Standards and Goals 29-30 (1974) (hereinafter Organized Crime).

which to buy votes.[89] Some are bought outright.[90] Others are threatened or blackmailed.[91] Whatever the mode of payment, the result is the same; the individual soon serves the master of organized crime. Whenever its interests are at stake, he will act, fail to act, or act ineptly, whichever will best serve his master's will.

There is no question that the long black hand of organized crime reaches into our state[92] and national[93] legislative chambers. As yet it has nowhere ever mustered a majority, but then it has never needed a majority. It needs only to defeat the enforcement of statutes as they are applied to its activities. This can be accomplished in any number of ways on the legislative level. For example,

---

[89] See, e.g., Kefauver Report at 164-69, which details out the use of money by organized crime in politics. The author of the most comprehensive examination of the relation between crime and politics estimates that 15 per cent of all contributions stem from criminal sources. See generally, A. Heard, The Costs of Democracy at 154-68 (1960). If campaign contribution restriction continue to tighten, it may be that organized crime will grow to play a larger role in politics.

[90] See infra n. 92.

[91] See, e.g., the remarks of former Commissioner of Narcotics of the United States Harry T. Anslinger, where he notes the use of prostitutes to blackmail public officials, in H. Anslinger and W. Ousler, The Murders at 29 (Avon 1961).

[92] See, e.g., Kefauver Report at 40, which details out the activities of the infamous West Side block in the Illinois legislature; Simon, "The Illinois Legislature: A study in Corruption," Harper's, September 1964 at 74-78.

[93] See, e.g., the practice of private bills introduced in the Congress to prevent the deportation of major hoods noted in Anslinger and Ousler, supra n. 91 at 74-75.

it is possible to fail to provide adequate appropriations for enforcement personnel[94] or to deny to the personnel provided the needed legal tools. Overt corruption on questions such as these may be impossible to prove. False economy can justify personnel cutbacks. Spurious civil liberties can warrant the failure to grant the necessary tools.[95]

The prosecution of any kind of crime requires evidence. This is a fundamental tenet of due process.[96] Ultimately, this means someone must take the stand subject to cross examination[97] in open court[98] and relate what he saw or heard. Without witnesses criminal prohibitions are what lawyers call precatory trusts, that is, mere admonitions, not enforceable commands. The ideology of the underworld keeps insiders silent. Citizen witnesses may be threatened,

---

[94]The Federal Bureau of Narcotics, now the Drug Enforcement Administration, has, for example, never been adequately staffed. The Challenge of Crime in Free Society, The President's Commission on Law Enforcement and the Administration of Justice at 219-20 (1967) (hereinafter The President's Report). Prohibition--the noble experiment--met a similar fate. See generally, F. Allen, Only Yesterday at 173-91 (Bantam Classic 1959).

[95]Mr. Justice Jackson rightly termed many of the objections to the use of electronic equipment "spurious." On Lee v. United States, 343 U.S. 747, 754 (1952).

[96]Thompson v. City of Louisville, 362 U.S. 199 (1960).

[97]Pointer v. Texas, 380 U.S. 400 (1965).

[98]People v. Jelke, 308 N.Y. 56, 123 N.E. 2d (1954).

bribed, or murdered.[99] Without insiders or citizen witnesses, prosecutions cannot be brought, or will fail for want of evidence, or will be supported only by police testimony.

It is possible to corrupt directly virtually an entire police force.[100] It is, however, not terribly efficient or economical. It makes much more sense to gain control of police policy by gaining control of key individuals.[101] By this technique, the day-to-day performance of the honest men may be undermined or nullified. It is possible, for example, to adopt the policy of a "wide-open" town.[102]

[99]Then Attorney General Nicholas deB. Katzenbach testified in 1965: "We must dismiss [organized crime cases] because key witness informants suffer 'accidents' and turn up, for example, in a river wearing concrete boots. Such accidents are not unusual. We have lost more than 25 informants in this and similar ways in the past 4 years. We have been unable to bring hundreds of other cases because key witnesses would not testify for fear of the same fate." Invasion of Privacy, Hearings before the Subcommittee on Administritive Practice and Procedure, Committee on the Judiciary, United States Senate, 85th Cong. 1st Sess. Pt. 3, 1158 (1965). See Id. at 1149-50 for statistics on intimidation of Treasury Department witnesses and agents. The Attorney General's reference to "concrete boots" is becoming a thing of the past. Now bodies and cars are crushed in a hydraulic machine in auto junkyards and neither is ever discovered. See New York Times, January 21, 1967, col. 2, p. 64.

[100]The classic illustration of this practice is the operations of bookmaker Harry Gross in the 1950s in New York City. See Kefauver Report at 113-117. A similar pattern also existed at that time in Philadelphia involving 38 police districts. Id. at 27-30.

[101]See Id. at 22-23, which details out an attempt to gain control of the St. Louis police board.

[102]See Id. at 15, which deals with the situation that once obtained in southern Florida. It is possible, too, to keep state people out by adopting a policy of "local autonomy". Id. at 88.

It is also possible to have the department organized so that the need to corrupt is minimized or the possibility of effective police action virtually eliminated. A classic technique of corruption is the "vice squad pattern."[103] Police activity against the major endeavors of organized crime is centralized in one special squad in the department. Men not assigned to that unit are required to refer organized crime matters to the exclusive unit. It is thus necessary only to corrupt that unit to subvert police activity. Indeed, it may not even be necessary to corrupt that unit. If you organize and operate it so poorly that its members become known throughout the community its effectiveness will be terminated without the necessity of actual corruption.[104]

Law enforcement may also be affirmatively corrupted. It is possible to use the police to eliminate your competitors.[105] Selective law enforcement has its advantages. It helps create an illusion of honest enforcement, while it secures the reality of illegal monopoly.

It is possible, too, to build into enforcement techniques planned illegalities, which will cause even honest courts

---

[103] See Id. at 76-77. But see Gambling in America, Commission on the Review of the National Policy Toward Gambling, 50-51 (1976) (recommendation of specialized gambling enforcement units).

[104] This was the situation found in the 1960's in Buffalo, New York. See An Investigation of Law Enforcement in Buffalo, Report of the New York State Commission of Investigation at 63-65 (1961).

[105] See Kefauver Report at 13, which indicates how police raids were used by the Chicago family of La Cosa Nostra to take over Miami gambling.

to throw out cases on the grounds that constitutional rights have been violated. The practice is known as the "tipover raid."[106] It helps, of course, to create the image in the community that other social institutions are responsible for the continued existence of organized crime.

Useful as corrupt police may be, no dollar of corruption buys as much real protection as the dollar which directly or indirectly influences the public prosecutor or one of his trusted assistants. To directly control the prosecutor is to directly secure immunity from legal accountability, for his is the crucial decision to prosecute or not.[107] On the other hand, the organization's purposes may be well served, although the prosecutor is honest, if he is only incompetent or indifferent. Other obstacles to bringing criminal sanctions to bear on organized crime are so formidable that only affirmative, creative use by the prosecutor of the legal tools uniquely available to him-the grand jury subpoena, the immunity grant, civil contempt, the selective

---

[106] See generally, Search Warrants and Organized Crime: A Policy Statement, Council of Judges of the National Council on Crime and Delinquency (1966) (No pagination); Dash, "Cracks in the Foundation of Criminal Justice," 46 U. of Ill. L. Rev. 385, 392 (1951).

[107] The classic illustration is found in Kefauver Report at 105-25 which details out the operations of William O'Dwyer as district attorney in Kings County New York. The Committee concluded O'Dwyer failed to take "effective action against the top echelons of the gambling, narcotics, waterfront, murder, or bookmaking rackets. His defense of public officials who were derelict in their duites, and his actions in investigation of corruption, and his failure to follow up concrete evidence of organized crime, particularly in the case of Murder, Inc., and the waterfront, have contributed to the growth of organized crime racketeering, and gangsterism in New York City." Id. at 125.

threat of a perjury prosecution, electronic surveillance, etc. can assure the success of any attack on the roots of organized crime using criminal sanctions. Consequently, if the organization can obtain a less than dedicated or less than able prosecutor, or affect similar choices for his close assistants, the immunity of the organization will be virtually guaranteed. This is often the chief aim of organized crime's considerable political activity.

Next to the prosecutor, the individual judge is the most powerful figure in the law enforcement process. Like the prosecutor, most of his decisions are not reviewable. Indeed, if he is able to exercise control over the assignment of cases brought within his jurisdiction, he may be considered the most powerful, that is, his potentiality for harm is the greatest. Organized crime, therefore, always seeks to subvert the judiciary or at least its administrative aids.

Facts can compel the issuance of a search warrant that could not be publicly refused, but its value may be undercut by an advanced warning to the place to be raided. Where honest men seek and grant search warrants, corrupt men can suppress the evidence. At the trial itself, verdicts may be directed, instructions carefully tailored to produce not guilty verdicts, or the process aborted by the imposition of only nominal fines where imprisonment is indicated.

E. Causes of Corruption

Discussions of the causes of corruption are probably fruitless. Indeed, they call to mind the apocryphal story of when Willie Sutton, the infamous bank robber, was asked why he robbed banks. Sutton is supposed to have answered, "'cause that's where the money is!" Nevertheless, there exists a considerable body of literature that discusses the question.[108] Some of it focuses on the individuals and their backgrounds and personalities. Other aspects of it focus on the situations in which corruption arises and their relationship to broader social and political environments. The most fruitful studies have been done of police corruption.[109]

---

[108]The literature is reviewed in Organized Crime at 25-29.

[109]See, e.g., Police Corruption: A Sociological Perspective (edited by L. Sherman 1974). Sherman reviews the literature and concludes:

COMMUNITY STRUCTURE

1. There will be less police corruption in a community with little anomie, in terms of both corrupters and corruptees.
2. There will be less police corruption in communities with a more public-regarding ethos.
3. There will be less police corruption in a community with less culture conflict.

ORGANIZATIONAL CHARACTERISTICS

4. A punishment-centered police bureaucracy will have the least corruption, a representative pattern will have more, and a mock pattern will have the most.
5. There will be less corruption in a police agency having leadership highly reputed for integrity.
6. There will be less organized police corruption when there is less work group solidarity.

Some comment here is warranted on them, since police corruption seems to be the most widespread, systematic, and difficult to control.

The "bad apple" theory[110] suggets that it is not reasonable to look for explanations of the general causes of corruption for two reasons: 1) corruption is limited to a few "bad" policemen; 2) generalities concerning the causes of police corruption, if there are any, will be found in the common personality characteristics of individual corrupt policemen.

109 (continued)

7. The less gradual the probable steps in a corrupt policeman's moral career, the less the ultimate "seriousness" (self-defined) of the grafting.
8. The greater the policemen's perception of legitimate advancement opportunities, the less likelihood there will be of their accepting corruption opportunities.

LEGAL OPPORTUNITIES

9. A decrease in either the scope of morals laws or the demand for the services they proscribe, while holding the other constant, will reduce police corruption opportunities (also the converse).
10. An increase in either the scope of the regulative law or the economic incentive to violate it, while holding the other constant, will increase corruption opportunities (also the converse).

CORRUPTION CONTROLS

11. There will be a greater perceived risk of apprehension for corruption in police agencies that have an internal investigation unit.
12. There will be proportionately less undiscovered corruption in police agencies that have an internal investigation unit using proactive methods.
13. Controls will decrease corruption only when they can avoid amplifying the corruption's extent or methods.
14. Less corruption will go undiscovered in a police agency watched by a vigorous and uncensored news media.

110 Knapp Commission at 6-8; City Police at 401.

Typically, the strongest proponents of this theory are members of the upper echelons of police hierarchies, who presumably advance it to counter charges of general corruption. The theory seems to prescribe vigilance and strict discipline as a solution to corruption within a department and strict screening procedures to keep the department clean. Unfortunately, the theory is also sometimes used to cover up departmental inability to cope with a substantial problem. Nevertheless, this explanation fails to account for the widespread practice of "accepting," and to the degree that it acts as a rationalization for failing to make needed reforms, it may be harmful.

Several investigations have advanced the theory that inherent pressures of police work make corruption inevitable. Rubinstein, in particular, believes that the pressures on policemen to make vice arrests compel behavior patterns that tend to lead to corruption.[111] Various segments of society, honest and otherwise, often attempt to buy official goodwill, official protection, or official inaction in response to the perceived benefit or threat that a policemen poses. Policemen as a group tend to perceive society as hostile to their role.[112] These factors combine to create a climate in which peer pressure makes it hard for a rookie policeman to remain honest despite his conscious intention

---

[111] City Police at 375-400.

[112] For a sympathetic view of the social realities of police work and their effects upon policemen, see City Police at 434-455.

to do so.[113] This theory suggests that there are few practical techniques, short of massive decriminalization of police regulation in vice and other areas, for combatting corruption, other than intensive campaigns to prosecute citizens who attempt to bribe policemen. Rubinstein's emphasis on the inherent pressures of enforcement of the vice laws may provide a useful starting point for a full scale investigation of a police department in which corruption is suspected.

The Knapp Commission also advanced the related theory that the enforcement of certain classes of laws placed policemen into situations where the temptation to slip into corrupt practices is too strong. Their recommendations are the decriminalization of many practices now covered by the vice laws and the shifting of enforcement responsibilities for other laws from the police to agencies in which society can better afford corruption.[114] The failings of this theory are its acquiesence to the problem and the counter-productive precedent that the solutions it proposes would establish. If every corruption hazard is removed from the

---

[113] The Knapp Commission concluded that:

> [t]he rookie who comes into the Department is faced with the situation where it is easier for him to become corrupt than to remain honest. (at p. 4)

[114] First, corrupt activity must be curtailed by eliminating as many situations as possible which expose policemen to corruption, and by controlling exposure where corruption hazards are unavailable.

Knapp Commission at 17.

province of police enforcement, then it is possible to envision the day when police forces are left with nothing to do but control the corruption of other enforcement agencies.

Several commentators have expressed the belief that the widespread practice of "accepting" gratuities creates a climate in which policemen predisposed to aggressive "soliciting" may procede with little fear of harrassment.[115] The "code of silence" created by this practice protects "accepter" and "solicitor" alike. This theory presents both a remedy and an investigative tool. If the acceptance of gratuities can be curtailed by prosecution of both those who offer and accept gratuities, then policemen entering a department will not become involved and the "code of silence" will eventually be broken. A policeman willing to testify about police corruption may prove very valuable.[116] The problems presented by prosecution of every restaurant owner who offers a free meal and every policeman who accepts it outline the practical limitations of this theory.

Policemen in some cities are commonly regarded to be on the take even if they are honest.[117] This cynical attitude

---

[115] Rubinstein refers to the practice of sharing knowledge of indiscretions as a token of mutual trust and loyalty as "mutual disclosure," City Police at 444.

[116] The Knapp Commission evidently regarded them as absolutely indispensible. Indeed, the disclosures of Frank Serpico and David Dark led to the creation of the commission. See generally Knapp Commission, at 35-60.

[117] City Police, at 432-433.

operates as a self-fulfilling prophesy. People in general tend to act as others expect them to act.[118] Thus, however the mechanism producing this effect works, the result is the creation of a climate in which corruption becomes the expected norm. It can only be hoped that diligent prosecution of corrupt policemen will produce a change in the attitude that is thougnt to help create the corruption.

Along more practical lines two related theories speculate that weak criminal sanctions and lax enforcement actually produce corruption. Where convictions are obtained in a low percentage of prosecutions and the sentences imposed are minimal, the police may be tempted to "punish" a perceived criminal vigilante-style.[119] The result may be a narcotics score or a gambling pad. Illegal investigating techniques may also be used to harrass an illegal operation. Although inapplicable to all forms of police corruption, the theory does suggest that prosecution that leads to a higher conviction rate and stiffer sentencing may remove the rationalization supporting some corrupt police practices.

Along similar lines, low conviction rates[120] and mild sanctions suffered by corrupt policemen may encourage a policeman to take his chances with profitable corrupt practices.

---

[118] Conn, Rosenthal, and Crowne, "Perception of Emotion and Response to Teachers' Expectancy by Elementary School Children," Psychological Reports, 22(1), pp. 27-34 (1968). Rosenthal, "Self-Fulfilling Prophecy," Psychology Today, September, 1968, pp.44-51.

[119] City Police at 377. Knapp Commission at 101.

[120] Knapp Commission, at 252-253.

Indeed, some police departments will allow corrupt policemen to retire with pension while under investigation for corruption.[121] The need to rethink these policies is manifest.

What this short review of theories of police corruption clearly establishes is that more than the enforcement of existing criminal laws is at stake. Nevertheless, it is probably also true that without the fair and effective enforcement of the criminal law, other efforts, too, will be doomed to failure.

II. SOCIAL CONTROL THROUGH LAW

A. Criminal Sanctions

1. Bribery

a. Historical development

The definition of bribery, in gist if not in words, has not changed since Sir Edward Coke described it as

> ...a great misprision, when any man in judicial place takes any fee or pension, note, or livery, gift, reward or brocage of any person, that hath to do before him any way, for doing his office, or by colour of his office...unless it be of meat and drink, and that of small value, upon divers, and grievous punishments.[122]

---

[121] New York City only abolished this practice in 1975. New York Times, November 8, 1975, p. 31, col. 5.

[122] E. Coke, Institutes of the Laws of England, Part 3, 144 (1817 ed.). The word bribery "commeth of the French word briber, which signifieth to devoure, or eat greedily, applyed to the devouring of a corrupt judge. . . " Id. at 144. Bribery is a misprision, "for that it is neither treason, nor felony; and it is a great misprision, for that it is ever accompanied with perjury." Id. at 146.

The offense originally was applicable only to judges,[123] or any "other person concerned in the administration of justice."[124] The crime, a common law misdemeanor, was however, gradually extended to include all public officials, whether elected or appointed.[125] The purpose, of course, was to promote integrity in the public service.[126]

Both the receiver and the offerer of a bribe were subject to fine and imprisonment. Even if a bribe was rejected, the offer was punishable.[127] If the bribe was in the form of a letter, the offerer was indictable both in the county where he deposited the offer, as well as in the jurisdiction where it was received.[128]

Punishment varied according to the importance of the official who was bribed. The bribery of judges "hath been always looked

[123] In fact, the judicial oath expressly bound the judges not to take any gift from any person who had a plea pending before them. See, Bodmin Case, 1 O'M. & H. 124 (1869) (Willes, J.)

[124] 1 W. Blackstone, Commentaries on the Laws of England, 139 (2nd ed. 1765). Coke later differentiated bribery and extortion by occupation: ". . . bribery is only committed both by him that hath judiciall place, or by him that hath a ministerial office." Coke, supra note 122 at 147.

[125] See 1. W. Russell, On Crime, 429 (Turner, ed. 1958).

[126] See 1.J. Bishop, Commentaries on the Criminal Law, 62, 411 (2nd ed. 1859).

[127] See, E. Coke, supra note 122 at 47. Bribery could also be committed "not only when a suit dependeth" on it, but also when a judge did anything under color of office, though there was no suit at all. Illustrative is the case of Lord Francis Bacon who pleaded guilty to corruption for "many exhorbitant and sordid briberies." Id.

[128] See, J. Bishop, supra note 126 at 63, 591.

upon" as a "heinous offense."[129] In the 17th and 18th centuries, a conviction for bribery often brought a forfeiture of office, a fine, and imprisonment.[130]

The crime embracery, or attempt to influence a jury, was separate from the offense of bribery, and punishable under statutes as early as the 12th century by fine and imprisonment.[131] The proscribed act of influencing jurors was not limited to promising them money; it could also consist of "menacing them" or "instructing them in the cause beforehand."[132]

The corruption of public elections and electors, though not of as "high and aggravated a nature"[133] as judicial corruption, was also punishable as a misdemeanor. According to Blackstone, both the offerer and receiver of the bribe were fined 500 pounds, and they were forever disabled from voting and holding any office.[134] Before his conviction, it was

---

[129] W. Blackstone, supra note 124. During the reign of Henry IV (12th century), the punishment for all "judges and officers of the king, convicted of bribery" was the forfeiture of treble the bribe, punishment at the King's will, and discharge from the King's service forever.

[130] See 2 W. Hawkins, A Treatise of the Pleas of the Crown, 75 (7th ed. 1795).

[131] W. Blackstone, supra note 124 at 140. As for the juror who was bribed, Blackstone reports the punishment was "perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value." Id.

[132] See, W. Hawkins, supra note 130 at 412.

[133] J. Bishop, supra note 126, at 63.

[134] See, W. Blackstone, supra note 124 at 173.

possible, however, for the offender to vindicate himself by bringing about the conviction of another offender.[135]

b. Elements of the offense

Bribery of public officials is now a statutory offense in the federal[136] and all state[137] jurisdictions. The elements of the offense, however, vary significantly among jurisdictions. Some generalizations, however, are possible.

(i) Conduct

In most jurisdictions, the bribe receiver (the public official) need only "agree" to accept a benefit. With few exceptions, statutes include the words "agree to accept"

---

[135] W. Hawkins, supra note 130 at 76.

[136] 18 U.S.C. §201 (1962). Bribery of federal judges has been recognized as a statutory offense since 1790. Rev. Stat. §§5449, 5499 (1875). Bribery of other federal officials was prohibited by statute in 1853. Rev. Stat. §§5451, 5501 (1875).

Federal jurisdiction to punish corruption of federal officers lies because this is a matter that is a distinctively federal concern. See, Schwartz, "Federal Criminal Jurisdiction and Prosecutors' Discretion," 13 Law and Contemporary Problems 64, 66 (1948).

Under certain circumstances, federal statutes also prohibit corruption of state and local government officials. The federal government has exercised its power to prohibit corruption where it involves travel in interstate commerce, or the use of any facility for transportation and communication in interstate commerce (see 18 U.S.C. §1341 (mail fraud), and 18 U.S.C. §1952 (the Travel Act)), "affects" interstate commerce (see 18 U.S.C. §1951 (Hobbs Act), and 18 U.S.C. §§1961-1968 (Racketeer Influenced and Corrupt Organizations Statute)), or is involved in the commission of another offense over which federal jurisdiction exists (see 18 U.S.C. §1511 (1970) (prohibiting official corruption where used to aid gambling)).

[137] For a listing and description of the state statutes, see Appendix A, infra.

as sufficient conduct on the part of the receiver.[138] Usually, other alternative forms of conduct, such as "asking," "soliciting," or "accepting," are also included.[139] Actual acceptance of the benefit, therefore, is not required; it is also not necessary that the official actually be influenced in the manner contemplated by the corrupt agreement.[140] Thus, the Supreme Court has said "[S]uccess may aggravate; it is not a condition of [bribery]."[141] A few jurisdictions,[142] however, still require proof of actual acceptance or receipt of the benefit by the official.

Typically, the conduct required on the part of a bribe offerer is "conferring," "offering," or "promising" a benefit in an effort to obtain an advantage in governmental processes.[143] Neither actual delivery of the benefit nor fulfillment of the

---

[138] See, e.g., Cal. Penal Code §§68, 86, 93 (West 1972); Conn. Gen. Stat. §53a-148 (1972); Ill. Rev. Stat. ch. 38, §33-1 (1977 Supp.); N.Y. Penal Law §200.10 (McKinney 1975).

[139] For example, the federal statute requires any of the following: ask, demand, exact, solicit, seek, accept, receive, or agree to receive. 18 U.S.C §201(c) (1970).

[140] See, United States v. Russell, 255 U.S. 138 (1921). Two states make it a crime for an official to fail to report an offer of bribery. N.H. Rev. Stat. Ann. §640: 2(1)(b) (1974); Me. Rev. Stat. tit. 17-A, §602 (1) (B) (1976 Supp.). See Appendix A, infra.

[141] United States v. Russell, 255 U.S. 138, 143 (1921).

[142] See, e.g., Alaska Stat. §11.30.050 (1976); N.J. Rev. Stat. §2A:93-1 (1969) (accepts or receives).

[143] See, Appendix A, infra, for the precise words used in state statutes. In the federal statute, the conduct required of the offerer is "giving," "offering," or "promising" anything of value. 18 U.S.C. §201(b) (1962).

corrupt agreement is an essential element of conduct.[144] It is legally irrelevant that the official did not actually have the authority to bring about the result that the offerer desired.[145] In at least one jurisdiction,[146] however, the statutory language describing the offerer's conduct is "gives." Actual delivery, therefore, of the benefit to the official must be proved to establish bribery.

In some jurisdictions, it has been successfully argued that separate acts, such as "promising to pay" and "paying" (offerer), or "agreeing to accept" and "accepting" (public official), although part of the same transaction, constitute separate offenses.[147] In addition, some courts have rejected an "installment method" approach, so that each separate payment, even if part of a single transaction, constitutes a separate violation.[148]

---

[144] See, e.g., United States v. Anderson, 509 F.2d 312 (D.C. Cir. 1974), cert. denied, 420 U.S. 991 (1975); United States v. Jacobs, 431 F.2d 754 (2d Cir. 1970), cert. denied, 402 U.S. 950, rehearing denied, 403 U.S. 912 (1971).

[145] United States v. Anderson, supra note 144.

[146] Mo. Rev. Stat. §558.010 (1969).

[147] United States v. Bernstein, 533 F.2d 775 (2nd Cir. 1976) (re: offerer); Egan v. United States, 287 F.2d 958 (D.C. Cir. 1923) (construing forerunner of 18 U.S.C. §201 as stating separate offenses re: public official). Contra, People v. Yore, 36 App. Div.2d 818, 320 N.Y.S.2d 601 (1st Dept. 1971).

[148] United States v. Anderson, 509 F.2d 312, 333 (D.C. Cir. 1974), cert. denied, 420 U.S. 991 (1975). See also, United States v. Cohen, 384 F.2d 699, 700 (2d Cir. 1967); United States v. Alaimo, 297 F.2d 604, 606 (3d Cir. 1961), cert. denied, 369 U.S. 817 (1962); United States v. Donovan, 339 F.2d 404, 410 (7th Cir.), cert. denied 380 U.S. 975 (1965).

On the other hand, those statutes that use the words "asked" or "solicited" for the official's conduct, and "offered" or "promised" for the offerer's conduct embrace attempts.[149] It is the law, therefore, that a conviction for bribery precludes a conviction for criminal solicitation,[150] or criminal attempt.[151]

Similarly, those statutes that include agreement as an alternative form of conduct[152] disallow convictions for both bribery and conspiracy to commit bribery on the same set of facts.[153]

(ii) Attendant circumstances

Most statutes are directed at bribery involving "public officials" and "public employees."[154] Usually, these terms are interpreted broadly to include every public official, employees of such officials, and those elected or disignated to become

---

[149] See, United States v. Jacobs, 431 F.2d 754, 760 (2d Cir. 1970), cert. denied, 402 U.S. 950, rehearing denied, 403 U.S. 912 (1971).

[150] See, N.Y. Penal Law §100.20 (McKinney 1976), which provides that in cases where an individual's conduct is "necessarily incidental to the commission of the crime solicited," he shall not be guilty of solicitation.

[151] People v. Legrand, 50 App. Div.2d 906, 377 N.Y.S.2d 562 (2d Dept. 1975).

[152] See, e.g., 18 U.S.C. §201(c) ("agrees to receive"); N.Y. Penal Law §200.00 (McKinney 1976) (agrees to confer).

[153] United States v. Dietrich, 125 F. 664 (C.C. Neb. 1904).

[154] See, Appendix A, infra.

public officials or employees.[155] Usually, too, it is not required that the official actually have the power to perform the act for which he is bribed.[156] Interposition of an agent to receive or offer the bribe does not affect the guilt of the principal.[157] Similarly, some statutes also prohibit bribes paid to another person or entity when intended to influence the actions of a public official.[158] Nevertheless, care must be exercised, so that this broad language does not prohibit lawful political

[155] See, e.g., N.Y. Penal Law §10.00[15] (McKinney 1976) definition of "public servant" which includes every category of government or public officer, every employee of such officer, and every person elected or designated to become a public servant. See also, People v. Woodford, 85 Misc.2d 213, 379 N.Y.S.2d 241 (Nassau Co. Ct. 1975) (University Security officer held public servant); People v. Lewis, 386 N.Y.S.2d 560 (Cr. Ct. N.Y. 1976) (special patrolman held public servant). The federal bribery statute includes jurors in the definition of "public official." 18 U.S.C. §201(a) (1970).

[156] United States v. Anderson, 509 F.2d 312 (D.C. Cir. 1974), cert. denied, 420 U.S. 991 (1975); United States v. Hall, 245 F.2d 338 (2d Cir. 1957); Wilson v. United States, 230 F.2d 521 (4th Cir.), cert. denied, 351 U.S. 931 (1956); Commonwealth v. Avery, 301 Mass. 605, 18 N.E.2d 353 (1938); People v. Mitchell, 40 App. Div.2d 117; 338 N.Y.S.2d 313 (3rd Dept. 1974); People v. Herskowitz, 80 Misc.2d 693; 364 N.Y.S.2d 350 (Orange Co. Ct. 1975)(official capacity, as opposed to individual capacity, is criterion); Pa. Stat. Ann. tit. 18 §4701 (1973). See also, 122 A.L.R. 951 and 73 A.L.R.3d 374 and cases cited.

[157] See, e.g., Commonwealth v. Connolly, 308 Mass. 481, 33 N.E.2d 303 (1941); United States v. Rosner, 352 F. Supp. 915 (S.D.N.Y. 1972) (18 U.S.C. §201 [b] expressly prohibits indirect as well as direct payments); West Virginia Code §61-5A-3 (1976) (directly or indirectly); State v. Ferro, 128 N.J. Super. 353, 320 A.2d 177 (1974) (statute covers the peddling of influence by person in an apparent position of access to a public official).

[158] See, e.g., 18 U.S.C. §201(b) and (c) ("any other person or entity"); New York Penal Law §10.00(17) (McKinney, 1975) (defines "benefit" as "any gain or advantage to the beneficiary or to any third person designated by the beneficiary.")

contributions.[159] Indeed, some statutes specifically exempt campaign contributions from bribery provisions.[160]

Generally, a "benefit" or "thing of value" must be offered

[159]This was done in United States v. Brewster, 506 F.2d 62 (D.C. Cir. 1974). There, the court distinguished lawful campaign contributions from "illegal graft," (prohibited by 18 U.S.C. §201 [g]) and graft from bribery.

One difference is the requisite intent. For bribery, the intent can be conceived of as ". . . incorporating a concept of the bribe being the prime mover or producer of the official act." Id. at 82. For gratuities, the intent

> . . . carries the concept of the official act being done anyway, but the payment only being made because of a specifically identified act, and with a certain guilty knowledge . . . [k]nowledge [under the section requires] that the donor was paying him compensation for an official act.

Id. Lawful political contributions, in contrast, compensate no specifically identified act.

A second difference recognized by the court concerns who actually receives the money.

> [I]f the [campaign] Committee was not an alter ego for [the defendant], any payments it received were not funds received by [the defendant] for himself and could not support a conviction under section 201(g).

Id. at 81.

[160]For example, Me. Rev. Stat. title 17-A, §601 (1976) reads:

> Nothing in this chapter shall be construed to prohibit the giving or receiving of campaign contributions made for the purpose of defraying the costs of a political campaign. No person shall be convicted of an offense solely on the evidence that a campaign contribution was made, and that an appointment or nomination was subsequently made by the person to whose campaign or political party the contribution was made.

Other statutes achieve the same result by requiring that the offer and acceptance both be made "corruptly." See, e.g., Fla. Stat. §838-015(1976); Mass. Gen. Laws Ann. §268A:2 (West 1968); Mich. Comp. Laws §28.32 (1970); Vt. Stat. Ann. title 13 §1101 (1974).

to or agreed to be accepted by the official.[161] Although payments of cash are almost invariably involved, this is not necessary.[162] The benefit must be something of value to the person receiving it.[163]

(iii) State of mind

In the majority of jurisdictions, the requisite state of mind that must be present when the conduct is engaged in for the offerer of a bribe is a specific intent to influence an official act.[164] Generally, the statutes do not specify what state of mind is required on the part of the public official being bribed, but the requirement of an agreement implies that intent

[161] Although some statutes speak in terms of a "gift" (Okla. Stat. title 21, §381 (1958); S.C. Code §16-211 (1962)), others speak of a bribe. See Cal. Pen Code §§67, 68, 92, 93, 85, 86 (West 1970); Idaho Code §18-2701 (1948); Md. Crim. Laws 27:23 (1976); N.J. Rev. Stat. §2A:93-1 (1952). Others require a benefit "not authorized." See, e.g., Ill. Rev. Stat. ch. 38 §33-1 (1972).

[162] See, e.g., United States v. Pommerening, 500 F.2d 92, (10th Cir. 1974) cert. denied 419 U.S. 1088, reh. denied 420 U.S. 939 (1975); Commonwealth v. Albert, 307 Mass. 239, 29 N.E.2d 817 (1940).

[163] See, e.g., Commonwealth v. Hayes, 311 Mass. 21, 40 N.E.2d 27 (1942). But the benefit must not be so nebulous or contingent as to create speculation as to its real value. People v. Cavan, 84 Misc.2d 510, 376 N.Y.S.2d 65 (Sup. Ct. 1975) (offer to turn state's evidence held not to constitute benefit); People v. Adams, 382 N.Y.S.2d 879 (Suffolk Co. Ct. 1976) (political benefit found too uncertain.)

[164] See, Appendix A, infra. Some bribery statutes omit any state of mind requirement. In those cases a general state of mind section of the statute applies. See, e.g., New York Penal Law §200.00 (McKinney, 1975) (bribery in the second degree); and New York Penal Law §15.15(2) (McKinney, 1975) (concerning state of mind requirement).

to be influenced is also required on his part.[165] "[T]he bribe is the mover or producer of the official act."[166] The payment and receipt of a bribe are not interdependent offenses in that the offerer's intent may differ from the official's.[167] The offerer may be convicted of giving a bribe despite the fact that the recipient had no intention of altering his official activities, or even lacked the power to do so.[168]

Finally, the state of mind usually required for both parties as to the attendant circumstances is knowledge.[169]

---

[165] See Appendix A, infra. Some states do, however, specifically require an intent on the part of the public official. Mass. Gen. Law Ann. §268A:2 (1968); Ga. Code §26-2301 (1972); Md. Crim. Law §27:23 (1976). At the other end, other states only require that the official accept the benefit with knowledge of the offerer's intent. Miss. Code Ann. &97-11-13 (1972); N.H. Rev. Stat. Ann. §640:2(I)(6) (1974); N.J. Rev. Stat. §2A:93-1 (1952). See, State v. Begyn, 34 N.J. 35, 167 A.2d 661 (1961).

[166] United States v. Brewster, 506 F.2d 62, 72 (D.C. Cir. 1974).

[167] United States v. Anderson, 509 F.2d 312 (D.C. Cir. 1974), cert. denied, 420 U.S. 991 (1975). See also, 20 ALR Fed. 950 and cases cited.

[168] See, e.g., Commonwealth v. Hurley, 311 Mass. 78, 40 N.E.2d 248 (1942).

[169] See, e.g., Commonwealth v. Albert, 307 Mass. 239, 29 N.E. 2d 817 (1940); Penal Law §5.15 (McKinney 1976). The federal courts are in disagreement as to whether there must be a state of mind showing regarding the interstate travel or use of interstate facilities requirement in prosecutions under federal bribery statutes where that circumstance allows jurisdiction. United States v. Barrows; 363 F.2d 62 (3d Cir. 1966), cert. denied, 365 U.S. 1001 (1967), and United States v. Ruthstein, 414 F.2d 1079, (7th Cir. 1969), require knowing interstate travel or use of interstate facilities to achieve the illegal act. Four other circuits, however, have rejected the necessity for such showing. United States v. Roselli, 432 F.2d 879, (9th Cir. 1970), cert. denied, 401 U.S. 924 (1971), rehearing denied, 402 U.S. 924 (1971); United States v. Hanon, 428 F.2d 101 (8th Cir. 1970),

2. Extortion

a. Historical development

The crime of extortion at common law was defined as

> any officer's unlawfully taking, by color of his office, from any man, any money or thing of value that is not due to him, or more than is due, or before it is due.[170]

The crime of extortion could be committed only by public officials, and it proscribed virtually every form of graft by forbidding the receipt of any unauthorized payment. Statutes prohibiting extortion by public officials existed as early as 1275.[171] Punishments for extortion were harsh; Coke cites a common punishment as being forfeiture of office, expulsion from the court, one years' imprisonment, and payment of treble damages to the victim of the extortion.[172]

---

169 (continued) cert. denied, 402 U.S. 952 (1970); United States v. Doolittle, 507 F.2d 1368, aff'd., 518 F.2d 500 (5th Cir. 1975); United States v. Le Faiver, 507 F.2d 1288, (4th Cir. 1974), cert. denied, 420 U.S. 1004 (1975).

170 4. W. Blackstone, Commentaries on the Laws of England §141 (2nd ed. 1765). How much was due an officer performing a particular function was published by act of parliament for the purpose of discouraging extortion by informaing the citizenry. 2. E. Coke, Institutes of the Laws of England, 467 (1817 ed.).

171 The Statute of Westminster I (3 Edw. 1, c. 26) (1275) provided:

> no sheriff nor other of the King's officers take any reward to do his office, but shall be paid of that which they take by the King; and he that so doth shall yield twice as much and shall be punished at the King's pleasure.

1.J. Russell On Crime, 418 (Turner, ed. 1958).

172 3. E. Coke, Institutes of the Laws of England, 150 (1817 ed). Another commentator, in 1883, implied that the punishment

In the late 1800's, a new element was added. To be found guilty of extortion, the official must have possessed a corrupt motive.[173]

> [Extortion], [i]mplying a corrupt mind,.... is not committed when the fee comes voluntarily, in return for real benefits conferred by extra exertions put forth.[174]

A different crime, robbery by menace,[175] which has come to be known as blackmail,[176] made it illegal for private individuals to extort property by means of threats of force or false accusations.[177] The element of threat required for this crime was not required when extortion by an official was involved, since the phrase "by color of office" legally recognized that potential use of an official's power is an implicit threat when an official seeks an unauthorized benefit.

Modern statutes continue to make extortion illegal, but

172(continued)
varied with the degree of harm to the victim who did not pay. A judge who was paid and, therefore, had a man put to death, suffered capital punishment. Generally, however, punishment consisted of fourfold damages. 1. J. Stephen, History of the Criminal Law of England 22 (1883).

173 See, W. Wharton, Criminal Law, 757-758 (1874). Wharton stated the crime as requiring both a corrupt motive in the taking of the fee, and that the acceptance be complete. Mere agreement only amounted to attempt.

174 2. J. Bishop, Commentaries on the Criminal Law 244 (2d ed. 1859).

175 4. W. Blackstone, Commentaries on the Laws of England §244 (2nd ed. 1765).

176 See, United States v. Nardello, 393 U.S. 286, 289 (1969).

177 See, e.g., statutes listed at 3. J. Stephen, History of the Criminal Law of England, 149 (1883).

in recent years the concept has been statutorily expanded to include the obtaining of property by private individuals through the use of force, fear, or duress.

b. Elements of the offense

(i) Conduct

Despite the lack of uniformity among state statutes covering extortion,[178] the dual concept of extortion, reflected in the Hobbs Act [179] on the federal level, pervades all. The Hobbs Act defines extortion as

> the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right.[180]

This section defines two separate offenses. The first offense applies to anyone who, through the use of fear, inducement, or threats, obtains property of antoher with his consent. The second, recently recognized,[181] offense applies only to a public

---

[178] See, Appendix B, infra.

[179] 18 U.S.C. §1951 (1970). This is the main federal extortion statute. Other federal extortion legislation includes: 18 U.S.C. §872 (1970) (extortion by an officer or employee of the United States, acting under color of office); 26 U.S.C. §7214 (a) (1970) (extortion by revenue agent); 18 U.S.C. §874 (1970) (public works extortion); 18 U.S.C. §875(a) (1970) (re: kidnapping); 18 U.S.C. §875(b) (1970) (communication with intent to extort) (threat to kidnap or injure); 18 U.S.C. §§876, 877 (1970) (use of mails to commit extortion); 18 U.S.C. §894 (1970) (extortionate credit transactions) 18 U.S.C. §1952 (1970) ("Travel Act"--use of interstate commerce or facilities to commit state crimes).

[180] 18 U.S.C. §1951(b)(2)(1970). State extortion statutes adopting this definition, with minimal differences, are: Cal. Penal Code §518 (1970); Idaho Code §18-2801 (1948); Okla. Stat. tit. 21 §1481 (1958).

[181] This separate second offense was not recognized by the courts

official, and it prohibits the mere intentional receipt by him of an unauthorized payment;[182] no coercion or threat need be shown. One offense involves the wrongful use of fear; the other offense involves the wrongful use of office.

Similarly, state statutes distinguish between these two types of extortion.[183] Many statutes punish what can be termed "private" extortion by prohibiting any person from obtaining the property of another by threats of injury, property damage, or the like.[184] Many states also allow an extortion conviction on proof of the mere communication of such threat before any

---

181(continued)
until 1972 in United States v. Kenny, 462 F.2d 1205 (3rd Cir. 1972), cert. denied, 409 U.S. 914 (1973). This offense, however, was the only one with which the common law definition of extortion was concerned. See, text accompanying note 170, supra. See also, United States v. Mazzei, 521 F.2d 639, 645 (3rd Cir.), cert. denied, 423 U.S. 1014 (1975), where the court said:

> under the common law definition of extortion, color of public office took the place of the coercion implied in the ordinary meaning of the word extortion.

182 Id. See also, United States v. Hall, 536 F.2d 386 (10th Cir. 1976); United States v. Hathaway, 534 F.2d 386 (1st Cir. 1976); United States v. Trotta, 525 F.2d 1096 (2nd Cir. 1975), cert. denied, 425 U.S. 971 (1976); United States v. Mazzei, 521 F.2d 639 (3rd Cir.), cert. denied, 423 U.S. 1014 (1975); United States v. Price, 507 F.2d 1349 (4th Cir. 1974); United States v. Braasch, 505 F.2d 139 (7th Cir. 1974), cert. denied, 421 U.S. 190 (1974); United States v. Crowley, 504 F.2d 992 (7th Cir. 1974); United States v. Staszcuk, 502 F.2d 875 (7th Cir. 1974).

183 California, Idaho and Oklahoma track the Hobbs Act fairly closely. See, note 180, supra.

184 Ark. Stat. Ann. §§41-2203(1)(b) (1975), Ind. Code Ann. §35-43-4-2-(i)(6) (Burns 1976 Supp.), Me. Rev. Stat. Ann., tit. 17A, §355 (1976), Ky. Rev. Stat. Ann. §514.080 (Baldwin 1975), Miss. Code Ann. §97-3-77 (1973), Mo. Ann. Stat. §560.130 (Vernon 1953), N.D. Cent. Code §12.1-23-02.2 (1976).

receipt of property by the extortionist.[185] Under both types of statute, the threat which, standing alone or coupled with receipt of property, is proscribed is one that instills fear in the victim. Another prevalent statutory type spells this out clearly by prohibiting the obtaining of another's property by instilling fear of injury, damage to reputation, or use or abuse of (the extortionist's) position as a public servant.[186] Even though these statutes may be applied to public officials, they remain "private" extortion statutes in that they require proof that the extortionist put the victim in fear; the public official's position is not enough in and of itself to legally imply the fear. This crime is uniformly classified as a felony.

In "private" extortion prosecutions "fear" is generally given an objective meaning, and the prosecution must show the fear that induced the victim to part with his property was reasonable in the circumstances.[187] It has been held unnecessary

---

[185] See, e.g., Mass. Ann. Laws ch. 265, §25 (1968), N.M. Stat. Ann. §40A-16-8 (1972), N.C. Gen. Stat. §14-118.4 (1975 Supp.), Tenn. Code Ann. §39-4301 (1975), Wis. Stat. Ann. §943.30 (West 1976 Supp.), Wyo. Stat. §6-147 (1959), Mich. Comp. Laws Ann., Mich. Stat. Ann. §28.410 (1962), Ohio Rev. Code Ann. §2905.11 (Page 1975).

[186] See, e.g., Alaska Stat. §11.20.345 (1976 Supp.), Ga. Code Ann. §26-1804 889-909 (West), Conn. Gen. Stat. Ann. §53a-119(5) (1976 Supp.) (West), Del. Code tit. 11, §846 (1975), Mass. Ann. Laws ch. 265, §25 (Michie/Law. Co-op 1968), Mont. Rev. Codes Ann. §94-6-302 (1976 Supp.), N.Y. Penal Law §155.05(2)(e) (McKinney 1975), Ore. Rev. Stat. §164.075 (1975), Pa. Cons. Stat. Ann. tit. 18, §3923 (Purdon), S.D. Compiled Laws Ann. §22-30A-4 (Supp. 1976), Wash. Rev. Code Ann. §9A.56.110 (Supp. 1976).

[187] See, e.g., United States v. Quinn, 514 F.2d 1250 (5th Cir.), cert. denied, 424 U.S. 955 (1975); United States v. Tolub, 309 F.2d 286 (2nd Cir. 1962); People v. Thompson, 97 N.Y. 313 (1884). In the federal jurisdiction, it is unnecessary that the prosecution

for the prosecution to prove that the defendant himself induced the fear. It is sufficient that he exploits it.[188] Generally, the fear need not be fear of personal injury; fear of economic loss may suffice.[189] The government also need not show that the extortionist derived any personal benefit from his victim's loss.[190] And it is often no defense that the public official, if one is involved, did not actually have the power to achieve the desired result, as long as the victim believed he did.[191]

The second kind of extortion, that involving the wrongful use of office by a public official, is prohibited by statute in many states. It is generally phrased in terms of the demanding, exacting or receiving by a public officer a fee or

187(continued)
prove the fear was a consequence of a direct threat, if under the circumstances the victim's fear was reasonable. The defendant's reputation for violence can be a crucial factor in determining the reasonableness of the victim's fear. See, United States v. Stubbs, 476 F.2d 626 (6th Cir. 1973); United States v. DeMasi, 445 F.2d 251, 257 (2nd Cir.), cert. denied, 404 U.S. 882 (1971).

188United States v. Crowley, 504 F.2d 992 (7th Cir. 1974); United States v. Gordon, 449 F.2d 100 (3rd Cir. 1971), cert. denied, 404 U.S. 1058 (1972).

189See, e.g., United States v. Emalfarb, 484 F.2d 787 (7th Cir.), cert. denied, 414 U.S. 1064 (1973); United States v. Addonizio, 451 F.2d 49 (3rd Cir.), cert. denied, 405 U.S. 936, rehearing denied, 405 U.S. 1048 (1972); People v. Dougardi, 8 N.Y.2d 260, 203 N.Y.S.2d 870 (1960); Commonwealth v. Albert, 307 Mass. 239, 29 N.E.2d 817 (1940).

190See, e.g., United States v. Green, 350 U.S. 415 (1955); United States v. Jacobs, 451 F.2d 530 (5th Cir. 1971). But see, N.Y. Penal Law §155.05 (1976). If the delivery is not completed, the criminal may not be prosecuted under this section but he may be prosecuted for attempt, N.Y. Penal Law §20.00 (McKinney, 1975).

191See, e.g., United States v. Mazzei, 521 F.2d 639 (3rd Cir.), cert. denied, 423 U.S. 1014 (1974).

thing of value not authorized.[192] The crime is usually classified as a misdemeanor. No element of fear or coercion is necessary, and in some instances, no demand need be made.[193]

(ii) Attendant circumstances

The federal extortion statute[194] and those states with statutes similar to it[195] prohibit both kinds of extortion, private and official. For private extortion, involving the use of fear, the government must show, not only that the victim parted with property out of fear, but also that the payment was "wrongful." Although the statutory wording implies that "wrongful" modifies the phrases concerning the use of force or fear, the Supreme Court has held that "wrongful" limits the coverage of the act to those instances in which the extortionist has no lawful claim to the property sought.[196] The Court reasoned that it would be redundant to speak of "wrongful violence" or "wrongful force."[197] The sections of the statutes

[192] See, e.g., Ga. Code §89-9909, 9910 (1972); Ind. Code §17-2-44-7 (1975); Md. Crim. Law 27:23 (1976); Mass. Gen. Laws Ann. 268A:2 (West 1968); Mich. Comp. Laws §28.411 (1970); Miss. Code Ann §97-11-33 (1972); Mo. Rev. Stat. §558-140 (1969); N.J. Rev. Stat. §2A:105-1 (1952); Pa. Cons. Stat. Ann. tit. 65 §133 (1975 Purdon); Va. Code §18.2-470 (1950); Wash. Rev. Code Ann. §42.18.210 (1970).

[193] See, e.g., State v. Savoie, 128 N.J. Super. 329, 320 A.2d 164 (1974); Contra, Mich. Stat. Ann. §28.411 (1962).

[194] 18 U.S.C. §1951 (1970).

[195] California's, Idaho's and Oklahoma's statutes fall in this category, see, note 180 supra.

[196] United States v. Emmons, 410 U.S. 396 (1973).

[197] Id. at 399-400.

covering official extortion require proof of the attendant circumstance that the taking was "under color of official right."[198]

Those state statutes directed against the wrongful use of fear,[199] whether by a public official or private individual, also require proof that the victim parted with his property out of fear[200] and that the payment was wrongful.[201]

Those state statutes directed against the wrongful use of office[202] by a public official generally require proof that the defendant was a public official, that the fee was "not authorized," and that it was demanded or received "unlawfully," or "for doing his office."[203]

(iii) State of mind

The statutes that are concerned with the taking of property by threatening or otherwise instilling fear require an intent to deprive[204] and an intent to instill fear.[205]

[198] See, e.g., Cal. Penal Code §518 (1970).

[199] See, note 186, supra.

[200] See, e.g., N.Y. Penal Law §155.05(a)(3) (McKinney, 1975) ("by means of instilling in him a fear").

[201] See, e.g., N.Y. Penal Law §155.05(2) (McKinney, 1975) ("larceny includes a wrongful taking, obtaining or witholding").

[202] See, note 192, supra.

[203] See, e.g., N.J. Rev. Stat. §2A:105-1 (1952).

[204] See, e.g., N.Y. Penal Law §155.05(1) (McKinney, 1975) ("intent to deprive"); United States v. Braasch, 505 F.2d 139 (7th Cir. 1974), cert. denied, 421 U.S. 910 (1975) (knowledge of the victim's fear, coupled with intent to exploit it held sufficient); Mich. Stat. Ann. §28:410 (1962); Mass. Gen. Laws Ann. ch. 265 §25 (1968); Pa. Stat. Ann. tit. 18 §§4702, 3923 (1973).

[205] The common requirement of a threat furnishes proof of an intent to instill fear. See statutes at note 185, supra.

The statutes concerned with the taking by a public official of a fee not authorized by law generally require an intent to take the fee. Usually, under this type of statute, the proof of receipt of a knowingly unlawful payment by an official in connection with his duties is sufficient to prove the necessary criminal intent.[206]

Under either type of statute, if a scheme of extortion can be shown (for example, a custom of policemen demanding money from bar owners in return for not carding and harassing customers), receipt of money by a public official with knowledge of that scheme can be considered tantamount to proof of intent.[207]

c. Extortion distinguished from bribery

The extortion statutes that are concerned with a public official's taking of an unauthorized fee, in essence, codify the common law definition of extortion. Similarly, the "under color of official right" offense under the Hobbs Act,[208]

> repeats the common law definition of extortion, a crime which could only be committed by a public official, and which did not require proof of threat, fear, or duress.[209]

Absent the coercive element generally associated with the crime

---

[206] See, e.g., State v. Begyn, 34 N.J. 35, 167 A.2d 161 (1961).

[207] See, United States v. Braasch, 505 F.2d 139 (7th Cir. 1974), cert. denied, 421 U.S. 910 (1974).

[208] See, text accompanying notes 181 and 182, supra.

[209] United States v. Kenny, 462 F.2d 1205, 1229 (3rd Cir.), cert. denied, 409 U.S. 914 (1972).

of extortion, there is, therefore, little distinction between extortion and bribery.

Nevertheless, some decisions have found that distinction crucial. In United States v. Kubacki,[210] for example, the prosecution failed to secure a conviction for extortion against a public official under the Hobbs Act because the court held that bribery and extortion were mutually exclusive crimes.[211] The defendant successfully argued that his acts constituted bribery, not extortion. In a trend beginning in the 1970's, the federal courts, however, have rejected the Kubacki holding.[212] In United States v. Braasch,[213] for example, the court held that if the motivation for the payment focuses on the recipient's office, the conduct falls within the Hobbs Act; it is immaterial that the conduct might also constitute classic bribery.[214]

If this trend back to the common law definition of extortion is followed by the states, any difference between bribery and

[210] 237 F. Supp. 638 (E.D. Pa. 1965). This case has been criticized in more recent times. Stern, "Prosecutions of Local Political Corruption Under the Hobbs Act: The Unnecessary Distinction Between Bribery and Extortion." 3 Seton Hall L. Rev. 1 (1971); Note, 5 Loy. Chi. L.J. 513 (1974).

[211] Id. at 641.

[212] New York, by statute, has also rejected the concept that, regarding the public official, bribery and extortion are mutually exclusive offenses. See, N.Y. Penal Law §200.15 (McKinney 1975) and comment, explaining the entire scheme. Nevertheless, proof of extortion is a complete defense for a victim charged with bribe giving. N.Y. Penal Law §200.05 (McKinney, 1975).

[213] 505 F.2d 139 (7th Cir.), cert. denied, 421 U.S. 910 (1974).

[214] Id. at 151.

extortion by a public official will disappear.[215] The Model Penal Code[216] definition of extortion closely resembles bribery; the distinction lies in that extortion requires an element of "intimidation."[217] Where fear, threats or other forms of intimidation are required for extortion, classic bribery conduct does not amount to extortion.[218]

3. Graft

a. Elements of the offense

(i) Conduct

In those states having graft statutes,[219] the crime of

---

[215] See supra note 212.

[216] Model Penal Code §206.3, Comment (Tent. Draft No. 2, 1954).

[217] Id. A New Jersey case distinguishes the two on the ground that bribery involves the offering and receiving of a present, whereas extortion is the demanding of an illegal fee or present by color of office. State v. Seaman, 114 N.J. Super. 19, 274 A.2d 810 (1971), cert. denied, 404 U.S. 1015 (1972).

[218] Classic extortion conduct, however, does necessarily make the public official guilty of bribery. An official who extorts payments through threats or coercion is inevitably implying that he will thereby be influenced in his official capacity. Accordingly, it is impossible to extort payment without concomitantly receiving a bribe as defined in most statutes.

[219] Many states have no statutory provisions for graft: Connecticut, but see, Conn. Gen. Stat. §29-9 (1977) (gifts to police); Kentucky, but see, Ky. Rev. Stat. §61.310 (1970) (gratuities to peace officers) and Ky. Rev. Stat. §61.096 (prohibited conflicts of interest); Louisiana, but see, La. Rev. Stat. Ann. §14:141 (1950) (splitting of profits) and La. Rev. Stat. An.. §14:140 (1950) (public contract fraud); Maryland, but see, Md. Estates & Trusts Code Ann §2-203 (1974) (fees and gifts to register prohibited) and Md. Agriculture Code Ann. §7-325 (1974) (acceptance of gifts by tobacco inspector); Michigan, but see, Mich. Comp. Laws §28.364(2) (gifts to court officers for procurring bondsmen) and Mich. Comp. Laws §4.1700(52) (1970) (conflicts of interest in contracts); New Mexico, but see, N.M. Stat. Ann. §68-405 (1953) (commissioners accepting gratuites) and

graft is usually a misdemeanor.[220] Usually, the conduct of the one dealing with the public official proscribed is "giving," "offering," or "promising" something of value; the receiver is prohibited from "accepting" or "agreeing to accept" a benefit or promise of benefit. Some statutes define graft in terms that require a benefit conferred in return for past official conduct, while bribery requires a benefit conferred in return for future official conduct.[221] In other cases, bribery requires proof of a specific intent to influence official conduct, or to be influenced in official conduct, while graft requires no such proof.[222]

(ii) Attendant circumstances

As with bribery, the recipient must be a public servant

219(continued)
N.M. Stat. Ann. §14-9-6 (1953) (mayor or officers receiving fees); North Carolina, but see N.C. Gen. Stat. §14-234 (1969) (commissioner contracting to own benefit); North Dakota; Pennsylvania, but see, Pa. Cons. Stat. tit. 46 §143.5 (1969) (legislative code of ethics--prohibitions) and tit. 16 §§7802, 4803 (receiving gratuities--1st & 2nd class counties) and 16 §7514 (1956) (private gifts or payments to police officers); Tennessee, but see, Tenn. Code Ann. §57-808 (1968) (liquore commissioner prohibited from accepting gifts); Vermont; and Wyoming.

220See, Appendix C, infra, for state statutes, their provisions and penalties.

221See, e.g., N.Y. Penal Law §§200.20, 200.22, 200.25, 200.27, 200.30 (McKinney, 1975).

222See, United States v. Irwin, 354 F.2d 192 (2d Cir. 1965) and United States v. Brewster, 506 F.2d 192 (D.C. Cir. 1974) which define the intent requirements of the federal graft statute, 18 U.S.C. §201(f) and (g) (1970), and compare them to the intent requirements for bribery.

or official, and he must ask for or be offered "something of value" or "compensation."[223]

Many jurisdictions require that, to constitute graft, the offer of a benefit or agreement to accept a benefit be "for a past official act."[224] This behavior is prohibited because it is feared that "tipping" will encourage preferential official treatment to those who pay and put pressure on all individuals to "tip" or risk disfavor. Such practices seriously undermine the integrity of government.

Often statutes specify that the payment must be "otherwise than as provided for by law."[225] This clause implies both an attendant circumstance and a state of mind requirement. The prosecution must prove both that the fee transferred was not provided for by law and that the defendant knew that the fee transferred was not provided for by law. An offer or solicitation prompted through mistake or other innocent reasons is not graft.[226]

---

[223]These issues are discussed in relation to bribery. See, text accompanying notes 154-163, supra.

[224]See, e.g., R.I. Gen. Laws §11-7-3 (1976); Texas Penal Code Ann. tit. 8 §36.07 (Vernon 1974); Utah Code Ann. §76-8-105 (1953); W. Va. Code §61-5A-4 (1977).

[225]See, e.g., 18 U.S.C. §201(f) and (g) (1970); Alaska Stat. §11.30.230 (1962); Ca. Penal Code §70 (1970); Colo. Rev. Stat. §18-8-304 (1973); Del. Code tit. 11 §1205 (1974); D.C. Code §1-1181(d) (1973); Fla. Stat. §838.016(1) (1976); Ga. Code §§89-9909, 89-9910 (1972); Ind. Code §4-2-6-5 (1975); Iowa Code §2102 (1946); Mass. Gen. Laws Ann. ch. 268A §3 (1968); Miss. Code Ann. §97-11-33 (1942); Okla. Stat. tit. 74 §1409 (1958); S.D. Compiled Laws Ann. §22-12A-8 (1967); Wash. Rev. Code §42.22.40 (1972).

[226]See, e.g., United States v. Irwin, 354 F.2d 192, 197 (2nd Cir. 1965).

(iii) State of mind

Usually, graft is a crime that does not require a specific state of mind on the defendant's part; he need only have knowledge that the benefit transferred was not provided for by law.[227] The elimination of the element of intent to influence was explained in United States v. Irwin.[228]

> The rewarding of gifts thus related to an employee's official acts is an evil in itself, even though the donor does not corruptly intend to influence the employee's official acts, because it tends, subtly or otherwise, to bring about preferential treatment by government officials or employees, consciously or unconsciously, for those who give gifts as distinguished from those who do not.[229]

b. Graft distinguished from extortion and bribery

It is accurate to conceptualize these three crimes on a continuum of criminal culpability where extortion, requiring the greatest culpability, merges into bribery,[230] which then

[227] See, Cal. Penal Code §70 (1970); Colo. Rev. Stat. §18-8-304 (1973); Del. Code tit. 11 §§1205, 1206 (1974); D.C. Code §1-1181(d) (1973); Ga. Code §§89-9909, 89-9910 (1972); Haw. Rev. Stat. §84-11 (1968); Ind. Code §4-2-6-5 (1975); Iowa Code §2102 (1946); Me. Rev. Stat. tit. 170A §605 (1968); Miss. Code Ann. §97-11-33 (1942); Mont. Rev. Codes Ann. §94-7-104 (1947); N.H. Rev. Stat. Ann. §640:5 (1974); N.Y. Penal Law §200.30 (McKinney 1975); Okla. Stat. tit. 74 §§1404(E), 1409(f) (1958); Or. Rev. Stat. §244.040(2)(5) (1953); S.D. Compiled Laws Ann. §22-12A-8 (1967); Tex. Penal Code Ann. tit. 8 §36.08 (Vernon 1974); Utah Code Ann. §67-16-5 (1953); Va. Code §2.1-351(c) (1950); Wash. Rev. Code §42.22.040(2) (1972); W. Va. Code §61-5A-6(a) (1977).

[228] 354 F.2d 192 (2d Cir. 1965).

[229] Id. at 196.

[230] See, discussion of bribery distinguished from extortion at text accompanying notes 208-18, supra.

merges into graft, requiring little culpability.[231] In the federal jurisdiction, and in those states that have separate statutes for extortion, bribery and gratuities,[232] the fundamental state of mind distinction among the crimes is intent to influence for extortion and bribery, but knowledge for gratuities.[233] Often, too, there is a distinction between bribery and gratuities in reference to the element of the line of the required conduct; a bribe must be offered before the occurrence of the official action, that the bribe was intended to influence, while a gratuity may be paid before or after the official act being rewarded.[234] The conduct required under statutes sanctioning common law extortion is generally identical to that required under graft statutes.[235] Often, however, the intent required under the two crimes will differ.

[231] In the federal jurisdiction, for example, graft is considered a lesser included offense of bribery. United States v. Amans, 368 F.2d 725 (2nd Cir. 1966), cert. dismissed, 389 U.S. 80 (1967). See also, United States v. Brewster, 506 F.2d 62 (D.C. Cir. 1974).

[232] See, Appendices for statutes of California, New York, Massachusetts, Florida, and New Jersey.

[233] Often, no state of mind requirement is specified in graft statutes, and knowledge must be implied. Such mens rea is necessary to distinguish unlawful gratuities from legitimate campaign contributions. See, United States v. Brewster, 506 F.2d 62 (D.C. Cir. 1974).

[234] See, e.g., United States v. Cohen, 387 F.2d 803 (2d Cir. 1967), interpreting the federal statutes.

[235] See, e.g., 18 U.S.C §201(f) and (g) (1970) (gratuity is the receipt of a thing of value, for or because of an official act), contrasted to 18 U.S.C. §1951 (1970) (extortion is the obtaining of another's property, with consent, induced under color of official right).

It appears that when intent to influence is required for official extortion, but only knowledge for graft, extortion is punished much more severely than graft.[236] When knowledge is required for both, both crimes are generally classified as misdemeanors.[237]

4. Immunities

The statement of substantive liability found on the face of criminal statutes cannot be taken at face value in the area of legislative corruption. The investigation and prosecution of legislative officers for such offenses as bribery, extortion, or graft is sharply circumscribed by the Speech and Debate clause of the United States Constitution[238] and similar state provisions.[239] Because of its importance in this significant area of official corruption, and because it is not widely understood, it merits extended treatment. But its understanding first requires an understanding of English history.

---

[236] See, e.g., 18 U.S.C. §201(f) and (g) (1970) (gratuities--maximum 2 years); 18 U.S.C. §1951 (1970) (extortion--maximum 20 years).

[237] See, e.g., Ca. Penal Code §§70,94, 518 (1970); Fla. Stat. §§838.016, 839.11 (1975).

[238] U.S. Const. art. I, §6:

> The Senators and Representatives shall . . . in all cases except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other place.

[239] Forty-three state constitutions contain such clauses. Index Digest of State Constitutions, p. 651 (1959); Note,"Constitutional Law-Legislative Freedom of Speech-Constitutional Privilege Available to Congressman Charged with Bribery," 50 Iowa L. Rev. 893, 895-96, n. 13 (1965).

a. Historical development

The doctrine of legislative privilege has its historical roots in the struggle between Parliament and the Crown to establish their respective powers in England.[240] As first conceived, the privilege afforded little protection to members of Parliament against the Crown's frequent attacks.[241] It was

[240] See generally, C. Wittke, The History of English Parliamentary Privilege (1921); T. Taswell-Langmead, English Constitutional History From the Tutonic Conquest To The Present Time (11th ed. 1960).

[241] The origin of the privilege has been dated as 1397, the year of Haxey's case. Rotuli Parliamentorum III at 388-9, 341 (1397) (conviction); id. at 434 (1399) (rehabilitation). Haxey, an important aide to Parliament, drew up of routine criticism of the Crown. For reasons unknown, Richard II prevailed upon the House of Lords to find such an onslaught traitorous. Haxey's life was spared because he was also a clergyman. The judgment, however, was later reversed during the reign of Henry IV, Richard's successor, because the judgment had been "encontre droit et la curse avoit este devant en Parlement." 3 W. Stubbs, Constitutional History of England 508 n.1 (Oxford ed. 1903).

In 1512, Parliament sought to protect its independence and enlarge its sphere of influence by enacting the Privilege of Parliament Act, 4 Hen. 8, c. 8 (1512), which annulled the prosecution of a member for activities engaged in during the Proceedings of Parliament. The passage of this bill was prompted by the prosecution and conviction of Richard Strode, a member of Commons, for introducing legislation regulating the tin industry. He was charged with having violated a local ordinance prohibiting the obstruction of mining. His release was secured through the passage of this bill.

This privilege was later formalized into the Speaker's Petition of 1541, but such measures did not prevent further harassment. In 1575, Peter Wentworth delivered a speech in the House of Commons highlighting the necessity of preserving the liberties of the House from interference by the Crown. For his efforts, Wentworth was imprisoned in the Tower of London.

These confrontations were not confined to the Tudor monarchy. This continued during the reign of the Stuart Kings. In 1621, James I, outraged by the House of Commons discussion of the Spanish marriage and the affairs of the Palatinate, dissolved the Parliament and sent several members of the House to the Tower as dangerous, libelous and seditious. A royally-dominated court

not until 1689, with the promulgation of the English Bill of Rights, that the ghost of monarchical interference was finally laid to rest.[242]

But while the existence of the privilege was not to be questioned, its proper scope and application were. The two seminal cases were Ex parte Wason[243] and Stockdale v. Hansard.[244]

In Wason, the English Court held that a conspiracy by a number of people, including Members of the House of Lords, to make false statements in the House was not an actionable offense. The courts were without power to question the motives of the members of Parliament.

In Stockdale, Lord Senman set for the classic description of the scope of the parliamentary privilege.

> [T]he privilege of having their debates unquestioned, though denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by the princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged. By consequence, whatever is done within the walls of either assembly must pass without question in any other place. For speeches made in Parliament

---

241 (continued)
found them guilty. In 1641, at their first opportunity, the House adopted a resolution declaring the proceedings against Eliot, Holles and Valentine to be an unwarranted invasion of their ancient rights, privileges and liberties. But it was not until 1667, following the Restoration, that the House sought to remove all doubt concerning the existence of the parliamentary privilege by declaring the Strode's Act to be general law, not limited to a specific case.

242. C. Wittke, supra note 240 at 30.

243 Q.B. 573 (1869).

244 112 Eng. Rep. 1112 (K.B. 1839).

> by a member to the prejudice of any other person, or hazardous to the public peace, that member enjoys complete impunity. For any paper signed by the Speaker by order of the House, though to thelast degree calumnious, or even if it brought personal suffering upon individuals, the Speaker cannot be arraigned in a court of justice. But if the calumnious or inflammatory speeches should be reported and published, the law will attach responsibility on the publisher.[245]

b. Evolution of the privilege in the United States

(i) Constitutional Convention

The men who drafted the Speech and Debate Clause at the Constitutional Convention were familiar with the history of the parliamentary privilege.[246] The Clause is a product of a lineage of free speech and debate guarantees from the English Bill of Rights to the first state constitutions.[247] and the Articles of Confederation.[248] Presumably, because the principle was so firmly rooted, there was little discussion of it at the Constitutional Convention[249] and virtually none during the ratification debates.[250] James Wilson, a member of the Con-

[245] 112 Eng. Rep. 1112, 1156 (K.B. 1839).

[246] See United States v. Johnson, 383 U.S. 169, 177-79 (1966).

[247] See Tenney v. Brandhove, 341 U.S. 367, 372-75 (1951). See also M. Clarke, Parliamentary Privilege in the American Colonies at 69-70, 93-131 (1943).

[248] Id.

[249] See 5 J. Elliot, Debates on the Federal Constitution 406 (2d ed. 1937). See also United States v. Johnson, 383 U.S. 169, 177 (1966).

[250] See 2 J. Elliot, Debates 52-54 (Massachusetts), 325 -329 (New York) (2d ed. 1937); 3 J. Elliot, Debates 368-75 (Virginia) (2d ed. 1937).

vention's Committee on Style, expressed the prevailing view that

> in order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty will occasion offense.[251]

Despite this attitude, the freedom of Congress to criticize the executive branch was challenged during the administration of John Adams, resulting in the indictment of one member of Congress[252] and the imprisonment of another.[253] As a result of public protest,[254] the right to criticize the Executive has been firmly established and has been unchallenged since the Adams administration.

(ii) Early American cases

Prior to 1972, the Speech or Debate Clause had received little authoritative judicial interpretation. The classic

---

[251] 1 Works of James Wilson 421 (McCloskey ed. 1967).

[252] In 1797, Congressman Samuel Cabell was indicted by a federal grand jury for criticizing the President's foreign policy in an undeclared war with France. See J. Smith, Freedoms Fetters: The Alien and Sedition Laws and American Civil Liberty at 95 (1956). Apparently, public outcry, led by Thomas Jefferson, was so great that Cabell never stood trial.

[253] In 1798, Congressman Matthew Lyon was fined $1000 and sentenced to four months in prison for violation of the Sedition Act. See J. Smith, supra note 252, at 220-36; Lyon's Case, No. 8646, 15 Fed. Cas. 1183 (Vt. Cir. 1798).

[254] 8 The Works of Thomas Jefferson 326 (1904).

interpretation was Coffin v. Coffin,[255] decided in 1808.[256] There, Chief Justice Parsons of the Supreme Judicial Court of Massachusetts offered the first American definition of the scope of the privilege.[257]

> These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I therefore think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech or haranguing in debate; but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature, and in the execution, of the office. And I would define the article, as securing to every member exemption from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office; without inquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules.[258]

The Supreme Court first interpreted the Speech or Debate

---

[255] 4 Mass. 1 (Suffolk County 1808).

[256] Micajah Coffin was sued by William Coffin for slander. Micajah had, while discussing a bill before the House, said that although William had been tried and acquitted of a bank robbery charge, that that didn't make him any less guilty. William had been a source of information for the pending bill.

[257] 4 Mass. at 4.

[258] Although this test is often quoted, and seems expansive, the court held the Micajah did not meet the test, and found him liable. See also, Cella, "The Docrtine of Legislative Privilege of Freedom of Speech and Debate: Its Past, Present and Future as a Bar to Prosecutions," 2 Suff. L. Rev. 1, 18-30 (1968).

Clause in Kilbourn v. Thompson,[259] decided in 1881. After approving the liberal constructionist dictum in Coffin, the Court stated that the Clause should be applied "to those things generally done in a session of the House by one of its members in relation to the business before it."[260] But in the very next sentence it drew back somewhat from the full implications of absolute immunity.

> It is not necessary to decide here that there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible. If we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the nation, or to follow the example of the French Assembly in assuming the function of a court for capital punishment, we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate.[261]

Thus, after defining the scope of the privilege, the Court

---

[259] 103 U.S. (1881). The court also dealt with Congressional power to punish for contempt. See generally, Cella, "The Doctrine of Legislative Privilege of Speech or Debate: The New Interpretation as a Threat to Legislative Coequality," 8 Suff. L. Rev. 1019, 1050-1052 (1974).

[260] 103 U.S. at 204. Hallett Kilbourn was a business associate of a real estate partnership, a firm which went bankrupt. The government, a creditor of the firm, sought to investigate. He was subpoenaed to appear before a committee of the House of Representatives. He appeared but did not answer all their questions. He was subsequently cited for contempt by a vote of the entire House. He was taken into custody by the Sergeant-at-Arms and imprisoned. Following his release, he brought suit against the Speaker of the House, the committee members and the Sergeant-at-Arms for false imprisonment.

[261] Id. at 204-205.

invoked the protection of the Clause for defendant members of Congress on the grounds that the acts complained of were an essential part of the legislative process. But it refused to extend the protection to the Sergeant-at-Arms.[262]

c. Modern cases

(i) Supreme Court

The Supreme Court was not faced again with interpreting the clause until 1951, when it decided Tenney v. Brandhove.[263] There, the Court expressed adherence to a broad liberal constructionist interpretation. Mr. Justice Frankfurter, speaking for the Court, wrote:

> The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of the Court in Fletcher v. Peck that it was not consonant with our scheme has remained unquestioned.[264]

Although expressing a note of expansive protection, the Court did specify a limitation: non-legislative activities, if not

[262] See generally Cella, supra note 259, at 1053-1067.

[263] 341 U.S. 367 (1951). At issue was whether the legislative protection afforded a member of the California legislature was a defense to suit brought under the Civil Rights statutes. Equating the state privilege with the federal, the Court held that a state legislative committee has an absolute privilege to investigate, even though the investigations might be unfair or damaging to individauls.

[264] 367 U.S. at 377, citing 10 U.S. (6 Cranch) 48, 72-73, 130 (1810).

considered evidence of the motive for legislation, would be proper subjects for inquiry.

In 1966, the Supreme Court interpreted the scope of the privilege in the context of a criminal case. In United States v. Johnson,[265] the Court was asked to review the conviction of a former Representative on seven counts of violating the federal conflict-of-interest statute,[266] and on one count of conspiring to defraud the United States.[267]

This last count alleged that the defendant Johnson was paid a bribe to obtain the dismissal of a pending mail-fraud indictment against officials of savings and loan associations. At trial, the Government questioned Johnson at length about a speech he had given on the House floor. The questioning dealt with the authorship of the speech, the factual basis of parts of the speech, and the speaker's motives. The Supreme Court, reversing the conviction, held

> that a prosecution under a general criminal statute dependant on such inquiries [into the speech or its preparation] necessarily contravenes the Speech or Debate Clause. We emphasize that our holding is limited to prosecutions involving circumstances such as those presented in the case before us.[268]

---

[265] 383 U.S. 169 (1966). See also Burton v. United States, 202 U.S. 344 (1906), where the Court upheld the conviction of a Senator who had been bribed in order to get a mail order indictment quashed, reasoning that the act was unprotected non-legislative conduct; and Williamson v. United States, 207 U.S. 425 (1908), where the Court rejected the claims of a Congressman convicted of perjury that any sentence of imprisonment would deprive him of his constitutional right to be privileged from arrest.

[266] 18 U.S.C. §281 (1970).

[267] 18 U.S.C. §371 (1970).

[268] 383 U.S. 169, 184, 185 (1966).

The Court also held that on remand the defendant could be retried on the conspiracy-to-defraud count, so long as no evidence concerning his speech on the House floor was admitted.

The Johnson opinion made three significant points. First, it stated that the Clause covers, in the language of Kilbourn, "things generally done in session of the House by one of its members in relation to the business before it."[269] Second, the opinion specifically left open the question of the validity of a prosecution that referred to legislative acts, but that was based on a "narrowly drawn" statute passed by Congress in the exercise of its power to regulate the conduct of its members.[270] Third, the opinion did not affect a prosecution that "does not draw into question the legislative acts of the defendant member of Congress or his motives for performing them."[271]

A year later, the Supreme Court decided Dombrowski v. Eastland.[272] In Dombrowski, the plaintiff brought suits for an injunction and for damages against a Senator who headed a subcommittee of the Senate Judiciary Committee and the counsel of the subcommittee for wrongful and unlawful seizure of property in violation of the Fourth Amendment. The Court

[269] Id. at 179, quoting Kilbourn v. Thompson, 103 U.S. 168, 204 (1881).

[270] 383 U.S. 169, 185 (1966).

[271] Id. at 185 (1966).

[272] 387 U.S. 82 (1967) (per curiam).

dismissed the complaint against the Senator because the record did "not contain evidence of his involvement in any activity that could result in liability."[273] The case was remanded against the counsel to determine whether he had acted outside of the protected legislative sphere.

In 1969, the Supreme Court again considered the scope of the Speech or Debate Clause in Powell v. McCormack.[274] Adam Clayton Powell, although elected to the House of Representatives, was excluded from his seat by a majority of the House because of alleged misdeeds. The Supreme Court held that the Clause did not bar all judicial review of legislative acts:

> The purpose of the protection afforded the legislators is not to forestall judicial review of legislative action but to insure that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions.[275]

Accordingly, the Court dismissed the action against the members of Congress, but allowed it to be maintained against the House employees. As in Kilbourn, the Court did not reach the question of whether the plaintiffs "would be entitled to maintain this action solely against members of Congress where no agents participated in the challenged action and no other remedy was available."[276]

---

[273] Id. at 84.

[274] 395 U.S. 486 (1969).

[275] Id. at 505.

[276] Id. at 506 note 26.

In 1972, the Court decided two important cases, United States v. Brewster[277] and Gravel v. United States.[278] Brewster, like Johnson, involved a criminal prosecution of a congressman accused of taking money in return for performing some legislative act on behalf of a private interest.[279]

The District Court, on defendant's pre-trial motion, dismissed all five counts on the grounds that the Speech or Debate Clause, as construed in Johnson, shielded him "from any prosecution for alleged bribery to perform a legislative act."[280] On direct appeal, the Supreme Court reversed, holding that the indictment did not necessitate any inquiry into the defendant's legislative act of voting. The Court stated:

> An examination of the indictment brought against appellee and the statutes upon which it is founded reveals that no inquiry into legislative acts or motivation for legislative acts is necessary for the Government to make out a prima facie case. The illegal conduct is taking or agreeing to take for a promise to act in a certain way. There is no need for the Government to show that appellee fulfilled the alleged illegal bargain: acceptance of the bribe is the violation of the statute, not performance of the illegal promise.[281]

The majority was able to distinguish the Johnson decision on the grounds of its narrow scope. In Johnson, the critical defect of the conviction was the prosecution's inquiry into

---

[277] 408 U.S. 501 (1972).

[278] 408 U.S. 606 (1972).

[279] 408 U.S. at 503.

[280] Id. at 504.

[281] Id. at 525, 526.

the defendant's speech and his motivation for making it. The Brewster case, however, involved no similar inquiry. Indeed, Brewster was seen to represent the type of case which was expressly excluded from the Johnson holding. As previously stated, the Court in Johnson had emphasized that its holding did not affect a prosecution under a general criminal statute if no legislative acts of the defendant or his motives for performing them were called into question.[282]

The Court in Brewster concluded:

> Johnson thus stands as a unanimous holding that a Member of Congress may be prosecuted under a criminal statute provided that the Government's case does not rely on legislative acts or the motivation of legislative acts.[283]

In an effort to define the "legislative acts" protected by the Speech or Debate Clause, the Court in Brewster drew a distinction between "purely legislative" activities and "political" activities such as performing "errands" for constituents, making appointments with government agencies, assisting in securing government contracts, preparing newsletters to constituents, news releases, and speeches delivered outside Congress. The Court concluded that the Clause does not protect all conduct relating to the legislative process, but only to those acts which are clearly a part of the legislative process--the "due functioning of the process."[284]

---

[282] 383 U.S. 169, 185 (1966).

[283] 408 U.S. 501, 512 (1972).

[284] Id. at 516.

In Gravel v. United States,[285] the Supreme Court had occasion to define further the scope of legislative immunity. At a midnight meeting of the Subcommittee on Buildings and Grounds of the Senate Public Works Committee, Senator Mike Gravel, a subcommittee chairman, read extensively from a copy of the top secret Pentagon Papers. He then placed 47 volumes in the public record. His aide, Dr. Leonard Rodberg, assisted him in these actions. Later Gravel and Rodberg made arrangements for private republication. A federal grand jury which was convened to investigate possible criminal conduct arising from the release and publication of the Pentagon Papers subpoenaed as witnesses Rodberg and Mr. Howard Webber, Director of M.I.T. Press. Gravel intervened and filed motions to quash the subpoenas on the grounds that compelling these witnesses to appear and testify would violate his privilege under the Speech or Debate Clause.

On review, the Supreme Court held that the Clause applies not only to a member of Congress, but also to his aide insofar as the aide's conduct would be a protected legislative act if performed by the member himself. The privilege belongs to the legislator, and it is invocable only by the legislator or by the aide on the legislator's behalf. Accordingly, an aide's claim of legislative privilege can be repudiated and thus waived by the legislator.[286]

---

[285] 408 U.S. 606 (1972).

[286] Id. at 621, 622.

More specifically, the majority decided that Senator Gravel and his aide would not be held liable for acts occurring at the subcommittee meeting, but since the private republication had no connection to the legislative process, the Senator and his aide could be questioned before the grand jury on other matters which were relevant to an investigation of possible third-party crime.[287]

In reaching its decision, the majority sought to clarify the distinction between legislative and non-legislative acts. The Court stated: "That Senators generally perform certain acts in their official capacity as Senators does not necessarily make all such acts legislative in nature."[288] The Court then defined "legislative act":

> Legislative acts are not all-encompassing. The heart of the Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.[289]

The Court concluded that neither the private republication nor the acquisition of the papers by the aide met this test. Moreover, the Court said:

> Here private publication by Senator Gravel through the cooperation of Beacon Press was in no way essential to the deliberations of the House; nor does questioning as to private republication

---

[287] Id. at 626, 627.

[288] Id. at 625.

[289] Ibid.

> threaten the integrity or independence of the House by impermissibly exposing its deliberations to executive influence.[290]

The Court also rejected the claim of common law privilege. Emphasizing that there never existed such an immunity with respect to criminal proceedings, the Court concluded that:

> The grand jury, therefore, if relevant to its investigation into possible violations of the criminal law and absent Fifth Amendment objections, may require from Rodberg answers to questions relating to his or the Senator's arrangements, if any, with respect to republication or with respect to third party conduct under valid investigation by the grand jury, so long as the questions do not implicate the legislative action of the Senator.[291]

Finally, the majority held that:

> Neither do we perceive any constitutional or other privilege that shields Rodberg, any more than other witnesses, from grand jury questions relevant to tracing the source of obviously highly classified documents that came into the Senator's possession and are the basic subject matter inquiry in this case, as long as no legislative act is implicated by the questions.[292]

In Eastland v. United States Servicemen's Fund,[293] decided in 1975, the Senate Subcommittee on Internal Security, in an effort to study the extent and effect of subversive activities in the United States, had subpoenaed the bank records of the United States Servicemen's Fund. The Fund sued

---

[290] Id. at 621-22, f.n. 13.

[291] Id. at 625, 626.

[292] Id. at 628. See also Doe v. McMillan, 412 U.S. 306 (1973) (civil action for distribution of report outside of congress sustained).

[293] 421 U.S. 491 (1975).

to enjoin the implementation of the subpoena on the grounds that it infringed upon freedom of the press and association guaranteed by the First Amendment.

The Court found that the issuance of the subpoena fell "within the legitimate legislative sphere,"[294] satisfying the Gravel standard of being "an integral part of the deliberative and communicative processes [of Congress]."[295] Thus, the absolute immunity of the Speech or Debate Clause applied to all of the defendants--the subcommittee chairman, the members, and the chief counsel--and the mere allegation of infringement of First Amendment rights did not warrant judicial interference.

The Court's reasoning was summarized in a lengthy footnote:

> In some cases we have balanced First Amendment rights against public interests . . . but those cases did not involve attempts by private parties to impede congressional action where the Speech or Debate Clause was raised by Congress by way of defense . . . The cases were criminal prosecutions where defendants sought to justify their refusals to answer congressional inquiries by asserting their First Amendment rights. Different problems were presented than here. Any interference with congressional action had already occurred when the cases reached us, and Congress was seeking the aid of the judiciary to enforce its will. Our task was to perform the judicial function in criminal prosecutions, and we properly scrutinized the predicates of the criminal prosecutions. . . . Where we are presented with an attempt to interfere with an ongoing activity by Congress, and that act is found to be within the legitimate legislative sphere, balancing plays no part. The Speech or Debate protection provides an absolute

---

[294] Id. at 505, quoting Doe v. McMillan, 412 U.S. 306, 314 (1973).

[295] Id. at 507-08 quoting Gravel v. United States, 408 U.S. 606, 625 (1972).

> immunity from judicial interference. Collateral harm which may occur in the course of a legitimate legislative inquiry does not allow us to force the "inquiry" to grind to a halt."[296]

The Court concluded that once it is determined that members of Congress are acting within the legitimate legislative sphere, the Clause is an absolute bar to judicial interference.

(ii) State

As noted above, constitutions in a number of states contain provisions for legislative immunity. Statutory provisions guaranteeing legislators freedom of speech are also found in many states.[297] It is appropriate, therefore, to examine some of the interpretations that have arisen in the application of legislative immunity under these provisions.

In Blondes v. State,[298] the Court of Special Appeals of Maryland sought to determine the scope of the speech and debate clauses of the Maryland Constitution. Article 10 of the Maryland Declaration of Rights provided:

> That freedom of speech and debate, or proceedings in the legislature, ought not to be impeached in any Court of Judicature.[299]

In addition, Section 18 of Article 3 of the Maryland Constitution provided:

---

[296] Id. at 509 n. 16.

[297] See, e.g., Iowa Code §2.23 (1962); La. Rev. Stat. Ann. §14.50 (1) (1950); N.C. Gen. Stat. §120-9 (1964).

[298] 16 Md. App. 165, 294 A.2d 661 (1972).

[299] Md. Const. Declaration of Rights, art. 10.

CONTINUED

1 OF 4

> No Senator or Delegate shall be liable in any civil action, or criminal prosecution, whatever, for words spoken in debate.[300]

Defendant Leonard Blondes, a member of the General Assembly of Maryland, was convicted of violating a state bribery statute. On appeal, the Court of Special Appeals held that these clauses should be construed in pari materia with the Speech or Debate Clause of the United States Constitution, subject to any limitation imposed by other provisions of the Maryland Constitution. Semantic similarities and the common derivation and purpose of both the Federal and state provisions justified this result. The court applied the standards enunciated in Brewster and Gravel, and it held that substantive evidence of any legislative acts performed by the defendant was inadmissible. A new trial was granted.

In United States v. Craig,[301] three members of the Illinois House of Representatives were indicted by a federal grand jury for extortion in violation of the Hobbs Act.[302] and for mail fraud.[303] The Court of Appeals for the Seventh Circuit held that the speech or debate privilege enjoyed by state legislators in federal criminal prosecutions arises under federal common law.

---

[300] Md. Const. art. 3, §18.

[301] 528 F.2d 773 (7th Cir. 1976).

[302] 18 U.S.C. §1951 (1970).

[303] 18 U.S.C. §1341 (1970).

The Court of Criminal Appeals of Texas, however, reached another conclusion in Mutscher v. State.[304] In Mutscher, the Speaker of the Texas House of Representatives, a member of the House, and a state employee were convicted of conspiracy to accept a bribe. Article III, Section 21 of the Texas Constitution provided:

> Words spoken in debate.--No member shall be questioned in any other place for words spoken in debate in either House.[305]

On the other hand, Article XVI, Section 41 of the Texas Constitution expressly provided for the prosecution of public officials, including legislators, for bribery.[306] The court reconciled these two provisions by citing Brewster, and affirmed the convictions. But the court also held that the federal Speech or Debate Clause was not applicable to state legislators through the Due Process Clause of the Fourteenth Amendment.[307]

d. Conclusion

Because of the scope and application of the doctrine of legislative immunity, the investigation and prosecution of legislative corruption requires care and planning. The prosecutor must focus on the illegal conduct and avoid drawing legislative acts into question at any stage of the enforcement process.

---

[304] 514 S.W.2d 905 (1974).

[305] Tex. Const. art. III, §21.

[306] Tex. Const. art. XVI, §41.

[307] See also, United States v. Dowdy, 479 F.2d 213, 220 (1973) (conflict of interest, bribery, obstruction of justice, and perjury prosecution of Congressmen).

To proceed otherwise is to risk reversible error. By keeping abreast of the federal and state case law on legislative immunity, the prosecutor can more effectively enforce the criminal laws against official corruption in the legislative hall.

B. Process of Investigation--Reactive Mode

A careful examination of the substantive law applicable to official corruption is only part of the job of the prosecutor. Criminal sanctions do not enforce themselves; it is always necessary to develop legally admissible evidence. Of equal significance with the substantive law, therefore, are the legal limitations on the evidence gathering process. Usually, witnesses do not volunteer in official corruption investigations to testify or to turn over relevant books and records. Compulsory process is necessary. Traditionally, the grand jury has been the chief vehicle out of which that process has issued. Consequently, any evaluation of the process of investigation must begin with an examination of the grand jury.

1. The Grand Jury

a. Historical development

The grand jury originated in Anglo-American law with the summoning of a group of townspeople before a public official to answer questions under oath.[308] In 1164, the Crown first established the criminal grand jury, a body of twelve knights, whose function was to accuse those who according to public knowledge had committed crimes.[309] Witnesses as such were not

[308] See generally, Note, "The Grand Jury as an Investigating Body," 74 Harv. L. Rev. 590 (1961), and authorities cited therein.

[309] L. Orfield, Criminal Procedure from Arrest to Appeal 137-139 (1947).

heard before this body. Two years later at the Assize of Clarendon, Henry II established the grand jury largely in the form in which it is known today.

During the 13th and early part of the 14th century the grand jurors served as petit jurors in the same matters in which they presented indictments. Not until the eventual separation of the grand jury and petit jury did the function of accusation become clearly defined and did crown witnesses come to be examined in secret before the grand jury.

The original function of the grand jury was to give to the central government the benefit of local knowledge in the apprehension of those who violated the King's peace. Its value as a buffer between citizen and state, the function which first comes to mind today,[310] did not fully mature until well into the 17th century.[311]

The modern grand jury is a "prototype" of its ancient

---

[310] See e.g., Hoffman v. United States, 341 U.S. 479, 485 (1951); Hale v. Henkel, 201 U.S. 43, 59 (1906).

[311] In 1681 in Colledge's case (1681) 8 How. St. Tr. 550, and the Earl of Shaftesburry's case, Id. at 759, the grand juries that first heard the evidence of the Royal prosecutor refused to indict. These cases are usually marked as establishing the institution of the grand jury as a bulwark against despotism. See generally Kuhn, "The Grand Jury 'Presentment': Foul Blow or Fair Play?" 55 Colum. L. Rev. 1104 (1955). Two years later the propriety of the grand jury report was also indirectly litigated. A Chester grand jury without returning a formal indictment charged certain Whigs with seditious conduct. An action for libel was brought and the court unanimously found for the defendants, apparently thus sustaining the actions of the jurors. Proceedings between Charles Earl of Macclesfield and John Starkey, Esq., (1684) 10 How. St. Tr. 1330.

British counterpart.[312] Aptly termed "a grand inquest" by the Supreme Court in Blair v. United States,[313] its inquisitorial powers are virtually without rival today. Despite early attempts in this country to limit the scope of its investigating powers to that which was brought to its attention by prosecutor or court,[314] its common law powers have survived largely without artificial limitations.[315] No such limitation is generally found today in federal,[316] or state law[317] where the grand jury is empowered to inquire into and return indictments for all crimes committed within its jurisdiction.[318] Indeed,

---

[312] See Blair v. United States, 250 U.S. 273, 282 (1919).

[313] Id. at 282.

[314] See generally Younger, "The Grand Jury Under Attack," 46 J. Crim. L. C. & P. S. 26, 40-42 (1955). Compare grand jury charge of Justice Field, 30 Fed. Cas. 993 (C.C.D. Cal. 1872), with Hale v. Henkel, 201 U.S. 43, 59 (1906).

[315] See e.g. Ward v. State, 2 Mo. 120 (1829), where after a St. Louis grand jury questioned a wide variety of witnesses in a gambling probe, the court was asked to quash the resulting indictments on the grounds they were the product of a "fishing expedition." The court refused, commenting that to hold otherwise "would strip [the grand jury] of [its] greatest utility and convert [it] into a mere engine to be acted upon by circuit attorneys or those who might choose to use them."

[316] Hale v. Henkel, 201 U.S. 43 (1905).

[317] See, e.g., New York ex. rel. Livingston v. Wyatt, 186 N.Y. 383, 79 N.E. 330 (1906); Samish v. Superior Court, 28 Cal. App. 2d 685, 83 P.2d 305 (1938).

[318] See, e.g., Cal. Penal Code §917 (1970); N.Y. Crim. Proc. Law §245 (McKinney, 1971).

the grand jury has usually been held open to citizen complaints.[319] Secrecy, however, governs its hearings.[320] Grand jury reports, often a catalyst for reform, may also be filed in a number of states.[321]

Under federal[322] and most state law,[323] the modern grand jury is composed of not less than sixteen nor more than twenty-three persons. Twelve affirmative votes are required in each jurisdiction to return an indictment.[324]

b. Scope of process

Ultimately, the power of the grand jury rests on the subpoena. Only through it can witnesses be compelled to appear and the production of books and records be required.

---

[319] Cf. 1794 Att'y Gen. Ann. Reps. 22; People v. Lawrence, 21 Cal. 368 (1863). But see People v. Parker, 374 Ill. 524, 30 N.E.2d 11 (1940) (person held in contempt for private communications to grand jury).

[320] See, e.g., Ill. Ann. Stat., ch. 38, §112-6 (Smith-Hurd Supp. 1967). Only in California has this rule been relaxed. There "public sessions" are permitted in cases affecting the "general public" welfare involving alleged corruption, misfeasance, or malfeasance in office . . . " Cal. Penal Code §939.1 (1970).

[321] N.Y. Crim. Proc. Law §253-a (McKinney, 1971); Irvin v. Murphy, 129 Cal. App. 713, 19 P.2d 292 (1933), which, in addition, accords the report a privilege against libel; People v. Polk, 21 Ill.2d 594, 174 N.E.2d 594 (1961); Ill. Ann. Stat., ch. 38, §112, comment, at 265 (Smith-Hurd 1964).

[322] Fed. R. Crim. P. 6(a).

[323] See, e.g., N.Y. Crim. Proc. Law §224 (McKinney, 1971).

[324] Ill. Ann. Stat. ch. 38, §112-4 (Smith-Hurd 1964); Fed. R. Crim. P. 6 (b); N.Y. Crim. Proc. Law §224 (1971); Cal. Penal Code §888.2 (1964) (Los Angeles requires 14). An indictment presently is not thought constitutionally mandatory. Hurtado v. California, 110 U.S. 516 (1884).

Under the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings (hereinafter the Act) out-of-state witnesses may be compelled to appear before a grand jury. The provisions of the Act have been adopted, with minor variations, in most states.[325] Since the Act operates on principles of comity, it is effectual only between two states which have adopted it.[326]

The Act's procedure[327] requires application to a judge of the court having jurisdiction over the grand jury; he issues a certificate to a judge in a court of record in the country where the witness is located.[328] This judge summons

---

[325] See, e.g., Mass. Gen. Laws Ann. §§13A-13D (1968) N.J. Rev. Stat. §§2A:81-18 through 2A: 81-23; N.Y. Crim. Pro. Law §640.10 (McKinney 1971). Iowa has similar but not identical provisions; Alabama does not follow the Act. The Act is also in force in the District of Columbia, Puerto Rico, Panama Canal Zone and Virgin Islands.

The Act does not apply in Federal court. United States v. Monjar, 154 F.2d 954 (3rd Cir. 1946). There is nationwide service of Federal process. F.R. Crim. P. 17(e). Under 28 U.S.C. §1783(a) (1970), a United States citizen living abroad may be subpoenaed to appear before a federal grand jury.

[326] See State v. Blount, 200 Or. 35, 264 P.2d 419, cert. denied, 347 U.S. 962 (1954).

[327] The procedure for procuring attendance of witnesses is set out in sections 2 and 3 of the Act. The Act may permit issuance of a subpoena duces tecum. Compare In re Saperstein, 30 N.J. Super. 373, 377, 104 A.2d 842, 846, cert. denied, 348 U.S. 874 (1954) (permitting subpoena duces tecum) with In re Grotte, 59 Ill. App.2d, 10, 208 N.E.2d 581, 586 (1965) (permitting only subpoena ad testificandum).

[328] The witness need not be a resident of that state. See People of the State of New York v. O'Neill, 359 U.S. 1 (1959) (upholding the constitutionality of the Act as applied to an Illinois resident who, while vacationing in Florida, was issued a summons by a Florida court pursuant to an application from a New York court.)

the witness to a hearing. The judge then must determine that the witness's testimony is material and necessary to the investigation, that the witness will not suffer undue hardship by appearing before the grand jury, and that the witness will be immunized under the laws of the demanding state from arrest and service of process regarding matters arising before his entry into the state. Following this determination, the judge issues an order directing the witness to travel to the demanding state, at its expense. Failure to appear and testify is punishable in the manner prescribed by the state in which the witness is located.[329] Aside from challenging the showing of materiality,[330] a witness can raise few objections

---

[329]Normally, this is done by contempt proceedings. The witness is subject to punishment by the state having personal jurisdiction over him. If he is issued a summons by State A upon the request of State B, but fails to leave State A, he is punished by State A. If he enters Sates B but fails to attend or testify, he is punished by State B.

[330]In construing the Act, the primary source of confusion is the meaning of "material witness." The Act states that at the hearing the certificate issued by the demanding state shall be "prima facie evidence . . . of all facts stated therein." See 11 U.L.A. §2 (1974). While one court has held that the certificate's conclusory statement of materiality is sufficient, See Epstein v. People of State of New York, 157 So.2d 705, 707 (Fla. Dist. Ct. App. 1963), the prevailing view is that the certificate either must be detailed, See In re Saperstein, 30 N.J. Super. 373, 375, 104A.2d 842, 843, cert. denied, 348 U.S. 874 (1954), or must be accompanied by an affidavit explaining why the witness is needed. See State of Florida v. Axelson, 80 Misc.2d 419, 363 N.Y.S. 2d 200 (Sup. Ct. N.Y. Co. 1974). Testimony may also be added at the hearing itself. In re Pitman, 201 N.Y. S.2d 1000 (Ct. Gen. Sess., N.Y. Co. 1960).

to the summons.[331]

c. Quashing process

(i) General

On a motion to quash a grand jury subpoena, venue lies in the court having jurisdiction over the grand jury.[332] Generally, only the witness subpoenaed has standing on a motion to quash,[333] but when a person's papers are in temporary possession of a third-party custodian, the owner himself may move to quash the subpoena against the custodian on Fifth Amendment grounds.[334] Raising a testimonial privilege on a

---

[331]Since the hearing is not a criminal proceeding, the witness is neither entitled to counsel nor to cross-examine. Epstein v. People of State of New York, 157 So.2d 705, 707-708 (Fla. Dist. Ct. App. 1963); Commonwealth v. Beneficial Finance Co., 360 Mass. 188, 306, 275 N.E.2d 33, 100-101, cert. denied, 407 U.S. 914 (1971). Matters of privilege are raised with the demanding state rather than at the hearing. Application of State of Washington in re Harvey, 10 App. Div.2d 691, 198 N.Y.S.2d 897 (1st Dept.), app. dismissed 8 N.Y.2d 865, 168 N.E.2d 715, 203 N.Y.S.2d 914 (1960). The witness has the burden of proof of undue hardship. Terl v. State of Maryland ex. rel. Grand Jury of Baltimore City, 237 So.2d 830 (Fla. Dist. Ct. App. 1970). If it appears that the summons is sought to be issued in bad faith (e.g. if the witness is a target of the grand jury investigation) the summons will not issue. In re Mayers, 169 N.Y.S.2d 839 (Ct. Gen. Sess., New York Co. 1957); Wright v. State, 500 P.2d 582 (Okla. 1972).

[332]National Lawyers Guild, Representation of Witnesses before Federal Grand Juries, 66 (1976). This is so despite the hardship to a witness subpoenaed from another states.

[333]Application of Laconi, 120 F. Supp. 589 (D. Mass. 1954). There, a defendant was not allowed to object to grand jury subpoenaing other witnesses. The court said, however, that it could quash, pursuant to its supervising power, without a motion, in response to suggestions made by counsel, litigants or strangers.

[334]See Couch v. United States, 409 U.S. 322, 333 n.16 (1973); Fisher v. United States, 425 U.S. 391 (1976).

motion to quash a subpoena ad testificandum is usually considered premature.[335] A subpoena duces tecum may also be quashed on Fourth Amendment grounds if it is "unreasonable,"[336] and it may be quashed, too, under the Federal Rules of Criminal Procedure[337] if it is "unreasonable and oppressive." A denial of a motion to quash a subpoena, however, is usually not appealable.[338] A witness seeking review usually must refuse

---

[335] See Representation of Witnesses, etc. supra note 332, at 67. The same is not true regarding subpoenas duces tecum. Where a privilege objection is raised against a subpoena duces tecum, the court will inspect the materials to determine whether or not they are privileged. Schwimmer v. United States, 232 F.2d 855, 864 (8th Cir.), cert. denied, 352 U.S. 833 (1956).

[336] To be reasonable, the subpoena must seek materials relevant to the grand jury inquiry. See In re Grand Jury Subpoena Duces Tecum (Local 627), 203 F. Supp. 575, 578 (S.D.N.Y. 1961); United States v. Gurub, 437 F.2d 239, 241 (10th Cir.), cert. denied sub. nom. Baher v. United States, 403 U.S. 904 (1970); In re Corrado Brothers, 367 F.Supp. 1126, 1130 (D.C. Del. 1973). Courts are split on who bears the burden of showing relevance. Compare In re Grand Jury Proceedings (Schofield), 486 F.2d 85 (3rd Cir. 1973) (government must make a minimal showing of relevance); In re Grand Jury Subpoena Duces Tecum, 391 F. Supp. 991, 995-997 (D.R.I. 1975) (government's prima facie showing of relevance irrebuttable); with In re Horowitz, 482 F.2d 72, 79-80 (2d Cir.), cert. denied, 414 U.S. 867 (1973) (witness must show there is no conceivable relevance to any legitmate subject of investigation).

[337] Fed. Rules Crim. Pro., Rule 17c. Rule 17c is not based solely on the Fourth Amendment; it has independent significance. Application of Radio Corp. of America, 13 F.R.D. 167, 171 (S.D.N.Y. 1952). Rule 17c gives the court powers of review in addition to those granted by the Fourth Amendment, but the tests are usually considered together.

[338] See, e.g., Cobbledick v. United States, 309 U.S. 323, 325 (1940); United States v. Ryan, 402 U.S. 530, 532-533 (1971). In New York, however, denial of a motion to quash a subpoena is appealable as of right if the subpoena was issued by a court having both civil and criminal jurisdiction. Matter of Queens Republican County Committee, 49 App. Div.2d 956, 374 N.Y.S.2d 57 (2d Dept. 1975); Cunningham v. Nadjari, 39 N.Y.2d 314, 347 N.E.2d 915, 383 N.Y.S.2d 590 (1976).

to comply with the subpoena, be held in contempt, and appeal the contempt judgment.[339]

---

[339] Cobbledick v. United States, supra note 338 at 327. The rights of witnesses before grand juries is an area of the law that has recently been the subject of much litigation.

Like a witness at a trial, a witness before a grand jury generally has no right to the assistance of counsel. See, e.g., In re Groban, 352 U.S. 330 (1957); State v. Catteone, 123 N.J. Super 169, 302 A.2d 138 (1973).

A handful of states follow a different rule. Kan. Stat. §22-300 (1974); Mich. Comp. Laws §28:934 (1970) (one man grand jury); S.D. Compiled Laws Ann. §23-30-7 (1967); Utah Code Ann. §77-19-3 (1953); Wash. Rev. Code Ann. §10.27.120 (1961). None of them are noted for a vigorous use of the grand jury system.

While a witness is entitled to the protection of his privilege against self-incrimination, the prosecution is generally not under a duty to advise him of it. See, e.g., United States v. Zeid, 281 F.2d 825, 830 (3rd Cir. 1960). But see Com'n v. McCloskey, 443 Pa. 117, 277 A.2d 764 (1971).

An indicted defendant stands in different shoes. An indicted defendant may not be called as a witness before a grand jury "to freeze" his testimony before trial. See United States v. Fisher, 455 F.2d 1101 (2nd Cir. 1972). If he is called before a grand jury and not informed of his status, a violation of his right to counsel and due process occurs. See, e.g., United States v. Doss, 545 F.2d 548 (6th Cir. 1976).

The targeted, but unindicted defendant occupies an unclear position under current law. There is no prohibition against the practice of calling such a person before the grand jury. Indeed, as stated by Chief Justice Burger in United States v. Mandujano, 425 U.S. 564, 573 (1976) (plurality opinion):

> It is in keeping with the grand jury's historic function as a shield against arbitrary accusations to call before it persons suspected of criminal activity, so that the investigation can be complete. It is entirely appropriate--indeed imperative--to summon individuals who may be able to illuminate the shadowy precincts of corruption and crime . . . . [I]t is unrealistic to assume that all witnesses capable of providing useful information will be pristine pillars of the community untainted by criminality.

(ii) Third-party records

Almost without exception, successful investigations and prosecutions of corrupt public servants are characterized

---

339 (continued)

The practice is almost universally upheld. See, e.g., United States v. Sweig, 441 F.2d 114, 121 (2nd Cir. 1971). But see People v. Steuding, 6 N.Y.2d 214, 160 N.E.2d 468 189 N.Y.S.2d 116 (1959) (construction of N.Y. Const. Art. I §6). Differences of opinion, however, exist on the rights of such a person.

Generally, he should be warned of his status. See, e.g., United States v. Jacobs, 531 F.2d 87 (2nd Cir. 1976) (decision based on supervisory jurisdiction not constitution); People v. Di Ponio, 48 Mich. App. 128, 210 N.W.2d 105 (Division 2-1973); State v. DeCola, 33 N.J. 335, 165 A.2d 729 (1960) A.B.A. Project on Standards for Criminal Justice Relating to the Prosecution Function §3.6(d) (Tent. draft 1970). Where he is not warned, the courts have split on the proper rememdy. Some courts merely suppress the evidence obtained from the defendant. United States v. Fructman, 282 F. Supp. 534 (N.O. Ohio 1968), affd., 421 F.2d 1019 (6th Cir.) cert. denied, 400 U.S. 849 (1970). Others automatically dismiss the indictment. United States v. Kreps, 349 F. Supp. 1049 (W.D. Mich. 1972); Com'n v. McCloskey 443 Pa. 117, 277 A.2d 764 (1971). While still others will dismiss an indictment only if there is insufficient evidence to uphold the indictment independent of the targeted defendant's testimony People v. Di Ponio, 48 Mich. App. 128, 210 N.W.2d 105 (Division 2-1973). Whatever the traditional rule, it now seems that, at least in the federal courts, no consequences will attach to a failure to warn. United States v. Washington, No. 74-11060, U.S. Sup. Ct., May 23, 1977.

Generally, too, he is not entitled to assistance of counsel inside the grand jury room. See, e.g., United States v. Corallo, 413 F.2d 1306 (2nd Cir. 1969); United States v. Levinson, 405 F.2d 971 (2nd Cir. 1968); State v. Cattaneo, 123 N.J. Super 167, 302 A.2d 138 (App. Div. 1973). Like a mere witness, he is limited to consulting with his counsel outside the grand jury room. See United States v. Capaldo, 402 F.2d 821, 824 (2nd Cir. 1968).

Finally, it is the generally recognized position that where a targeted defendant is called before a grand jury, even though he is not warned of his status, he may be prosecuted for perjury based on his testimony, if it is false. United States v. Wong U.S. Sup. Ct. no. 74-635 decided May 23, 1977; United States v. Mandujano, 425 U.S. 564 (1976); People v. Blachura, 59 Mich. App. 664, 229 N.W.2d 877 (Division 2-1975); Com'n v. Good, 461 Pa. 482, 337 A.2d 288 (1975).

by one common factor: the ability of law enforcement to trace the flow of illicit cash through carefully doctored books and records and to corroborate crucial oral testimony with such

339 (continued)

The argument can be forcefully made, however, that a targeted defendant should have the assistance of counsel in a grand jury room, as a person does under police interrogation. See, e.g., Escobedo v. Illinois, 378 U.S. 478 (1964); Miranda v. Arizona, 384 U.S. 436 (1966).

While the right to counsel is guaranteed by the constitution, it has never been held that the right exists without qualification. As the Third Circuit observed in United States ex rel Carey v. Rundle, 409 F.2d 1210, 1215 (3rd Cir. 1969):

> Although the right to counsel is absolute, there is no absolute right to particular counsel. Desirable as it is that a defendant obtain private counsel of his own choice, that goal must be weighed and balanced against an equally desirable public need for the efficient and effective administration of justice.

The chief danger to be avoided where the counsel is introduced into the process of grand jury and similar investigations is obstruction of justice. As Earl J. Silbert the former U.S. Attorney for the District of Columbia observed:

> Too often, we have seen a lawyer known to represent Mr. Big in narcotics come down to represent one of his lieutenants who has been arrested. The result: the chances of the lieutenant deciding in his interest to cooperate and turn state's evidence against Mr. Big are eliminated. Too often, in cases involving business corporations or labor unions, one lawyer represents targets of the investigation and witnesses, multiple representation, which in our view fosters obstruction of justice, criminally preventing prosecutors from penetrating to the top of organized criminal conspiracies.
>
> Some lawyers are simply oblivious to the legal and ethical problems of multiple representation. A few, aware of the problems, deliberatley ignore them for monetary reasons. Others, also aware of the problems, reject what appears to them to be the efforts of prosecutors to dictate whom they can represent.

Counsel, in short, may only appear to represent a person; he may, in fact, represent other, sometimes sinister, interests.

339 (continued)

Traditionally, courts have stepped in to guard against this sort of evil. Compare Pirillo v. Takiff, 341 A.2d 896 (Pa. 1975) (F.O.P. paid for singel counsel for several policemen in bribery investigation: counsel disqualified), with In re Investigators before April 1975 Grand Jury, 531 F.2d 600 (D.C. Cir. 1976) (Union paid for lawyer representing strikers: disqualification reversed for lack of evidence of conflict). Care must be taken, however, to weigh the relevant factors, the most important of which is the person's constitutional right to associate and to obtain legal counsel. See United Mine Workers v. Illinois State Bar Association, 389 U.S. 217 (1967); NAACP V. Button, 371 U.S. 415 (1963). More than disqualification, too, is at issue. When a true conflict of interest exists, it can be the grounds for suspension, In re Abrams, 56 N.J. 271, 266 A.2d 275 (1970), disbarment, In re Mogel, 18 App. Div.2d 203, 238 N.Y.S.2d 683 (1st Department 1963).

The general question of multiple representation and obstruction of justice was comprehensively addressed in Watergate: Special Prosecution Force Report pp. 140-141 (1975):

> In almost every investigation which centers on the criminal activity of one or more members of a hierarchical structure--whether a corporation, labor union, a Government agency, or a less formally organized group--the prosecutor is confronted with a witness who has been called to testify about his employers. Many times, the witness is represented by an attorney who also represents the employer and perhaps is compensated by him. Although the legal profession's "Code of Professional Responsibility" forbids a lawyer from representing conflicting or even potentially conflicting interests, lawyers and judges have historically been reluctant to enforce the Code's mandate strictly. They have taken the position that, so long as the witness understands that his attorney also represents the person or entity about which he will be asked to testify and that he has the right to a lawyer of his own choosing, he cannot be forced to retain new counsel.
>
> No lay witness, however, can realistically be expected to appreciate all the legal and practical ramifications of his attorney's dual loyalties, and in many cases he will be precluded from giving adequate consideration to the possibility of cooperating with the Government by the fear that the fact of his cooperation will be revealed to his employer. A mere inquiry by the judge in open court concerning the witness' preference is not likely to elicit a truthful response. It is necessary, therefore, for the court to intervene more directly by making a factual determination as to the existence of the

documentation.[340] Consequently, anything that facilitates law enforcement's access to books and records promotes the investigation and prosecution of public corruption. Weighing

339 (continued)

> conflict of interest and then requiring the witness to retain, or appointing for him, counsel who has no such conflict. Although there will obviously be great reluctance to interfere with the individual's freedom to select his own attorney, the suggested course is the only one that can preserve the equally valid right of the Government to his full and truthful testimony.
>
> Both the courts and the various bar groups should be alerted to the serious issues of professional responsibility arising out of the representation of multiple interests during grand jury investigations, and Government counsel should press on every justifiable occasion for a judicial ruling on the question of conflict of interest and, where a conflict is found, for the replacement of the attorney involved.

The Watergate Report reminds us that a recent National Administration not only misused grand juries; it also sought to obstruct one through the agency of compliant attorneys.

[340] Jonathan L. Goldstein, the current United States Attorney for New Jersey, whose office has been responsible for a number of major political corruption prosecutions makes the point:

> But as surely as corruption follows money, money leaves a trail behind it, and this is what we have focused on in the investigations conducted by our office. Every prosecution involving political, corporate and labor corruption in New Jersey during the past six years has been conducted with the assistance of I.R.S. special and revenue agents, who have worked together with assistant United States Attorneys during grand jury investigations analyzing literally millions of documents in a joint effort to trace illicit cash gains arising out of varied illegal activities. Without this sort of painstaking and skilled auditing, bribery, extortion, fraud against the government and significant tax fraud schemes are, quite simply, impossible to successfully uncover.

Remarks of Jonathon L. Goldstein, Federal Bar Convention, May flower Hotel, September 16, 1976.

the interest of effective law enforcement against the interest of personal privacy, our society is finally beginning to strike a balance that allows that effective investigation.

Investigation in this area generally focuses on three types of records. First, and probably most important, are records kept by banks and other financial institutions. Banks maintain a variety of records that are helpful to the investigator.[341] Once the financial and business records of an individual are obtained, after the tracing of cash flow, invest-

---

[341] For instance, the bank holds a signature card for each checking and savings account. Not only does the card provide a sample of the subject's writing, but it often also gives useful background information. In addition, banks deliver periodic statements for each checking account. Federal regulations require them to maintain copies of the statements that provide running records of all deposits and withdrawals.

Safe deposit rental contracts and entry slips are other valuable sources of information for the investigator. The contract contains the subject's signature and his physical description. The date and time of each entry into the box is recorded on the entry slip that is kept by the bank.

Finally, tellers keep daily proof sheets recording all purchases of cashier checks. This is particularly helpful because many individuals involved in criminal transactions use cashier's checks in the mistaken belief that they cannot be traced.

These records may be useful in a number of ways. For example, law enforcement may suspect that a man who owns a modest retail furniture store is fencing stolen goods. The subject's tax returns show legitimate business income to be around $15,000 annually. His bank records, however, may disclose that he is regularly dealing in huge sums of money, grossly disproportionate to that expected of a small businessman. This information at the very least shows the investigator that further investigation is warranted.

Even if investigation turns up insufficient evidence of fencing, the bank records may be valuable in a prosecution for tax fraud. See generally, R. Nossen, The Seventh Basic Investigative Technique (L.E.A.A. 1976).

igators use any of several means of analysis to discover information that my link the subject to a crime.

Telephone company records may also be useful in many facets of law enforcement. The records show the date, time, duration and destination of all long distance telephone calls, and the name and address of the person owning the calling telephone. In addition, in unusual situations, some conversations may be recorded by the telephone company and be subject to possible examination.[342] Such telephone company records can be used for investigative leads,[343] to provide probable cause for issuing a search warrant[344] or authorizing electronic surveillance,[345] as evidence before a grand jury[346] or as evidence at trial.[347]

---

[342] See, e.g., United States v. Hanna, 260 F.Supp. 430 (S.D. Av. 1966) rev'd. 393 F.2d 700 (5th Cir.), aff'd on rehearing. 404 F.2d 405 (5th Cir. 1968) (telephone company investigators of "blue box" leading to a bookmaking operation).

[343] See, e.g., United States v. Barnard, 490 F.2d 907, 913 (9th Cir. 1973), cert. denied, 416 U.S. 959 (1974); United States v. Michigan Bell Telephone Co., 415 F.2d 1284 (6th Cir. 1969).

[344] See, e.g., United States v. Russo, 250 F. Supp. 55 (E.D. Pa. 1966); Cashen v. Spann, 125 N.J. Super. 386, 311 A.2d 192 (App. Div. 1973), modified on other grounds, 66 N.J. 541, 334 A.2d 8, cert. denied, 423 U.S. 829 (1975).

[345] See, e.g., United States v. Kohne, 347 F. Supp. 1178 (W.D. Pa. 1972).

[346] See, e.g., Nolan v. United States, 423 F.2d 1031, 1044 (10th Cir. 1969), cert. denied, 400 U.S. 848 (1970).

[347] See, e.g., United States v. Gallo, 123 F.2d 229 (2d Cir. 1941).

Records of commercial enterprises may be useful. Records from credit card companies reveal how and where a suspect spends his money. Since card-issuing companies keep the monthly account statements for several years, investigators can reconstruct the pattern of a suspect's travels and expenditures over a period of time.[348] Car rental agencies, airlines, hotels, and credit reporting bureaus provide comparable material. This sort of information can be particularly valuable in tax fraud and political corruption cases.

To a limited extent a fourth category of records, those in the hands of professionals, are important to law enforcement officials. In a financial investigation, the records held by the subject's attorney or accountant can provide valuable information; they may relate to his business, contractual obligations, legal status under a separation agreement, tax returns, etc. The subject's general financial position will generally be clearly reflected in his accountant's records. In addition, his doctor can provide the medical history of the subject. In some situations, a clergyman's records may also be of assistance.

Investigation into each of these types of records, however, has raised various constitutional issues. Traditionally, this litigation has centered on access to the books and records of the subject himself. A new set of issues, however, have arisen around access to those books and records when they are

---

[348] R. Nossen, The Seventh Basic Investigative Technique at 60-63 (L.E.A.A. 1976).

maintained by third parties. Most of the litigation has arisen over law enforcement access to bank records. Challenges have usually been based on Fourth, Fifth, or First Amendment grounds.

To come within the limitations imposed by the Fourth Amendment, the government action[349] must constitute a "search and seizure" in terms that emphasize the concept of a "reasonable expectation of privacy."[350] Following this rationale, the Supreme Court, in Andresen v. Maryland,[351] recently upheld the issuance of an otherwise valid search warrant for the books and records of a lawyer relating to the crime of obtaining property by false pretenses. A search warrant, therefore, can be obtained, consistent with the Bill of Rights, to get access to books and records. It need only meet the usual requirements of probable cause, particularity, etc.[352]

---

[349]Private action does not fall within the Amendment. Burdeau v. McDowell, 256 U.S. 465 (1921).

[350]Katz v. United States, 389 U.S. 347, 352 (1967). See particularly the concurring opinion of Mr. Justice Harlan. 389 U.S. at 361. The most dramatic catalyst for the development of Fourth Amendment theory away from an analysis rooted in property law concepts was electronic surveillance. Katz overruled Olmstead v. United States, 277 U.S. 438 (1928), in which the Supreme Court had held that since wiretapping involved neither a physical trespass nor a tangible seizure, it was not within the Fourth Amendment.

[351]427 U.S. 463 (1976).

[352]This is the general rule applicable to all types of third-party records. See, e.g., Vonder AHE v. Howard, 508 F.2d 364 (9th Cir. 1974) (search warrant for doctor's records. United States v. Fina, 502 F.2d 938 (7th Cir. 1974) (search warrant on phone company to install pen register).

Neither its literal language nor the history behind the Fourth Amendment supports its application to a subpoena for books and records. Nevertheless, the Supreme Court in Boyd v. United States,[353] in dictum, extended the reach of the Amendment to any "compulsory extortion of . . . private papers to be used as evidence. . .".[354] Today, however, although the subpoena is subjected to the Fourth Amendment, no requirement of probable cause is imposed, and only the most general requirement of particularity is enforced.[355] The Supreme Court,

---

The requirements of warrant and probable cause have been given a broad construction in the context of administrative inspections. See, See v. Seattle, 387 U.S. 541 (1967) (only generalized probable cause required in fire department inspection); Camara v. Municipal Court, 387 U.S. 523 (1967) (same for building inspector); United States v. Biswell, 406 U.S. 311 (1972) (search without warrant or probable cause of commercial gun license upheld).

When law enforcement seeks a search warrant for bank or commercial records, however, courts are particularly sensitive to blanket warrants designed to permit investigators to comb all available records. See, Vonder AHE v. Howard, 508 F.2d 364, 369 (9th Cir. 1974).

[353] 116 U.S. 616, 630 (1886).

[354] Id.

[355] The Boyd decision was followed in 1906 by Hale v. Henkel, 201 U.S. 43, in which the Court held that "an order for the production of books and papers may constitute an unreasonable search and seizure within the Fourth Amendment." Id. at 76.

Although the Court in Hale held that a grand jury subpoena may be subject to Fourth Amendment scrutiny, the Court did not apply the requirement of probable cause to it. Instead, it analyzed the facts in terms of "particularity" and held that the subpoena duces tecum was "far too sweeping in its terms." Id. at 76. This traditional view was repeated in F.T.C. v. American Tobacco Co., 264 U.S. 298 (1924).

in the recent case of Miller v. United States,[356] has even upheld the disclosure of bank records under a defective subpoena when that disclosure was challenged on Fourth Amendment grounds. The Court based its decision on two grounds. First, the documents subpoenaed (bank records) were not Miller's "private papers," but rather the business records of the bank. Second, Miller had no legitimate "expectation of privacy" in the bank records concerning him. The Court observed:

> The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the government...This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to government authorities, even if the information

---

355(continued)

A new trend, begun in 1928 in Brown v. United States, 276 U.S. 134, was summarized in Oklahoma Press v. Walling, 327 U.S. 186, 209 (1946), and hit its highwater mark in 1950 in United States v. Morton Salt Co., 338 U.S. 632. Noting the argument that the F.T.C. was accused of engaging in a "fishing expedition," the Court observed:

> We must not disguise the fact that sometimes, especially early in the history of the federal administration tribunal, the courts were persuaded to engraft judicial limitations upon the administrative process.

Administrative investigations fell before the colorful and nostalgic slogan 'no fishing expeditions.' Id. at 642. The Court then compared the administrative investigation to that of the traditional grand jury:

> [The F.T.C. has] a power of inquisition . . . not derived from the judicial function [but] more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. Id. at 642-43.

356 United States v. Miller, 425 U.S. 435 (1976).

> is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.[357]

Consequently, only the bank can object to a faulty subpoena; the depositor cannot complain how the records are obtained - by consent, subpoena, or by warrant.[358] That the bank in Miller did not resist, it should be noted, may not be typical.[359] Although

---

[357] Id. at 442.

[358] In Miller the Court also noted that the depositor argued that a subpoena for bank records should be tested by a rule equivalent to search warrant standards. The Court responded by referring to the traditional subpoena standard:

> In Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 208 (1946), the Court said that "the Fourth [Amendment], if applicable [to supoena as for the production of business records and papers], at most guards against abuse only by way of too much indefiniteness or breadth in the things required to be 'particularly described,' if also the inquiry is one the demanding agency is authorized by law to make and the materials specified are relevant.

United States v. Miller, 425 U.S. 435, 445-46 (1976).

[359] Banks are often likely to exercise the right to challenge because the industry has always been sensitive to its obligation to protect the customer's privacy. Le Valley and Lonery, "The I.R.S. Summons and the Duty of Confidentiality: A Hobson's choice for Bankers," 89 Banking L.J. 979, 980 (1972). But see American Banker, May 19, 1972, p. 1, col. 3-4: "Many banks voluntarily allow agents of the government to examine at will the records of individuals and organizational accounts, without the permission or indeed the knowledge of any of the people involved." The real ground for bank resistance to subpoena is apparently cost. That alone, however, is seldom sufficient. Compare United States v. Dauphin Deposit Trust Co., 385 F.2d 129, 130 (3d Cir. 1967), cert. denied, 390 U.S. 921 (1968) (insufficient) with United States v. Northwest Pennsylvania Bank and Trust Co., 355 F.Supp. 607 (W.D. Pa. 1973) (contra). See also United States v. Farmers and Merchants Bank, 397 F. Supp. 418 (C.D. Cal. 1975), which lists recent cases and sets out a procedure for banks to follow in securing cost reimbursement in I.R.S. summons cases. In United States v. Continental Bank and Trust Co., 503 F.2d 45 (10th Cir. 1974), a $1500 cost was held not to be unreasonable when it had to be borne by the bank.

most state courts will probably follow the Miller lead,[360] at least in California a different rule obtains.[361]

The modern Court has recognized that the "privilege [against self-incrimination], like the guarantees of the Fourth Amendment, stands as a protection of .....values reflecting the concern of our society for the right of each individual to be let alone."[362] Like the Fourth Amendment, the privilege against self-incrimination is personal; it may not be asserted to protect another.[363] It has also been limited by the Supreme

---

[360]The Miller rationale applies to other types of third-party records with the same result: the person about whom the records are made has no standing to object to the government's acquisition of them. See, e.g., United States v. Fithian, 452 F.2d 505 (9th Cir. 1971) (phone records); Ebbel v. United States, 364 F.2d 127 (10th Cir.), cert. denied, 385 U.S. 1014 (1966) (commercial records).

[361]California has rejected the standing rule in searches and seizures. People v. Martin, 45 Cal. 2d 755, 759, 290).2d 855, 857 (1955); See also People v. Warburton, 7 Cal. App.3d 815, 86 Cal. Rptr. 894 (1970) (compliance with subpoena). Likewise, it has found an expectation of privacy in bank records, Burrows v. Superior Court, 13 Cal.3d 238, 118 Cal. Rptr. 166, 529 P.2d 590 (1974), and telephone company records, People v. McKunes, 51 Cal. App.3d 487, 124 Cal. Rptr. 126 (1975). See also Shapiro v. Chase Manhattan Bank, 84 Misc.2d 938, 376 N.Y.S.2d 365 N.Y. Ct. 1975). (Pre-Miller case following Burrows). Burrows was rejected in United States v. Sahley, 526 F.2d 913 (5th Cir. 1975) (subpoena without probable cause to obtain financial disclosure statement made to bank), prior to the Supreme Court's decision in Miller.

[362]Tehan v. United States ex. rel Shott, 382 U.S. 406, 416 (1966).

[363]McAllister v. Henkel, 201 U.S. 90 (1906). Although the California courts have rejected the requirement of standing under the Fourth Amendment, see supra note 361, they have retained it under the Fifth Amendment, People v. Varnum, 66 Cal.2d 808, 427 P.2d 772 (1967)(no standing to complain that another's Miranda warnings have not been given.

Court to natural persons.[364] In addition, the interests protected by the privilege have not been enlarged beyond the privilege's historical roots; to claim the privilege, a witness must be faced with compulsion to be a witness against himself.[365] Where no compulsion is involved, the privilege is inapplicable.[366] Only testimonial evidence falls within the phrase "be a witness," identifying physical characteristics may be taken without violating the privilege.[367] Unless the evidence called for is incriminating, the privilege does not obtain; it does not

---

[364] See Hale v. Henkel, 201 U.S. 43 (1906) (corporations have no privilege); United States v. White, 322 U.S. 694 (1944) (labor unions have no privilege); Bellis v. United States, 417 U.S. 85 (1974) (partner, of a partnership, in his representative capicity has no privilege).

The other clauses of the Fifth Amendment are not so limited. Corporations, for example, may complain of double jeopardy, Rex Trailer Co. v. United States, 350 U.S. 148 (1956), due process, Boyce Motor Lines v. United States, 342 U.S. 337 (1952), and improper eminent domain, Missouri Pac. Ry. v. Nebraska, 164 U.S. 403 (1896).

[365] Nevertheless, the privilege may now be claimed in more than "criminal cases." It has been extended to juvenile proceedings, In re Gault, 387 U.S. 1, 42-57 (1967), civil litigation, McCarthy v. Arndtein, 266 U.S. 34 (1924), grand jury proceedings, Hoffman v. United States, 341 U.S. 479, 486-87 U.S. 155 (1955), administrative hearings, L.C.C. v. Brimson, 154 U.S. 447, 478-80 (1894), and questioning at the police station, Miranda v. Arizona, 384 U.S. 436 (1966).

[366] Since a search warrant operates without compulsion on the person, even though it secures incriminating evidence, it does not violate the Fifth Amendment. Andresen v. Maryland, 427 U.S. 463, 470-77, 2743-47 (1976).

[367] Blood tests, Schmerber v. California, 384 U.S. 757 (19-6), voice samples, United States v. Wade, 388 U.S. 218 (1967); and handwriting exemplars, Gilbert v. California 388 U.S. 263, 265-7 (1968), for example, do not fall within the protection of the privilege.

protect inquiry resulting in infamy or disgrace.[368]

The application of the privilege to the compulsory production of books and records in the modern jurisprudence of the Court is best illustrated by Fisher v. United States.[369] In Fisher, taxpayers transferred accountant's papers (given by the taxpayers) to their lawyers. Summons were issued for production of the papers, and there was resistance on Fifth Amendment grounds.[370] Following a parallel holding in Couch v. United States,[371] the Court first found that the taxpayers' privilege as such was not involved with the enforcement of a summons issued to a third party, including the taxpayer's lawyer. A violation of the taxpayer's privacy without an element of personal compulsion on the taxpayer, the Court held, was immaterial. Nevertheless, because the third party was a lawyer,[372] the Court considered whether the attorney-client privilege applied; the Court held that it did, but only to the degree that the taxpayers themselves would have been privileged under the Fifth Amendment not to produce the documents. Rejecting the broad dicta of Boyd

---

[368] Brown v. Walker, 161 U.S. 591, 605-06 (1896).

[369] 425 U.S. 391 (1976).

[370] The taxpayers also raised attorney-client and Fourth Amendment issues.

[371] 409 U.S. 322 (1973) (Fifth Amendment rights of taxpayer not violated by enforcement of summons against accountant for production of taxpayer's papers).

[372] In Couch v. United States, supra note 371, the Court rejected an accountant-client privilege in the Federal courts.

v. United States,[373] the Court held that the only production of books and records within the scope of the privilege was that involving some testimonial character in the act of production. The content of the books and records as such was immaterial. Since the papers were the accountants', the act of production would not involve the taxpayers in "testifying" against themselves, and their privilege against self-incrimination was not applicable.[374]

The jurisprudence of the Supreme Court has not yet developed any major First Amendment block of a general character to governmental access to books and papers.[375] The First Amendment issues are usually raised, however, when the papers sought

---

[373]116 U.S. 616 (1886). The Court observed (Fisher,425 U.S. at 408):

> It would appear that under that case [Bellis v. United States 417 U.S. 85 (1974)] the precise claim sustained in Boyd would now be rejected for reasons not there considered.

It also noted that Boyd's application of the Fourth Amendment to subpoena has been limited by Hale (at 407), that Boyd's evidence per se rule was no longer valid (id.), and that incrimination was now thought limited to testimonial incrimination (at 408).

[374]Fisher's rationale clearly applies to banks, phone companies and commercial record-holders, as well as to accountants and other professionals. Pre-Fisher cases rejecting Fifth Amendment challenges to production of third-party records are: United States v. Gross, 416 F.2d 1205 (8th Cir. 1969) (Western Union records); Newfield v. Ryan, 91 F.2d 700 (5th Cir.), cert. denied, 302 U.S. 729, rehearing denied, 302 U.S. 777 (1937) (copies of telegrams).

[375]Relevant issues were raised but never squarely decided in Buckley v. Valeo, 424 U.S. 1 (1976); Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975); California Banker's Ass'n. v. Shultz, 416 U.S. 21 (1974).

revolve around the freedom to associate for political purposes.[376] The investigating body need only show "a subordinate interest which is compelling" to justify the investigation.[377] Only the N.A.A.C.P., during the civil rights struggles in the south in the late 1950's and early 1960's, was consistently successful in the Supreme Court in blocking inquiries on freedom of association grounds.[378] On the other hand, the Supreme Court has consistently recognized that First Amendment

---

[376] Courts have also considered freedom of the press issues in third party records investigations. Even when subpoenas are directly issued to the subjects of an investigation in cases admittedly touching freedom of the press, however, the usual rules governing subpoena enforcement are held to apply, at least in the first instance. S.E.C. v. Wall Street Transcript Corp., 422 F.2d 1371, 1380 (2d Cir.), cert. denied, 398 U.S. 958 (1970); SEC v. Sanage, 513 F.2d 188, 189 (7th Cir. 1975). Generally, similar rules have been applied in the subpoenaing of third parties. In re Lewis, 501 F.2d 418, 422-23 (9th Cir.) cert. denied, 420 U.S. 913 (1974). At least one district court, however, has developed the novel rule that in third party investigations touching on First Amendment issues, a subpoena must be sought before resort is made to a search warrant. Stanford Daily v. Zurcher, 353 F.Supp. 124 (N.D. Cal. 1972), appeal docketed, No. 74-3212, 9th Cir. Nov. 20, 1974. The rule is subjected to cogent analysis in Note, "Search and Seizure of the Media: A Statutory, Fourth Amendment and First Amendment Analysis," 28 Stan. L. Rev. 957, 995-1000 (1976).

[377] See, e.g., Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 546 (1963); Barenblatt v. United States, 360 U.S. 109 (1959).

[378] See NAACP v. Alabama, 357 U.S. 449 (1958) (compulsory disclosure of membership records set aside); Bates v. City of Little Rock, 361 U.S. 516 (1960) (same); Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963) (same).

Newspaper reporters have not generally succeeded on First Amendment grounds in blocking grand jury inquiries. See Branzburg v. Haynes 408 U.S. 665 (1972).

interests play an important role in limiting the production of books and records in the execution of searches.[379]

The lower courts have, however, dealt specifically with issues raised by delivery of bank and professional records to law enforcement agencies. The Second Circuit, for example, took a narrow view of the chilling effects of financial disclosure in Fifth Avenue Peace Parade Committee v. Gray.[380] The Committee brought an action to challenge an F.B.I. investigation, in which the Bureau obtained bank records of the Committee prior to an antiwar demonstration. The Parade Committee was an umbrella organization for 200 antiwar groups in the New York City area. To provide transportation to Washington, D.C. for a moratorium demonstration, the Committee hired buses and trains; the receipts from the ticket sales were deposited in a bank account. The F.B.I. obtained the bank records and the information was eventually disseminated to various governmental agencies. Because of this investigation, the number of buses reserved by the organization was ascertained and the bus departures were observed by F.B.I. agents. The

---

[379] Fear of suppression of political dissent led the Supreme Court to insist on judicial supervision of electronic surveillance of domestic "national security" groups. United States v. United States District Court, 407 U.S. 297, 314 (1972). It has also led the Court to insist on a high degree of particularity in the execution of search warrants for books and papers embracing First Amendment interests. Stanford v. Texas, 379 U.S. 476 (1965). Finally, it has led in the area of obscenity to a special body of case law dealing with search and seizure. See, e.g., Marcus v. Search Warrant, 367 U.S. 717 (1961); A Quantity of Books v. Kansas, 378 U.S. 205 (1964).

[380] 480 F.2d 326 (2d Cir. 1973), cert. denied, 415 U.S. 948 (1974).

Committee went to court seeking a declaration that the F.B.I.'s conduct violated their constitutional rights and an injunction directing the F.B.I. to surrender or destroy the data and requiring that the data not be used in any manner. The court refused to find that a chilling effect resulted from the disclosure; the decision was based on the plaintiff's failure to demonstrate that harm occurred because the financial information was disseminated.

In contrast, the Supreme Court of California combined First and Fourth Amendment policy considerations to strike down a financial disclosure law regarding political candidates in City of Carmel v. Young.[381] Nowhere did the opinion suggest that actual harm to associational rights had to be shown before the disclosure law was invalid.

Professionals, of course, also may challenge on First Amendment grounds government access to books and records held by them; with the exception of clergymen,[382] however, few such challenges have met with success.

Finally, at least one court has limited the right of banks to disclose records on common law grounds. In Brey v. Smith,[383] the New Jersey Court of Chancery stated:

---

[381] 2 Cal. 3d 259, 466 P.2d 225, 85 Cal. Rptr. 1 (1970). The law required public officials and candidates for public office to submit a statement describing their investments over ten thousand dollars, with the exception of homes for residential and recreational purposes. The investments of the candidates' spouses and children also had to be disclosed.

[382] In re Verplank, 329 F.Supp. 433 (C.D. Cal. 1971).

[383] 104 N.J. Eq. 386, 146 A. 34 (Ch. 1929).

> There is an implied obligation, as I see it, on the bank, to keep [records of accounts] from scrutiny unless compelled by a court of competant jurisdiction to do otherwise. The information contained in the records is certainly a property right.[384]

Under this reasoning, a bank cannot freely give records to law enforcement officials.

When records of professionals are sought, common law privileges are implicated and may block access. The attorney-client privilege[385] is the strongest; if documents were protected in the hands of the client, the attorney-client privilege gives them the same protection in the hands of the attorney.[386] Other privileges which may be raised in appropriate circum-

---

[384] 104 N.J. Eq. at 390, 146 A. at 36. This equitable obligation of the bank became one implied by contract in In re Addonizio, 53 N.J. 107, 248 A.2d 531 (1968).

[385] See 8 J. Wigmore, Evidence §§2292, 2390, et. seq. (McNaughten rev. 1961).

[386] Fisher v. United States, 425 U.S. 391, 403 (1976). The attorney-client privilege does not prevent the production of pre-existing documents that are delivered to an attorney, because the element of confidentiality is lacking. See, e.g., United States v. Judson, 322 F.2d 460, 463 (9th Cir. 1963). In appropriate circumstances, the attorney-client privilege may bar disclosures made to non-lawyers employed as agents of an attorney. United States v. Pipkins, 528 F.2d 559, 562 (5th Cir. 1976); United States v. Schmidt, 360 F.Supp. 339, 346 (M.D. Pa. 1973). There is a qualified privilege for the work product materials of an attorney prepared in anticipation of litigation. Hickman v. Taylor, 329 U.S. 495 (1947).

stances are accountant-client,[387] physician-patient,[388] and spousal.[389]

A number of statutes recently enacted also regulate bank records. At the federal level, the Bank Secrecy Act of 1970 requires banks to compile files on customer accounts and to report designated financial transactions to the Secretary of the Treasury.[390] These provisions were designed to create and preserve records that "have a high degree of usefulness

---

[387]There is no federal accountant-client privilege. Couch v. United States, 409 U.S. 322 (1973). Several states have a statutory privilege. See, e.g., Ariz. Rev. Stat. Ann. §32-749 (1976).

In federal civil actions and criminal proceedings, the privilege of a witness is governed by the federal courts in the light of reason and experience. As a rule, no state law pertaining to accountant-client privilege is applied. See, e.g., Cotton v. United States, 306 F.2d 633, 636 (2d Cir. 1962), cert. denied, 371 U.S. 951 (1963).

[388]There is no common law physician-patient privilege. 8 J. Wigmore, Evidence §2380 (McNaughton rev. 1961). The privilege is entirely a creature of statute; it is a much-limited privilege. See, e.g., State v. Broussard, 12 Wash. App. 355, 529 P.2d 1128 (1974); Mass. Mutual Life Insurance Co. v. Brei, 311 F.2d 463 (2d Cir. 1962); Ranger, Inc. v. Equitable Life, 196 F.2d 968 (6th Cir. 1952).

[389]Confidential communications between spouses are privileged. 8 J. Wigmore, Evidence §§2332-41 (McNaughten rev. 1961). There are two important exceptions. Testimony or production of documents may be compelled where both spouses are granted immunity. In re Alperen, 478 F.2d 194 (1st Cir. 1973). Testimony or production of documents may be compelled where the spouses are partners in a crime; the privilege does not apply. United States v. Van Drunen, 501 F.2d 1393 (7th Cir.), cert. denied, 419 U.S. 1091 (1974). The modern trend is toward strict construction of the privilege. See United States v. George, 444 F.2d 310, 314 (6th Cir. 1971).

[390]The provisions of the Act are codified in 12 U.S.C. §§1730(d), 1829(b), 1951-59 (1970); 31 U.S.C. §§1051-62; 1081-83, 1101-05, 1121-22 (1970). The Secretary is authorized to promulgate regulations to implement the Act. The regulations are found in 31 C.F.R. 103 (1975).

in criminal, tax and regulatory investigations or proceedings."[391] There are both recordkeeping[392] and reporting [393] provisions.

---

[391] 12 U.S.C. §§1829(a) (2), 1951 (1970); 31 U.S.C. §1051 (1970).

[392] 12 U.S.C. §1829(b) (1970) applies only to federally insured banks. It requires banks to record the identities of persons having accounts with them and of persons having signatory control over accounts. To the extent that the Secretary determines certain records have a "high degree of usefulness" etc., the banks must make and maintain microfilm or other reproductions of each check, draft, or other instrument either drawn on it or presented to it for payment. In addition, records must be made of each check, draft, or other instrument received by the bank for deposit or collection, together with an identification of the party holding the account involved in those transactions. The Secretary is authorized to requrie insured banks to keep a record of the identity of all individuals who engage in transactions that are reportable by the bank under the Act's reporting requirements.

The regulations require copying of checks in excess of $100. 31 C.F.R. §103.34(b)(3) (1975). Only "on us" checks must be copied; dividend, payroll, and employee benefit checks are among checks exempt from the requirement. Id. The identity of depositors must be recorded, and various other financial documents may be microfilmed. 31 C.F.R. §103.34 (1975). Additionally, all financial institutions must maintain a microfilm copy of each extension of credit over $5000 (except those secured by an interest in real property). Further, communications related to transfers of funds exceeding $10,000 to a person, account or place outside the United States must be microfilmed. 31 C.F.R. §103.33 (1975). The regulations state that inspection or access to the records is governed by "existing legal process." 31 C.R.R. §103.51 (1975). See also 31 U.S.C. §1121(b) (1970); California Bankers Ass'n. v. Shultz, 416 U.S. 21, 52 (1974). Civil and criminal penalties exist for willful violations of the recordkeeping requirements.

[393] 31 U.S.C. §§1101-1105 (1970) and the corresponding regulations in 31 C.F.R. §103.22 (1976) require individuals to report transportation of monetary instruments into or out of the United States and receipts of such instruments in the United States from foreign places, if the instrument transported or received has a value in excess of $5000. Title 31 U.S.C. §§1121-1122 (1970) also generally require United States citizens, residents, and business people to file reports of their relationship with foreign financial institutions. The domestic

On the state level, some bank secrecy laws have recently appeared. The California Right to Financial Privacy Act,[394] for example, regulates the disclosure of records by financial institutions. To receive copies of financial records, state and local officers must present customer authorization, an administrative subpoena, a search warrant, a judicial subpoena, or a subpoena duces tecum.[395] The general thrust of the Act is to limit access by government to bank records.[396]

393(continued)
reporting provisions of the Act, as implemented by the regulations, apply only to banks and financial institutions. Under 31 U.S.C. §1081 (1970) the Secretary may specify the types of currency transactions that should be reported. 31 U.S.C. §1082 (1970) authorizes him to require such reports from the domestic financial institutions involved from the parties to the transactions, or from both. The Secretary, however, has promulgated regulations that require only financial institutions to report to the Internal Revenue Service. The relevant regulation, 31 C.F.R. §105.22 (1975), requires the financial institution to "file a report of each deposit, withdrawal, exchange of currency or other payment or transfer by, through, or to such financial institutions which involves a transaction in currency of more than $10,000."

31 U.S.C. §1061 (1970) authorizes the Secretary to provide by regulation for the availability of information provided in the reports required by the Act to other departments and agencies of the federal government; pursuant to this authority, the Secretary has promulgated Section 103.43.

394 1976 Cal. Legis. Serv. C. 1320.

395 Id. at §7470(a).

396 Customer authorization must state the period for which it is valid. The name of the agency making the request and the reason for disclosure must also be included. The records to be examined must be identified, and the requesting agency must send to the customer written notice of the disclosure within thirty days. Id. at §7473. If information is divulged pursuant to an administrative subpoena or summons, a copy of the process must be served upon the customer before hand. The subject of the records may move to quash the subpoena in court. Where a part or potential future violation is involved, service upon the customer may be waived. Nonetheless, when

A recent Maryland statute[397] also similarly restricts record disclosure by "financial institutions." With limited exceptions,[398] the financial institution may not release customer information unless the customer authorizes it or the investigator presents a lawful subpoena, summons, warrant or court order.[399]

New laws governing electronic funds transfer systems also reflect a developing trend toward greater confidentiality of bank records.[400]

396(continued)
a waiver is granted, the court must order the agency to notify the customer within sixty days of the disclosure. The financial institution may notify the customer of receipt of process unless waiver of notice is granted, and the court finds that notice would impede the investigation. Id. at §7474.

The Act does not require customer notification if the examination is conducted pursuant to a search warrant; the institution may, of course, elect to notify the subject unless prohibited from doing so by a court order. Id. at §7475.

397 1976 Md. Laws ch. 252. The Act adds §§224-27 to Article II of the Code, which deals with banks and trust companies.

398 A financial institution that holds records on customers may examine, handle, and maintain them without additional customer autorization or legal process. Supervising agencies also have that right. Finally, information may be published so long as the data is not identified in connection with a particular individual.

399 Md. Code Ann. art. 11, §225 (Supp. 1975). In all cases, the process must be served on both customer and institution at least twenty-one days before disclosure, although a court may waive service of process on the customer for good cause. Id.

400 Many statutes recently enacted to deal with computerized banking specify presumptions of confidentiality, liabilities of banks to customers for disclosure of information, criminal penalties for "tapping in" to the computer to obtain financial information, and criminal penalties for people obtaining

Laws concerning disclosure of telephone records and conversations also exist. Section 605 of the Federal Communications Act of 1934, protects the integrity of communications systems and the privacy of communications themselves.[401] It addresses two distinct classes of persons.[402] Sentence one deals with persons "receiving or assisting in receiving, or transmitting, or assisting in transmitting any interstate or foreign communication by wire or radio" and prohibits them from divulging the existence or contents of the communication except under certain circumstances.[403] Sentence two addresses "all other persons not within the first class." Interception of any communication and divulging its existence or contents is prohibited, except where authorized by the

---

400(continued)
information from the system without authorization. See, e.g., Fla. Stat. §659.062 (Supp. 1976) (remote banking terminals authorized if information secure); Iowa Code §527.1, 527.10 (Supp. 1977) (confidential electronic transfer of funds); Kan. Stat. §5568 (Supp. 1976) (remote terminals must be secure from tapping or interference); Or. Rev. Stat. §§714.270 and 714.992 (1975) (obtaining or attempt to obtain information about customer without his consent from remote terminal made a felony).

401 47 U.S.C. §605 (1970). See, e.g., Bubis v. United States, 384 F.2d 643, 646-47 (9th Cir. 1969).

402 United States v. Covello, 410 F.2d 536, 541 (2d Cir.), cert. denied, 396 U.S. 879 (1969).

403 47 U.S.C. §605 (1970). Among the exceptions, disclosure can be made "in response to a subpoena issued by a court of competent jurisdiction or on demand of other lawful authority."

sender.[404] Defendants have argued for suppression of telephone company records under both sentences.[405]

---

[404] In 1968, as part of Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§2510-20 (1970), Congress rewrote section 605. The regulation of wiretaps was taken out of section 605, leaving exclusive control to Title III. It also made the second sentence, now dealing only with radio communications, irrelevant with respect to telephone toll records. United States v. Baxter, 472 F.2d 150, 166-67 (9th Cir.), cert. dismissed, 414 U.S. 801 (1973), cert. denied, 416 U.S. 940 (1974).

[405] Under the first sentence, they argue that a person with the described duties divulged the existence of a communication in a situation not falling under one of the exceptions. Usually, too, they argue that the exception "demand of other lawful authority" should be narrowly construed. The argument under the second sentence, no longer possible under the post-1968 section, was that a person not authorized by the sender intercepted a communication and divulged its existence.

These arguments are most easily answered by holding that telephone toll records are not within the scope of section 605. See United States v. Covello, supra. note 402. Accord United States v. Crone, 452 F.2d 274, 289 (7th Cir. 1971), cert. denied, 405 U.S. 964 (1972); United States v. Barnard, 490 F.2d 907, 913 (9th Cir. 1973), cert. denied, 416 U.S. 955 (1974).

Other courts have handled these issues by narrowly construing the class of persons covered by sentence one, finding that the individual who actually turned over the toll records to the police was not within its scope. See United States v. Russo, 250 F.Supp. 55 (E.D. Pa. 1966).

The ultimate answer, of course, is that the telephone toll records were obtained in compliance with the statute. See, e.g., Nolan v. United States, 423 F.2d 1031, 1045 (10th Cir. 1969), cert. denied, 400 U.S. 848 (1970); DiPiazza v. United States, 415 F.2d 99, 103 (6th Cir. 1969), cert. denied, 402 U.S. 949 (1971).

The court that has gone the farthest in sustaining law enforcement interests indicated a willingness to include within the phrase "demand of other lawful authority" a request by a law enforcement officer in the regular course of his duties. See United States v. King, 335 F.Supp. 523 (S.D. Cal. 1971), aff'd in part, rev'd in part on other grounds, 478 F.2d 494 (9th Cir. 1973), cert. denied, 417 U.S. 920 (1974).

The Fair Credit Reporting Act[406] governs the dissemination of information collected by credit reporting bureaus. Distinctions are drawn between a "consumer report," which contains financial and credit information on the individual, and a "investigative consumer report," which includes personal information about the subject. A bureau may generally provide consumer reports under the order of a court.[407] If a bureau discloses an investigative consumer report, it must inform the consumer within three days of the request for the report.[408] Some states also have similar credit reporting statutes.[409]

The Privacy Act of 1974[410] may affect access to private commercial records.[411] It deals with maintenance and dis-

---

[406] 15 U.S.C. §§1681-81(t) (Supp. 1975).

[407] 15 U.S.C. §1681 (b)(1) (Supp. 1975).

[408] 15 U.S.C. §1681(d) (Supp. 1975). Further, the consumer may ask the agency that received the report to disclose the nature of the investigation within five days of his request or within five days of receipt of the report, whichever is sooner. Id.

[409] Conn. Gen. Stat. §§36-431 to 435 (Supp. 1976); Mass. Gen. Laws Ann. ch. 93, §§50-70 (1975); N.H. Rev. Stat. Ann. §359-B (Supp. 1975); N.M. Stat. Ann. §50-18-1 (Supp. 1975); N.Y. Gen. Bus. Law §§370-76 (McKinney Supp. 1976); Okla. Stat. Ann. ch. 211 §81 (1955).

The Massachusetts, New Hampshire, New Mexico and Oklahoma statutes are based on the Federal model. All but the Oklahoma law only permit disclosure of identifying information to government agencies upon request. Any other information is restricted.

[410] 5 U.S.C. §552(a) (Supp. 1976). This Act amends title 5 of the U.S. Code.

[411] The ultimate effect is still undetermined. Section five created the Privacy Protection Study Commission with a mandate to study private inforamtion systems and to recommend, if necessary, measures to regulate them. Privacy Act of 1974, 88 Stat. 1896 (1974).

semination of information on individuals, collected by government agencies. Disclosure without written consent of the individual involved is forbidden. An exception is made for law enforcement agencies that submit a written request to the agency possessing the record. The request must specify the records as well as the law enforcement activity for which they are sought,[412] but no accounting of these requests must be made to the individual.[413]

d. Immunity

In many situations, a witness, called to testify before a grand jury will assert his privilege against self incrimination to resist testifying; it may, however, be overcome by a grant of statutory immunity. Most jurisdictions have an immunity statute.[414] A handful of jurisdictions have use immunity statutes that prohibit the government from using any of the testimony given by the witness, or its fruits, against him in a subsequent criminal proceeding.[415] The Constitution

---

[412] 5 U.S.C. §552(a)(b) 7 (Supp. 1976).

[413] 5 U.S.C. §552(a)(b) (Supp. 1976).

[414] See e.g. 18 U.S.C. §§6001-6005 (1970); N.Y. Crim. Proc. Law §50.10 (McKinney 1971); N.J. Stat. Ann. §2A: 81-17.3 (West 1960); Mass. Gen. Laws Ann. ch. 233, §§20C-20I 81-17.3 (1970).

[415] Federal law and New Jersey, for example, provide use immunity. See 18 U.S.C. §§6001-6005 (Supp. 1975); N.J. Stat. Ann. §2A: 81-17.3 (West Supp. 1976). In addition to the area of compulsory testimony, the concept of use immunity is found in a number of places in the law. When a defendant pleads not guilty by reason of insanity, for example, a government psychiatrist will examine him, but nothing he says can be used against

does not require a broader grant of immunity to replace a witness' Fifth Amendment privilege.[416] Nevertheless some jurisdictions go further and provide that the witness cannot be convicted of any crime concerning which he testifies under the grant of immunity.[417]

When the prosecutor expects or knows a witness will "take the Fifth" when called to testify before the grand jury, he may get an immunity order, which becomes effective when

415(continued)
him, except on the issue of insanity. See Lee v. County Court, 27 N.Y.2d 432, 267 N.E.2d 452, 318 N.Y.S.2d 449 (1971). Similarly, a defendant may testify on a motion to suppress, but nothing he says can be used against him in the governments case in chief. Simmons v. United States, 390 U.S. 377 (1968). See also A.B.A. Standards, Guilty Pleas, 2.2 (1968) (withdrawn plea not usable). In light of this general use of the concept to reconcile various conflicting claims, it is difficult to understand the objection to use immunity.

416 Kastigar v. United States, 441 U.S. (1971). When a witness is later prosecuted for a crime disclosed by his immunized testimony, the burden of proving that the testimony was not used, even indirectly, is on the prosecution. Id. This is a "heavy" burden. United States v. First Western State Bank, 491 F.2d 780 (8th Cir.), cert. denied, 419 U.S. 825 (1974). See also Goldberg v. United States, 472 F.2d 513 (2d Cir.1973); United States v. Kurzer, 534 F.2d 511 (2d Cir. 1976). The defendant is entitled to a pretrial evidentiary hearing at which the government must prove lack of taint. United States v. De Diego, 511 F.2d 822 (D.C. Cir. 1975).

417 See e.g. N.Y. Crim. Proc. Law §190.40 (McKinney 1971); Mass. Gen. Laws Ann. ch.233, §§20C-20 I (1970). This is true even if the state is able to prove his guilt by evidence obtained wholly independantly of the immunized evidence.

A common limitation prevailing in transactional immunity jurisdictions is that the witness' answers must be "responsive." See, People v. Breindel, 73 Misc. 2d 734, 342 N.Y.S. 2d 428 (Sup. Ct. New York Co. 1973). This prevents a sophisticated witness from coming before a grand jury and blurting out irrelevant incriminating statements in the hope of receiving immunity from prosecution for all the crimes about which he speaks.

the witness so refuses to testify.[418] The witness must then testify or face imprisonment for contempt.[419] On the other hand, in New York (a transactional immunity jurisdiction) a prosecutor need not get a court order and may, but need not, get written immunity agreement signed by the witness. The New York statute[420] provides that any responsive answer by a witness before the grand jury automatically cloaks that witness with full transactional immunity regarding any crimes discussed in that answer.

A valid grant of immunity in one jurisdiction will protect the witness from use of the immunized testimony by another jurisdiction.[421] A state, however, is "powerless to grant

---

[418] In the federal system, under 18 U.S.C. §6003 (1970), the order may be issued before the witness refuses to testify, but it does not become effective until there is a refusal. United States v. Seavers, 472 F.2d 607 (6th Cir. 1973). Under federal procedure, although the United States Attorney seeking the order must apply to a District Court, the court must approve the order and is without discretion. United States v. Leyva, 513 F.2d 774 (5th Cir. 1975). Witnesses have neither a right to notice and hearing nor standing to contest the immunity order. Id.

In New Jersey, on the other hand, after a witness refuses to answer based on his privilege against self-incrimination, the court must rule that the privilege is applicable before the prosecutor need seek an immunity grant. In re Addonizio, 53 N.J. 107, 248 A.2d 531 (1968).

[419] See, e.g. United States v. Bryan, 339 U.S. 323 (1950).

[420] See N.Y. Crim. Proc. Law §190.40 (McKinny Supp. 1976).

[421] Murphy v. Waterfront Commission, 378 U.S. 52 (1963).

immunity against foreign prosecution."[422]

A grant of immunity is not necessary to compel a corporation to produce incriminating evidence;[423] a corporation has no privilege against self incrimination.[424] A grant of immunity is also unnecessary to compel real or physical evidence when the act of production, as opposed to the contents of what is produced, is not incriminating. The Fifth Amendment does not protect against compulsory production of books and records,[425] exhibition of physical characteristics,[426] hand-

---

[422] 8 J. Wigmore, Evidence 346 (McNaughton rev. 1961).
Accord: Zicarelli v. New Jersey Investigation Commission, 406 U.S. 472, 478 (1972); United States v. Doe, 361 F.Supp. 226 (E.D. Pa. 1973), aff'd, 485 F.2d 678 (3d Cir. 1973), cert. denied, 415 U.S. 989 (1974); United States v. Armstrong, 476 F.2d 313 (5th Cir. 1973); In re Parker, 411 F.2d 1067 (10th Cir. 1969). Contra, In re Cardassi, 351 F.Supp. 1080 (D.Conn. 1972).

[423] Curcio v. United States, 354 U.S. 112 (1956); United States v. Lay Fish Co., 13 F.2d 136 (2d Cir. 1926).

[424] Campbell Painting Corporation v. Reid, 392 U.S. 286, 288-89 (1967); Hale v. Henkel, 201 U.S. 431 (1906). Even when the corporation is the mere alter-ego of its owner, no privilege attaches to the corporation documents. Hair Industry Ltd. v. United States, 340 F.2d 510 (2d Cir. 1965). Partnerships may or may not have a Fifth Amendment privilege depending on the circumstances. See United States v. White, 322 U.S. 674, 701 (1943), and Bellis v. United States, 417 U.S. 85 (1974).
This is traditional Fifth Amendment analysis. In light of the Supreme Court decision in Fisher v. United States, however, 425 U.S. 391 (1976), an immunity grant may not always be necessary to compel production of books and records of individuals either.

[425] Fisher v. United States 425 U.S. 391 (1976).

[426] Holt v. United States, 218 U.S. 245 (1910); United States v. Wade, 388 U.S. 218 (1963).

writing exemplars,[427] and voice exemplars,[428] for example, so no immunity is required to compel such evidence.[429] Immunity also need not be granted when any penalties likely to be suffered as a result of testimony are not criminal;[430] the Fifth Amendment privilege speaks of a "criminal proceeding." Similarly, while immunized evidence may not be used against the witness in a criminal proceeding, it may be used against him in a civil action.[431] If the privilege applies, however, the witness may be

---

[427] Gilbert v. California, 388 U.S. 263 (1967).

[428] United States v. Dionisio, 410 U.S. 1 (1972).

[429] Likewise, this type of evidence should not be suppressed even if given under a grant of immunity. In the federal system, at least, this must be so since "[t]his statutory immunity is intended to be as broad as, but no broader than the privilege against self-incrimination." S. Rep. No. 91-617, 91st Cong., 1st Sess. 145 (1969). See also United States v. Hawkins, 501 F.2d 1029 (9th Cir. 1974), cert. denied, 419 U.S. 1079 (1974).

[430] Ullman v. United States, 350 U.S. 422 (1956). There, the witness was granted full transactional immunity and asked to testify about his Communist Party membership. He refused to answer, stating the statutory immunity was insufficient since he could lose his job, be expelled from labor unions, become ineligible for a passport, and be the object of public opprobrium. The Court responded that the Fifth Amendment only applies where the witness is required to give testimony that might expose him to a criminal charge. Ullman's contempt conviction was affirmed. See also In re Bonk, 527 F.2d (7th Cir. 1975); In re Michaelson, 511 F.2d 892 (9th Cir. 1975).

[431] Gardner v. Broderick, 392 U.S. 273 (1968); United States v. Cappetto, 502 F.2d 1357 (7th Cir. 1974), cert. denied 420 U.S. 925 (1975). For example, in Gardner the Supreme Court said that if a public employee, called to testify concerning the performance of his public job, were given immunity he could be dismissed from his job on the basis of his compelled testimony. See also Maryland State Bar Ass'n. Inc. v. Sugarman, 273 Md. 306, 329 A.2d (1974),

penalized neither civilly nor criminally for asserting it.[432] Finally, a grant of immunity has no effect of a prior conviction,[432a] even though the witness may be forced to admit his involvement in the crime for which he was convicted.[433]

A witness's non-compliance with the immunity agreement, usually by perjury or a repeated refusal to testify, prevents the immunity from attaching. Most statutes specifically allow the use of anything said under an immunity grant in a subsequent "prosecution for perjury, giving a false statement, or other-

---

431(continued)
cert. denied, 420 U.S. 974 (1975) (18 U.S.C. §6002 involved); Committee on Ethics of West Virginia State Bar v. Granziani, 200 S.E. 2d 353 (W. Va. Sup. Ct. App. 1973), cert. denied, 416 U.S. 995 (1974) (state immunity statute involved).
Thus, the main consideration is not the context in which the testimony is given, but the use to which it is to to be put. But the mere labeling of an action or penalty as civil or criminal is not decisive. See United States v. United States Coin & Currency. 401 U.S. 715 (1971) (forfeiture held criminal in substance if not form).

432 Lefkowitz v. Turley, 414 U.S. 70 (1973) (loss of government contracts); United States v. United States Coin & Currency, 401 U.S. 715 (1971) (loss of money seized in a gambling raid); Gardner v. Broderick, 392 U.S. 273 (1968) (loss of public employment); Spevach v. Klein, 385 U.S. 511 (1967) (disbarment); United States v. Cappetto, 502 F.2d 1351 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975) (divestiture of property interest in a building).

433 Kastigar v. United States, 406 U.S. 441, 461 (1972). See also In re Liddy, 506 F.2d 1293 (D.C.Cir. 1974); State v. Craig, 107 N.J. Super. 196, 257 A.2d 737 (1969). When pronouncing sentence for the prior conviction, the judge may in no way use the intervening immunity testimony of the defendant. United States v. Laca, 499 F.2d 922 (5th Cir. 1974); United States v. Wilson, 488 F.2d 1231 (2d Cir. 1973) (defendant entitled to resentencing by a judge who is unaware of the immunized testimony).

wise failing to comply with the [immunity] order."[434] The rationale is that the perjury or contempt breaches the immunity agreement.[435] Immunized truthful testimony, however, can never be used against the witness-- either in a prosecution for a past[436] or a future[437] crime.

---

[434]18 U.S.C. §6002 (1970). See also N.Y. Crim. Proc. Law §50.10 (McKinney 1971); N.J. Stat. Ann. §2A: 81-17.3 (West 1960); Mass.Gen. Laws Ann. ch. 233, §20G (1970).

A specific provision is, however, unnecessary. The Supreme Court has held that perjured testimony given under immunity could be used in a subsequent trial for perjury, even though that particular immunity statute did not specifically except perjury. Glickstein v. United States, 222 U.S. 139 (1911).

[435]See United States v. Tramunti, 500 F.2d 1334, 1342-44 (2d Cir.), cert. denied, 419 U.S. 1079 (1974), for an excellent discussion of this rationale. See also United States v. Bryan, 339 U.S. 323 (1950) (contempt); United States v. Leyva, 513 F.2d 774 (5th Cir. 1975) (perjury); United States v. Watkins, 505 F.2d 545 (7th Cir. 1974) (perjury); United States v. Cappetto, 505 F.2d 1351 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975) (contempt); United States v. Alter, 482 F.2d 1016 (9th Cir. 1973).

[436]United States v. Doe, 361 F.Supp. 226 (E.D.Pa. 1973), aff'd., 485 F.2d 678 (3d Cir. 1973), cert. denied, 415 U.S. 989 (1974).

[437]Cameron v. United States, 231 U.S. 710 (1914); United States v. Hockenberry, 474 F.2d 247 (3d Cir. 1973); Kronick v. United States, 343 F.2d 436 (9th Cir. 1965).

Since immunized truthful testimony may not be used criminally against a witness, but immunized false testimony may, interesting issues arise surrounding the use of immunized testimony under statutes punishing inconsistent statements (as opposed to perjury), e.g., 18 U.S.C. §1623 (1970); N.J. Stat. Ann. §2A: 131-4 (1952). Such statutes prohibit irreconcilably inconsistent statements under oath; proof of which statement was false is unnecessary.

Suppose a witness makes two irreconcilably inconsistent statements under oath. If neither statement is immunized, the witness may be prosecuted. On the other hand, if both statements are given under a grant of immunity the witness may not be prosecuted solely on the evidence of the two

e. Contempt

The contempt power has roots running deep in Anglo-American legal history.[438] At common law, contempt pro-

437(continued)
inconsistent statements. This is because the immunity grant under which the witness testified truthfully prohibits any use of that testimony for past or future crimes.

If only one of the statements was given under an immunity grant the problems are complicated.

First, assume only the first statement is immunized. If the first statement is false and the second is true probably there would have to be some independent evidence of the falsity of the first statement before a prosecution could brought under an inconsistent statement statute. Otherwise, it would be possible to assume from the statements' inconsistency that actually the first statement was true (therefore protected by the immunity grant) and the second statement false. If there were some evidence of the falsity of the first statement, however, its immunized status would disappear. This evidence could be either direct evidence of its falsity, or direct evidence of the truth of the inconsistent statement. If the first statement were true and the second false, on the other hand, the immunized truthful testimony may never be used against the witness for prosecution. United States v. Hockenberry, supra.

Second, assume only the second statement is immunized. If the first statement is false and the second true, the immunity grant protects the witness from use of the truthful testimony to establish a past crime. United States v. Leyra, 513 F.2d 774 (5th Cir. 1975); United States v. Doe, supra. If the first statement is true and the second false, however, problems again arise. Unless the first statement is independently shown to have been false, the mere inconsistency of the two statements would not prove the second statement false. Until the immunized statement itself is shown to be false, the witness is protected from its use against him in any prosecution.

Immunity, therefore, will often remove the unique advantage of an inconsistent statement statute from the prosecutor, i.e., a prosecution for a false statement without the necessity of proving which of two is false.

438See generally, R. Goldfarb, The Contempt Power (1963). The Judiciary Act of 1789, 1 Stat. 83 (1789), first recognized the contempt power. A limitation to conduct that obstructs justice was enacted in 1831 and sustained as constitutional in Ex parte Robinson, 86 U.S. (19 Wall.) 505 (1874).

ceedings were sui generis and punishable summarily.[439] Under modern law, there is no question that courts have power to enforce compliance with their lawful orders.[440]

The contempt power of courts and contempt procedures are now generally spelled out in statutes.[441] Case law and statutes draw two important distinctions regarding contempt.

First is the distinction between civil and criminal contempt.[442] Under civil contempt, when a witness refuses to testify before a grand jury, the refusal is brought to the

---

[439] Myers v. United States, 264 U.S. 95 (1924).

[440] United States v. United Mine Workers, 330 U.S. 258, 330-32 (1947). Persons involved directly in a judicial proceeding and mere spectators are subject to all reasonable orders of the court, United States v. Abascal, 509 F.2d 752 (9th Cir. 1975).

[441] See, e.g., 18 U.S.C. §401 (1970) (contempt power of Federal courts); 28 U.S.C. §1826 (1970) (federal civil contempt procedure); Fed. Rules Crim. Pro., Rule 42 (federal criminal contempt procedure); N.Y. Jud. Law §750-55 (1962) (New York courts' civil & criminal contempt power); N.Y. Civ. Prac. Law and Rules §2308 (1965) (New York civil contempt procedure); N.Y. Penal Law §§215.50, 215.51 (crimes of criminal contempt). See also, N.J. Stat. Ann. §2A:10-1, 10-3, 10-5, 10-7, and 10-8 (West 1965); N.J. Rules of Court, Rules 1:10-1 to 1:10-4 (1969).

[442] The issues arises as follows. When subpoenaed before a grand jury the witness must attend. See, e.g., United States v. Neff, 212 F.2d 297 (3d Cir. 1954). The grand jury, however, has no power as such to hold a witness in contempt if he refuses to testify without just cause. To constitute contempt, the refusal must come after the court has ordered the witness to answer specific questions. Wong Gin Ying v. United States, 231 F.2d 776 (D.C. Cir. 1956). Two courses, however, are open when a witness thus refuses to testify after a proper court order: civil or criminal contempt. The courses, are not exclusive; the same conduct may be proceeded against both civilly and criminally. United States v. United Mine Workers, 330 U.S. 258, 299 (1947).

attention of the court,[443] and the witness may be confined until he testifies.[444] The witness is said to "carry the keys of the [prison] in [his] own pocket."[445] Under federal law,

---

[443] The usual procedure is set out in In re Hitson, 177 F. Supp. 834, 837 (N.D. Cal. 1959), rev'd on other grounds, 283 F.2d 355 (9th Cir. 1960):

> A legally constituted grand jury must call the witness and place him under oath. The witness must refuse to answer a pertinent question on the grounds that the answer would tend to incriminate him under some federal law. The grand jury, prosecuting official and witness must then come before the court in open session where the foreman must inform the court of the matter and ask its advice. The court then hears the question and makes certain that the witness understands it. If the question does not on its face disclose that the answer would tend to incriminate the witness, he must be given opportunity to be heard and introduce any relevant evidence; if the court is satisfied that an answer would not tend to incriminate it must direct the witness to return to the grand jury room and answer the question. Should the witness continue to refuse, such fact is reported to the court in open session, with the grand jury and court again listening to the question. The question is again put to the witness and if he still refuses to answer he has committed a contempt.

[444] McCrone v. United States, 307 U.S. 61 (1939). The conditional nature of the imprisonment justifies holding civil contempt proceedings absent the safeguards of indictment and jury trial, provided that basic due process requirements are met. In re Long Visitor, 523 F.2d 443, 448 (8th Cir. 1975). A violation of the court's order need not be found intentional for the witness to be guilty of civil contempt. N.L.R.B. v. Local 282 Teamsters, 428 F.2d 994 (2d Cir. 1970); United States v. Greyhound Corp., 363 F.Supp. 525, aff'd, 508 F.2d 529 (7th Cir. 1973). Fear of gangland reprisal does not make a failure to comply any less voluntary. See Piemonte v. United States, 367 U.S. 556, 559 (1961); Reina v. United States, 364 U.S. 507 (1960).

[445] In re Nevitt, 117 F.449, 461 (8th Cir. 1902.

the confinement cannot extend beyond the life of the grand jury or eighteen months, although the sentence can be reimposed if the witness adheres to his refusal to testify before a successor grand jury.[446] Under criminal contempt the witness,

---

[446] Shillitani v. United States, 384 U.S. 364 (1966). Theoretically, of course, this would allow for indefinite incarceration of a stubborn witness. Due process problems, therefore, arise. Since the purpose of the civil contempt sanctions is to coerce testimony, it may be argued that incarceration for a great period of time eventually loses any coercive impact on the witness and so should be terminated to avoid becoming punitive.

In affirming the validity of judgement for civil contempt, Judge Friendly, for the Second Circuit, addressed the argument that the witness' non-compliance with the court's order left him vulnerable to indefinite incarceration. The court stated that

> even though the evidence is not within a testimonial privilege, the due process clause protects against the use of excessive means to obtain it. While exemplars of Devlin's handwriting may be important to the Government, they can hardly be essential...

United States v. Doe, 405 F2d 436, 438 (2d Cir. 1968). Additionally, the time actually served in that case for the civil contempt was "relatively mild." Id. at 439. Based on these two dicta, a defense of due process may be raised by a contemnor probably only when the evidence he is asked to produce is not "essential" and his time is not "relatively mild."

In Catena v. Seidl, 65 N.J. 257, 321 A.2d 225 (1974), where the evidence which the contemnor was asked to produce was "essential," five years imprisonment of the seventy-three year old witness was held to have lost its "coercive impact" and had no legal justification to continue. Relevant factors were the age of the witness, his failing health, and his continued "obstinancy." The court found evidence sufficient to meet the standard that there existed "no substantial liklihood" that continued confinement would cause the witness to change his mind and testify. The court interpreted Shillitani, supra, to mean that when the contemnor is adamant, "continued imprisonment may reach a point where it becomes more punitive than coercive and thereby defeats the purpose of the commitment.

after his refusal and a hearing,[447] may be fined or imprisoned or both[448] not to secure compliance with the court's order, but to vindicate the court's authority.[449] Since criminal contempt is a crime, most constitutional safeguards that protect a criminal defendant apply to criminal contempt proceedings;[450] probably most important is that the contemnor is entitled to a jury trial if the penalty to be imposed for the contempt exceeds six months.[451] Thus in distinguishing between civil

---

[447] Taylor v. Hayes, 418 U.S. 488 (1974); Harris v. United States, 382 U.S. 162 (1966).

[448] Bloom v. Illinois, 391 U.S. 194 (1968).

[449] Gompers v. Bucks Stove and Range Co., 221 U.S. 418, 441 (1911); Lamb v. Cramer, 285 U.S. 217 (1932).

[450] One charged with criminal contempt is presumed innocent until proven guilty beyond a reasonable doubt, and he cannot be compelled to testify against himself. Gompers, supra note 449. He must be found to have possessed wrongful intent, United States v. Seale, 461 F.2d 345 (7th Cir. 1972); In re Brown, 454 F.2d 999 (D.C. Cir. 1971), and he is entitled to a hearing on the issue, Harris v. United States, 382 U.S. 162 (1966), where he has a right to assistance of counsel and the right to call witnesses to give testimony. Cooke v. United States, 267 U.S. 517 (1925). Evidence seized in violation of the Fourth or Fourteenth Amendments is subject to the exclusionary rule in criminal contempt proceedings. Dyke v. Taylor Implement Co., 391 U.S. 216 (1968). A criminal contempt proceeding, however, need not be initiated by an indictment, no matter what the sentence is to be. Mitchell v. Fiore, 470 F.2d 1149 (3d Cir. 1972), cert. denied, 411 U.S. 938 (1973); In re Dellinger, 461 F.2d 389 (7th Cir. 1972).

[451] Codispoti v. Pennsylvania 418 U.S. 506 (1974). For purposes of the "six month rule," the Court said that in the case of post-verdict adjudications of various acts of contempt committed during a proceeding, a jury trial is required if the sentences imposed aggregate more than six months, even though no sentence for more than six months was imposed for any one act of contempt. On the other hand, in the companion case of

and criminal contempt, the nature of the sanction imposed is determinative;[452] the procedural consequences flow from the distinction.[453]

Second, is the distinction between direct and indirect contempt. Direct contempts are those committed in the actual physical presence of the court or so near the court as to

---

451(continued)
Taylor v. Hayes, 418 U.S. 488 (1974), the Court held that a sentence of longer than six months could be reduced to satisfy this rule; no retrial with a jury was necessary.

As to other penalties, the Court, in Frank v. United States, 395 U.S. 147 (1969), has held that a penalty of a probation for up to five years would not entitle the contemnor to a jury trial.

[452]Criminal contempt sanctions are punitive in nature and cannot be purged by any act of the contemnor; the civil contempt sanction is conditional in nature and terminable if the contemnor purges himself by compliance with the court's order. In addition, criminal contempt, but not civil contempt, is subject to the pardoning power. Ex parte Grossman, 267 U.S. 87, 119-20 (1925).

[453]The Supreme Court has said that the trial judge should first consider the feasibility of coercing testimony through the imposition of civil contempt before resorting to criminal contempt. Shillitani v. United States, 384 U.S. 364, 371 n.9 (1966). The First Circuit has interpreted this suggestion as a discretionary matter, so that if the judge does impose a criminal sanction for the contempt, the appellate court will be loathe to recharacterize it as civil. Baker v. Eisenstadt, 456 F.2d 382 (1st Cir. 1972).

Additionally, three circuits have held that a valid civil contempt sentence operates to interrupt a criminal sentence then being served by the contemnor, reasoning that this is the only method of bringing civil contempt's coercive power to bear on an incarcerated witness. Martin v. United States, 517 F.2d 906 (8th Cir. 1975); United States v. Liddy, 506 F.2d 1293 (D.C. Cir. 1974); Anglin v. Johnson, 504 F.2d 1165 (7th Cir. 1974), cert. denied, 95 S.Ct. 1353 (1975).

interfere with or interrupt its orderly course of procedure.[454] Traditionally, such attempts are punished in a summary manner.[455] Indirect contempts are those committed outside the presence of the court that tend by their operation to interfere with the orderly administration of justice. Since the behavior constituting indirect contempt occurs beyond the sight and hearing of the court, a hearing of some type[456] is required to inform the court of the facts constituting alleged contempt. A contempt before a grand jury is considered an indirect contempt; it cannot be summarily punished but requires some sort of a hearing.[457]

When a witness called before a grand jury refuses to testify, therefore, it may be either an indirect civil contempt or an indirect criminal contempt, depending on the sanction imposed by the judge.[458] In an indirect civil

---

[454] Nye v. United States, 313 U.S. 230 (1962). Even when it occurs in the presence of the court, the contempt must be open. Compare Ex parte Terry, 128 U.S. 289 (1888) (assault of court officer in court: upheld) with Cooke v. United States, 267 U.S. 517, 534-35 (1925) (letter submitted in court: remanded).

[455] In re Michael, 326 U.S. 224 (1945); In re Murchison, 349 U.S. 133 (1955).

[456] Civil and criminal contempt are tested by standards of due process, rather than under specific strictures of particular provisions of the Bill of Rights. United States v. Bukowski, 453 F.2d 1094 (7th Cir. 1970), cert. denied, 401 U.S. 911 (1971).

[457] Harris v. United States, 382 U.S. 162 (1965), overruling Brown v. United States, 359 U.S. 41 (1959).

[458] The other two categories of contempt are direct civil contempt and direct criminal contempt. In a direct civil contempt, a refusal to testify, occurring in the judge's presence,

contempt, a refusal to testify is punished conditionally after an informal hearing. The contemnor is not entitled to a jury trial, but punishment extends only for the life of the grand jury. In an indirect criminal contempt, a refusal to testify is punished unconditionally. The contemnor is entitled to a formal hearing before punishment and to a jury trial if the sentence imposed exceeds six months. In some circumstances, the trial must be held before a different judge.[459]

f. Perjury

In many jurisdictions, when a grand jury witness lies the prosecutor has the choice of charging either perjury or "false swearing," depending upon the proof available.[460] The differences in proof make the statutes complimentary, enhancing the law's effectiveness against false testimony.

458(continued)
is punished conditionally. The contemnor is not entitled to a hearing before punishment nor to a jury trial, but punishment is limited to the life of the proceeding. In a direct criminal contempt, a refusal to testify, occurring in the judge's presence, is punished unconditionally. The contemnor is not entitled to a formal hearing before punishment, nor a jury trial unless the sentence imposed exceeds six months.

459 See Taylor v. Hayes, 418 U.S. 488 (1974); Mayberry v. Pennsylvania, 400 U.S. 455 (1971). The issue is one of fact and the test is "whether there was 'such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused'." 418 U.S. at 502. It appears that a new judge will be required more often for the hearing of a direct criminal contempt than for an indirect criminal contempt. 418 U.S. at 504.

460 In the federal system, for example, the courts have held that the false swearing statute was meant to supplement, rather than supplant, the perjury statute. See e.g. United States v. Kahn, 472 F.2d 272 (2d Cir. 1973).

The two are treated separately here.

The elements of the offense of perjury[461] are: lawful oath,[462] proper proceedings, false swearing,[463] willfulness and materiality. Since falsity is an essential element, perjury cannot be based on a witness's answer which, although incomplete, misleading, or unresponsive, is literally true or technically accurate,[464] even if for devious reasons the statement was intentionally misleading,[465] or was shrewdly evasive - intentionally conveying false information by implication.[466] Some courts have held that perjury cannot be based on non-responsive, and therefore ambiguous, answer, the literal

---

[461] See e.g. 18 U.S.C. §1621 (1964); N.Y. Penal Law §§210.00-210.15 (1965); N.J. Stat. Ann. §2A: 131-1 (West 1969); Mass. Gen. Laws Ann., ch. 268, §1 (1968).

[462] Any oath having a legislative basis is sufficient. Caha v. United States, 152 U.S. 211 (1894). See also People v. Grier, 42 App. Div.2d 803, 346 N.Y.S. 2d 422 (3d Dept. 1973).

[463] In grand jury proceedings, a witness need not be given Miranda-type warnings before testifying in order for his false testimony to be used against him. This is true even when the grand jury proceedings had become accusatory, focusing on him. United States v. Wong, U.S. Sup ct No. 74-635, decided May 23, 1977.

[464] Bronston v. United States, 409 U.S. 352 (1973). See also, United States v. Franklin, 478 F.2d 703 (5th Cir. 1973); United States v. Cook, 489 F.2d 286 (9th Cir. 1973); United States v. Isaacs, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976, rehearing denied, 418 U.S. 955 (1974).

[465] See United States v. Slutzky, 79 F.2d 504 (3d Cir. 1935).

[466] Bronston, supra note 464.

truthfulness of which cannot be ascertained.[467] It is the duty of the prosecutor to elicit clear answers by skillful questioning.[468]

To prove intent, it must be shown that the witness did not believe his statements to be true;[469] the issue is for the jury.[470]

For a false statement to be perjurious, it must be

---

[467] See United States v. Esposito, 358 F.Supp. 1032 (N.D. Ill. 1973); United States v. Cobert, 227 F.Supp. 915 (S.D. Cal. 1964). See also People v. Samuels, 284 N.Y. 410, 31 N.E. 2d 753, 23 N.Y.S.2d 410 (1940).

[468] In reversing a perjury conviction for an unresponsive literally true, but misleading answer by the witness, the Supreme Court in Bronston v. United States, 409 U.S. 352, 357-60 (1973), observed that

> . . .the statute does not make it a criminal act for a witness to willfully state any material matter that implies any material matter that he does not believe to be true. . . .If a witness evades, it is the lawyer's reponsibility to recognize the evasion and to bring the witness back to the mark, to flush out the whole truth with the tools of adversary examination.
>
> It is no answer to say that here the jury found that petitioner intended to mislead his examiner. A jury should not be permitted to engage in conjecture whether an unresponsive answer, true and complete on its face, was intended to mislead or divert the examiner; the state of mind of the witness is relevant only to the extent that it bears on whether 'he does not believe [his answer] to be true.'

[469] Bronston, supra note 468.

[470] United States v. Letchos, 316 F.2d 481 (7th Cir.), cert. denied, 375 U.S. 824 (1963). Intent may be inferred, however, from proof of the falsity itself. United States v. Devitt, 499 F.2d 135 (7th Cir. 1974), cert. denied, 95 S.Ct. 1974 (1975); La Placa v. United States, 354 F.2d 56 (3d Cir. 1965), cert. denied, 383 U.S. 927 (1966). It also may be proved by prior similar acts. United States v. Freedman, 445 F.2d 1220 (2d Cir. 1971).

material to the investigative proceeding in which it is made.[471] The test of materiality is whether the testimony has the capacity or tendency to influence the decision of the inquiring body, or impede the proceeding, with respect to matters which the body is competent to consider.[472] Materiality is a question of law for the court.[473]

Since the time of Blackstone, a conviction for perjury could not be sustained when it was based solely on the uncorroborated testimony of one witness;[474] the so-called "two witness" rule developed into an absolute requirement in perjury

---

[471] United States v. Freedman, 445 F.2d 1220 (2d Cir. 1971); United States v. Stone, 429 F.2d 138 (2d Cir. 1970). Lord Coke seems to have originated this requirement. He said that, for perjury, a false statement must be "in a matter material to the issue, or cause in question. For if it be not material, then though it be false, yet it is no perjury, because it concerneth not the point in suit, and therefore in effect it is extrajudicial." See (McKinney, Practice Commentary, N.Y. Penal Law §210.15, 1965).

[472] United States v. Saenz, 511 F.2d 766 (5th Cir. 1975). Or, stated another way, for the false statement to be "material" it must be shown that a truthful answer would have been of sufficient probative importance to the inquiry that a minimum of additional, fruitful investigation would have occurred. United States v. Freedman, 445 F.2d 1220 (2d Cir. 1971). The government need not prove that the false testimony actually impeded the investigation. United States v. Makris, 483 F.2d 1082 (5th Cir. 1973).

[473] United States v. Demogovlos, 506 F.2d 1171 (7th Cir. 1974). Materiality must be established only in reference to the time the statement was given; subsequent events do not render testimony "immaterial," which was "material" when given. United States v. Gremilliar, 464 F.2d 901 (5th Cir.), cert. denied, 409 U.S. 1085 (1972).

[474] United States v. Wood, 39 U.S. 430 (1840). This is because, otherwise, there would be nothing more than "an oath against an oath."

prosecutions.[475] The rule applies only to the element of falsity;[476] it requires that falsity be proven by the testimony of two witnesses, or by one witness corroborated by independent evidence.[477]

The "two witness" rule is inapplicable when the "direct evidence" rule applies.[478] When the government's evidence of falsity rests primarily upon documentary evidence, the document itself constitutes sufficient direct evidence to support conviction.

In the end, both rules may be inapplicable. The trend of decisions is toward abrogation of the rules; circumstantial evidence of falsity meeting standards such as "sufficiently

---

[475]Even though not constitutionally mandated, United States v. Koonce, 485 F.2d 374 (8th Cir. 1973); United States v. Isaacs, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976 (1974), under perjury statutes, the rule still prevails. See Weiler v. United States, 323 U.S. 606 (1945); People v. Doody, 172 N.Y. 165, 64 N.E. 807 (1902).

[476]Hammer v. United States, 271 U.S. 620 (1926).

[477]United States v. Delcon, 474 F.2d 790 (5th Cir.), cert. denied, 414 U.S. 853 (1973).

The rule is satisfied by either of two methods of proof. First, if two witnesses testify to distinct incidents or transactions which, if believed, prove that the defendant's testimony is false, the rule is satisfied. United States v. Weiner, 479 F.2d 923, 928 (2d Cir. 1973). It is of no consequence whether the testimony of the second witness is corroborative of the first witness in whole, in part, or not at all.

Second, the rule is satisfied by corroborative evidence of sufficient content and quality to persuade the jury that the one witness' statement (showing the falsity of the defendant's statement) is correct. Id. at 928.

[478]Stassi v. United States, 401 F.2d 259 (5th Cir. 1968).

probative"[479] or "or substantial weight"[480] has been held sufficient. As the Ninth Circuit recently said,

> The responses to the questions involved in these counts were invariably, "I don't remember." Given answers of this nature, it would be difficult to find two witnesses to testify that the defendant did know or believe or recall a matter which he said he did not. Absent a contrary admission by the defendant, there would be no way to get direct evidence that the defendant did know or recall the fact that he denied knowing or recalling under oath. Therefore, only circumstantial evidence can be used to establish the knowing lies ofthe defendant.[481]

The form of the perjurious statement, therefore, may determine the type of evidence required; the court may demand the most trustworthy evidence obtainable, but nothing more.

When a witness is asked to give answers to questions that are "substantially the same" only one perjury count is proper.[482] But if the witness tells two "separate and distinct" lies, two counts are proper.[483] A witness retraction

---

[479] United States v. Goldberg, 290 F.2d 729 (2d Cir.), cert. denied, 368 U.S. 899 (1961).

[480] United States v. Bergman, 345 F.2d 931 (2d Cir. 1966). See also United States v. Collins, 272 F.2d 650 (2d Cir. 1959), cert. denied, 362 U.S. 911 (1960); Weinheimer v. United States, 283 F.2d 510 (D.C. Cir. 1960), cert. denied, 364 U.S. 930 (1961).
New Jersey has discarded both rules by statute, See N.J. Stat. Ann. §2A: 131-6 (West 1969).

[481] Gebhard v. United States, 442 F.2d 28 (9th Cir. 1970).

[482] Gebhard v. United States, 442 F.2d 28 (9th Cir. 1970); Masinia v. United States, 296 F.2d 871 (8th Cir. 1961).

[483] United States v. Tyrone, 451 F.2d 16 (9th Cir. 1971), cert. denied, 405 U.S. 1075 (1972); Richards v. United States, 408 F.2d 884 (5th Cir. 1969).

of his perjurious statement is no defense.[484]

Under statutes prohibiting false swearing,[485] in contrast, although materiality is generally required,[486] no proof of actual falsity may be required.[487] A recantation or retraction defense is usually provided, but only if at the time of retraction the false statement has not materially affected the proceedings and it had not become obvious that the falsity would be exposed.[488] Neither the two-witness rule nor the direct evidence rule applies.[489] As with perjury, a witness, even a potential defendant, need not be given Miranda warnings before testifying.[490]

---

[484] United States v. Norris, 300 U.S. 564 (1937). Such a willingness to correct a false statement, however, is relevant to showing absence of intent. United States v. Kahn, 472 F.2d 272 (2d Cir.), cert. denied, 411 U.S. 982 (1973).

[485] See 18 U.S.C. §1623 (1970); N.Y. Penal Law §210.20 (McKinney 1965); N.J. Stat. Ann. §2A: 131-4 (West 1969).

[486] United States v. Devitt, 499 F.2d 135 (7th Cir. 1974), cert. denied, 421 U.S. 975 (1975); United States v. Mancuso, 485 F.2d 275 (2d Cir. 1973).

[487] It is generally sufficient to show that the two statements are irreconcilably contradictory.

[488] See, e.g., 18 U.S.C. §1623 (d) (1970); N.Y. Penal Law §210.25 (McKinney 1965). (In New York, this recantation defense applies both to perjury and false swearing.)
The witness is not entitled to be warned of his right to recant. United States v. Del Toro, 513 F.2d 656 (2d Cir. 1975).

[489] See, e.g., 18 U.S.C. §1623(e) (1970). Proof beyond a reasonable doubt by any admissible evidence allows conviction.

[490] United States v. Pommerenning, 500 F.2d 92 (6th Cir.), cert. denied, 419 U.S. 1088, rehearing denied, 420 U.S. 939 (1974).

C. Process of Investigation--Proactive Mode

The grand jury, as a vehicle of gathering evidence, is essentially reactive; it is primarily useful in gathering evidence of crimes that have already occurred; it seeks testimony about incidents in the past. Official corruption schemes, however, may be on-going; they may involve re-occurring meetings. Consequently, it may be possible, indeed necessary, to act to uncover official corruption by proactive techniques of investigation, including the use of informants electronic surveillance, and simulated offenses.

1. Constitutional limitations on informants

a. Fourth Amendment

Conversations with, or in the hearing of, an informant or undercover agent are not searched or seized within the Fourth Amendment. In Hoffa v. United States,[491] the Supreme Court held that a person speaking within the hearing of a government agent is not relying on the security of his expectation of privacy, but on his placed confidence that the listener will not reveal what is said. Informants

---

[491] 385 U.S. 293, 302 (1966). See also United States v. Santillo, 507 F.2d 629, 632 (3d Cir.), cert. denied, 421 U.S. 968 (1975). (undercover agent's testimony from notes admissible at trial); Berlin Democratic Club v. Rumsfeld, 410 F.Supp. 144, 153 (D.D.C. 1976) (covert penetration of organization does not violate Fourth Amendment); State v. Hamm, 234 N.W.2d 60, 63 (S.D. 1975) (use of informant to "pump" suspects does not violate Fourth Amendment); Brown v. State, 10 Md. App. 462, 271 A.2d 182, 187 (1970) (statements overheard by intentionally placed informant in jail cells admissible at trial). But cf. Note, "Judicial Control of Secret Agents," 76 Yale L. Rev. 994 (1967).

invited into a home, or place of business may, therefore, testify regarding what they see and hear,[492] but they may not make a general search for incriminating evidence.[493]

b. Fifth Amendment

Similarly, Hoffa v. United States[494] stands for the proposition that an informant, or undercover agent, overhearing incriminating statements does not violate the speakers privilege against self-incrimination; the statements are voluntary and lack any element of compulsion. Lower federal[495] and state courts[496] have followed Hoffa on this point largely without dissent.

---

[492] Lewis v. United States, 385 U.S. 206, 211 (1966) (agent invited into home to purchase narcotics); United States v. Tarrant, 460 F.2d 701, 703 (5th Cir. 1972) (agent invited into home testified regarding observed illegal possession of firearms). See also Lopez v. United States, 373 U.S. 427, 438 (1963) (agent invited into business office did not violate privacy of office).

[493] Lewis v. United States, 385 U.S. 206, 211 (1966). There is authority, however, to the effect that a "listening post" informant would violate the Fourth Amendment. See People v. Collier, 85 Misc. 2d 529, 376 N.Y.S.2d 854 (Sup. Ct. N.Y. Ct. 1975). (informant lived in community). But cf. Berlin Democratic Club v. Rumsfeld, 410 F.Supp. 144, 153 (D.C.D.C. 1976).

[494] 385 U.S. 293, 303-304 (1966).

[495] See, e.g., United States v. DiLorenzo, 429 F.2d 216, 219 (2d Cir. 1970), cert. denied, 402 U.S. 950 (1970); Ansley v. Stynchcombe, 480 F.2d 437 (5th Cir. 1973); United States v. Quintant, 508 F.2d 867, 872 (7th Cir. 1975).

[496] See, e.g., Easley v. State, 56 Ala. App. 102, 319 So. 2d 721, 724 (1975); People v. Murphy, 8 Cal. 3d 349, 362,

c. Due Process

Likewise, Hoffa v. United States[497] rejects per se due process objections to the use of informants or undercover agents.

d. First Amendment

The First Amendment objections to informants or undercover agents are more telling.[498] Mere surveillance, however, is not enough to raise a valid First Amendment claim.[499] But

---

496(continued)
503 P.2d 594, 105 Cal. Rptr. 138, 146 (1972), cert. denied, 414 U.S. 833 (1973); State v. Jordan, 220 Kan. 110, 551 P.2d 773, 778 (1976); Montgomery v. State, 15 Md. App. 7, 288 A.2d 628, 640 (1972); State v. Myers, 190 Neb. 146, 206 N.W. 2d 851 854 (1973); State v. Hamm, 234 N.W.2d 60, 64 (S.D. 1975); State v. Killary, 133 Vt. 604, 349 A.2d 216 (1975).

Contra, State v. Travis, 360 A.2d 548, 551 (R.I. 1976) (statements made to undercover agent in jail cell after request was made for counsel were obtained in violation of Fifth Amendment of United States Constitution and Article I of Rhode Island Constitution).

497 385 U.S. 293, 311 (1966). Hoffa has been followed, too, where the organization infiltrated was political. United States v. Crow Dog, 532 F.2d 1182, 1197 (8th Cir. 1976). Usually, however, the informant is used to obtain statements from individuals, such as jail inmates. See, e.g., Brown v. State, 10 Md. App. 462, 271 A.2d 182 (1970).

498 As Mr. Justice Marshall observed in Socialist Workers Party v. Attorney General, 419 U.S. 1314, 1317 (1974):

> Dangers inherent in undercover investigation are even more pronounced when the investigated activity threatens to dampen the exercise of First Amendment rights.

499 Laird v. Tatum, 408 U.S. 1, 9 (1972); Socialist Workers Party v. Attorney General of the United States, 419 U.S. 1314, (1974) (per Mr. Justice Marshall, Circuit Justice); Friends v. Tate, 519 F.2d 1335, 1337-38 (3d Cir. 1975); Donohue v. Duling, 465 F.2d 196, 201 (4th Cir. 1972).

where the government seeks to intimidate[500] or no criminal activity is under surveillance,[501] a violation of the First Amendment may be made out.

e. Sixth Amendment

The proactive use of informants or undercover agents raises two significant Sixth Amendment issues: right to counsel during interrogation and right to effective assistance of counsel during trial.

In Massiah v. United States,[502] the Supreme Court held that it was a violation of the Sixth Amendment's guarantee of the right to counsel to subject an indicted defendant to surreptitious interrogation. The Court emphasized that it was entirely proper to continue a covert investigation of the defendant on other charges.

> All that we hold is that the defendant's own incriminating statements . . . could not . . . be used . . . against him at his trial.[503]

---

[500] Berlin Democratic Club v. Rumsfeld, 410 F.Supp. 144, 151 (D.D.C. 1976); Lowenstein v. Rooney, 401 F. Supp. 952, 954 (E.D.N.Y. 1975).

[501] White v. Davis, 13 Cal. 3rd 757, 120 Cal. Rptr. 94, 503 P.2d 594 (1975) (surveillance of university class room).

[502] 377 U.S. 201, 206 (1964).

[503] 377 U.S. at 207. Cases sustaining investigations of separate offenses include Grieco v. Meachum, 533 F.2d 713, 717 (1st Cir. 1976); United States v. Frank, 520 F.2d 1287, 1291 (2d Cir. 1975), cert. denied, 423 U.S. 1087 (1976); United States v. Osser, 483 F.2d 727, 732 (3d Cir. 1973); United States v. Missler, 414 F.2d 1293, 1303 (4th Cir. 1969), cert. denied, 397 U.S. 913 (1969);

Two years later, in Hoffa v. United States,[504] the Court made it clear that the Massiah rule did not apply when an investigation had not yet produced a charge or an indictment. Nevertheless, the "charge or indictment" rule is not formal. Whenever judicial proceedings have been initiated, including by warrant, arraignment, and judicial commitment, the right to counsel attaches.[505] It is the government, moreover, that must avoid the deliberate elicitation of incriminating statements after the initiation of proceedings. Informants acting on their own do not come within the rule.[506] There must also be a deliberate elicitation[507] of the statement; accidentally

---

503(continued)
United States v. Hayles, 471 F.2d 788, 792 (5th Cir. 1973), cert. denied, 411 U.S. 969 (1972); United States v. Merritts, 527 F.2d 713, 716 (7th Cir. 1975); Vinyard v. United States, 335 F.2d 176, 184 (8th Cir. 1964), cert. denied, 379 U.S. 930 (1964); Gascar v. United States, 356 F.2d 101, 102 (9th Cir. 1966), cert. denied, 385 U.S. 865 (1966). See also State v. Hill, 26 Ariz. App. 37, 545 P.2d 999, 1002 (1976).

504 385 U.S. 293, 310 (1966).

505 Brewer v. Williams, 20 Crim. L. Rptr. 3095, 3098 (Mar. 23, 1977).

506 Paroutian v. United States, 370 F.2d 631, 632 (2d Cir. 1967), cert. denied, 387 U.S. 943 (1966); United States ex rel. Baldwin v. Yeager, 428 F.2d 182, 184 (3rd Cir. 1970), cert. denied, 401 U.S. 919 (1970); Carter v. United States, 362 F.2d 257, 259 (5th Cir. 1966); Stowers v. United States, 351 F.2d 301, 302 (9th Cir. 1965).

507 United States v. Garcia, 377 F.2d 321, 324 (2d Cir. 1967), cert. denied 389 U.S. 991 (1967); United States v. DeLoy, 421 F.2d 900, 902 (5th Cir. 1970); United States v. Aloisio, 440 F.2d 705, 710 (7th Cir. 1971); Narten v.

overheard statements are admissible.[508] The deliberate elicitation rule, however, is not universally followed,[509]

507(continued)
Eyman, 460 F.2d 184, 191 (9th Cir. 1969); United States v. Brown, 466 F.2d 493, 495 (10th Cir. 1972); Greenwell v. United States, 336 F.2d 962 (D.C. Cir. 1964), cert. denied, 380 U.S. 923 (1964); People v. Griffin, 23 Ill. App. 3d 461, 318 N.E. 2d 671, 675 (1974); State v. Killary, 133 Vt. 604, 349 A.2d 216, 217 (1975).

508 United States v. Garcia, supra, note 507 (undercover agent arranging a narcotics 'buy' who was unaware that the seller was under indictment for assault, could testify to incriminating statements about assault made spontaneously and voluntarily by defendant); United States v. Aloisio, supra note 507 (informant arrested and jailed with defendant to maintain his cover could testify to incriminating statements made to others which informant overheard); State v. Killary, supra note 507 (statements made by jailed accused to undercover agent, in jail to protect his cover regarding a different investigation, could be used against the accused when they were made spontaneously, voluntarily and without coercion); Marten v. Eyman, supra note 507 (conversation between defendant and his wife in sheriff's office, overheard by police officer present in the room, was not deliberately elicited and was therefore admissible).
In People v. Griffin, supra note 507, the Illinois court admitted statements made by defendant in a telephone conversation which were heard by an officer present in the room. The court found Massiah inapplicable since the defendant was not indicted.
Under the accidentally overheard rule, incriminating statements that have been lawfully interpreted electronically would be admissible because they are not deliberately elicited. See, e.g., United States v. Poeta, 455 F.2d 117, 122 (2d Cir.), cert. denied, 406 U.S. 948 (1972) (post-indictment statements lawfully intercepted by wire-tap admissible); Williams v. Nelson, 457 F.2d 376, 377 (9th Cir. 1972) (conversation with co-defendant intercepted by 'bug' in police interrogation room following confession admissible).

509 Hancock v. White, 378 F.2d 479, 482 (1st Cir. 1967); United States ex.rel. Baldwin v. Yeager, 428 F.2d 182, 184 (3rd Cir. 1970), cert. denied, 401 U.S. 919 (1970); United States v. Slaughter, 366 F.2d 833, 840(4th Cir. 1966); State v. Green, 46 N.J. 192, 215 A.2d 546, 551 (1965), cert. denied, 384 U.S. 946 (1966).

and it may be inconsistant with Supreme Court precedent.[510]

---

[510] In Beatty v. United States, 377 F.2d 181 (5th Cir.), rev'd per curiam, 389 U.S. 45 (1967); an indicted defendant requested an interview with an undercover agent, initiated the conversation, and spontaneously made incriminating statements regarding the acts for which he was charged. He also threatened future violence against the agent-prospective witness. The Court of Appeals for the Fifth Circuit, focussing on the voluntary nature of the statements, ruled that they were all admissible. The Supreme Court granted certiorari and reversed without an opinion, citing Massiah. The distinction made by the court of appeals, that the informant did not elicit the statements, was apparently rejected by the Supreme Court in its curt refusal. One way of interpreting the ruling is to define as deliberate elicitation any conversation between an informant investigating a charge already pending and the person against whom the charge is filed. The Supreme Court of Kansas adopted this interpretation of Beatty in State v. McGorgary 218 Kan. 358, 543 P.2d 952 (1975). Interrogation, or the lack of it, is irrelevant; the focus is rather on the intent of the government to obtain additional incriminating evidence through surreptitious means. See also State v. Smith 107 Ariz.100, 482 P.2d 863, 866 (1971) (informant placed in cell next to defendant; incriminating statements inadmissible). But see Montgomery v. State, 15 Md. App. 7, 288 A.2d 628 (informant placed in cell near defendant with purpose of obtaining incriminating statements; statements admissible; no Sixth Amendment argument discussed). The Fifth Circuit, however, continued to develop the deliberate elicitation distinction despite the Beatty reversal. In United States v. DeLoy, 421 F.2d 900 (5th Cir. 1970), an indicted defendant appeared at an FBI office and requested an interview with an agent. He was repeatedly advised of his rights, but waived his right to counsel. The court said his statements were admissible because they were not deliberately elicited. 421 F.2d at 902.

It is difficult to see, moreover, why the Supreme Court reversed in Beatty the admission of the defendant's threats against the informant. These statements constitute a separate offense and would be admissible under the separate offense rule. The reversal also fails to answer why the Massiah rule is not a deliberate elicitation rule, when the facts of that case turned on the informant's attempts to elicit the statements. Finally, the court in Brewer v. Williams, 20 Crim. L. Rptr. 3095, 3098 (Mar. 23, 1977) ("deliberately and designedly set out to elicit information") applied Massiah using deliberate elicitation language.

The Sixth Amendment protects against more than surreptitious interrogation; it also protects the privacy of the attorney-client relationship during a trial. In Weatherford v. Bursey[511] the Supreme Court recognized that if an informant intrudes on the attorney-client relationship during trial preparations and reports back to the prosecution to the prejudice of the defendant a Sixth Amendment violation would be made out.[512]

---

[511] 20 Crim. L. Rptr. 3059 (Feb. 23, 1977). In fact, the Court held that because the informant had not reported back and the defendant had not suffered prejudice, no violation was shown; the court also held that there is no due process right to have a potentially damaging informant's identity revealed before trial. 20 Crim. L. Rptr. at 3063.

[512] See also Hoffa v. United States, 385 U.S. 293 (1966). Where intrusion, transmission and prejudice are shown, there is some dispute about the proper remedy: new trial or dismissal. The State of Washington initially developed the rule that an intrusion in the attorney-client relationship was unconstitutional per se and had to be remedied by dismissal of the indictment. State v. Cory, 62 Wash. 2d 371, 378, 382 P.2d 1019, 1027 (1963). The rule was seriously undermined, however, in State v. Baker, 78 Wash.2d 327, 474 P.2d 254 (1970), where the court held that dismissal is available as a remedy only when the defendant has been prejudiced. 78 Wash.2d at 332-333, 474 P.2d 254, 259-60 (1970); Cory was distinguished but not overruled. In State v. Grant, 9 Wash, App. 260, 511 P.2d 1013 (1973), cert. denied, 419 U.S. 849 (1974), in an opinion by Horowitz, J., who is now a member of the Supreme Court of Washington, the rule was further undercut. A confidential conversation intercepted electronically was excluded from the trial. The defendant was allowed discovery of a summary of the evidence to be used at trial and had an opportunity to object to evidence before trial. The court found that there was no prejudice to the defendant and reversal was not required. In Hoffa v. United States, supra, however, the Supreme Court suggested that dismissal would be required only if the intrusion were so pervasive as to prejudice the defendant's Sixth Amendment rights at a new trial as well. 385 U.S. 308 Accord, People v. Pobiner, 32 N.Y.2d 356, 365, 345 N.Y.S.2d 482 (1973), cert. denied, 416 U.S. 905 (1973).

2. Electronic surveillance

Coverage of meetings and conversations in connection with corrupt schemes cannot always be obtained through reliable informants or undercover agents. Consequently some substitute for the informant or undercover agent is necessary. The use of electronic surveillance[513] can be, therefore, of unique value in official corruption cases. In these situations, the greatest part of the actual criminal activity is verbal; indeed, the only conduct required under many statutes is an agreement to exchange money for a favor or protection. The use of well-placed electronic surveillance in a corruption case can make a record what one court termed, "the guts of the case."[514] Such surveillance can, therefore, be of crucial value in establishing the defendant's state of mind, particularly where threats or suggestions of violence are veiled.[515]

---

[513] Key terms pertaining to electronic surveillance should be distinguished. "Bugging" means obtaining microphone coverage of an area, so that a conversation in that area can be listened to and recorded elsewhere. "Wiretapping" means obtaining coverage of a telephone so that a conversation on that phone can be listened to and recorded elsewhere. "Recording" means one party to a conversation taping the exchange, but not simultaneously permitting others to listen. "Transmitting" means one party to a conversation wearing a microphone that enables others elsewhere to listen.

[514] See, United States v. Napier, 451 F.2d 552 (5th Cir. 1971).

[515] For example, a tape allows the jury to hear a threatening tone of voice in a sentence which, if spoken differently on the witness stand, seems completely innocuous. In United States v. Quintana, 457 F.2d 874 (10th Cir. 1972), to take another example, an extortionist made no direct

In addition, an important advantage of a recording is its elimination of credibility as an issue at trial. If the government's key witness is a person whose character is not spotless, and the defendant is a respected public official, a case of one person's word against another's may be fatal for the prosecution. There is no question, however, that what is on a tape was said. A properly authenticated recording, therefore, removes credibility problems.[516]

a. One-party consent

Before 1967, the law was clear that, when a conversation was recorded, the consent of a party to that conversation established the legality of the investigatory procedure. Nevertheless, since the Supreme Court conceptualized the legal issue both as a "surveillance"[517] and an informant[518]

515(continued)
threats to the victim but the entire conversation implied a threat of violence. In the absence of tapes of the conversation, defense counsel might be able to argue on summation that since there were no direct threats, the "threats" heard by the victim were really a product of his own imagination or a misunderstanding; the entire transaction would "lose something in the translation." Tapes allow the jury to draw the inferences that a reasonable victim would draw in the situation.

516 See, Osborn v. United States, 385 U.S. 323 (1966); Boulware v. Battaglia, 344 F.Supp. 889 (D.Del. 1972), which demonstrate the use of a recording to surmount a credibility problem.

517 The surveillance inquiry before 1967 focused on the presence of a physical trespass. See, Olmstead v. United States, 277 U.S. 438 (1928), a wiretap case where the Court concluded that the Fourth Amendment's protection did not prohibit actions that involved no trespass on the defendant's property.

518 In On Lee v. United States, 393 U.S. 747 (1951), the Court faced the issue of the legality of an informant's simultaneous transmission of his conversation to a govern-

problem, a precise rationale was elusive.[519]

In United States v. White,[520] a plurality opinion[521] defined the appropriate rationale. The defendant, White, made incriminating statements to Harvey Jackson who, unbeknownst

---

518(continued)
ment agent. The Court concluded that since the informant had been invited into On Lee's laundry, no trespass had taken place. Consequently, no search and seizure had occurred under Olmstead, and On Lee's incriminating remarks were admissible. Id. at 751-752. On Lee also contained language that suggested the legality of the procedure was based on On Lee's indiscretion in misplacing his trust in the informant. Id. at 754. The "misplaced trust" rationale appeared again in Lopez v. United States, 373 U.S. 427 (1962) and in Hoffa v. United States, 385 U.S. 293 (1966).

519 The legal basis for recording with one party consent remained a matter of academic concern so long as it was valid under either rationale--no trespass or misplaced trust. It became an increasingly practical concern, however, as the Court moved away from the Olmstead trespass rationale. See Berger v. New York, 388 U.S. 41 (1967). In Katz v. United States, 389 U.S. 347 (1967), the Court directly overruled the Olmstead trespass doctrine and substituted the standard of "reasonable expectation of privacy." Id. at 353. Katz did not involve a one-party consent situation, but the demise of Olmstead cast doubt on the one-party consent deicisions. In the wake of Katz, the one party consent issue could be framed in either of two ways. If electronic surveillance with the consent of a participating party was primarily a search and seizure, violating an individual's reasonable expectation of privacy, the Katz rationale would apply and a warrant would be required. On the other hand, if the consenual surveillance were more akin to "misplaced trust" in an individual turned informant, there would be no invasion of a reasonable expectation of privacy and no need for a warrant.

520 401 U.S. 745 (1971).

521 The plurality consisted of Chief Justice Burger, and Justices White, Stewart, and Blackmun. Justice Black concurred on the ground that the Fourth Amendment does not apply to any electronic eavesdropping. Justice Brennan concurred only on the ground that Katz should not be given

to White, was transmitting the conversation to government agents. At White's trial, Jackson was unavailable and the agents testified about the conversation. White challenged the agents' testimony as fruits of an illegal search and seizure. The plurality rejected that contention and reaffirmed the validity of the "misplaced trust" rationale. The opinion stated anything verbally conveyed to another could not be considered to be done with "a justifiable expectation of privacy."[522] The plurality continued:

> If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same conversation made by the agent or by others from transmissions received from the agent to whom the defendant is talking and whose trustworthiness the defendant necessarily risks . . . .
>
> If the law gives no protection to the wrong-doer whose trusted accomplice is or becomes a police agent, neither should it protect him when the same agent has recorded or transmitted the conversations which are later offered in evidence to prove the state's case.[523]

The White plurality clearly rejected any distinction between recording and transmitting, as well as the corroboration limitation placed on such activity by the lower court.[524]

---

[521](continued)
retroactive effect.

[522]401 U.S. at 751.

[523]Id. at 751-752.

[524]See, United States v. White, 405 F.2d 838 (7th Cir. 1969), rev'd , 401 U.S. 745 (1971).

The White doctrine, approving of warrantless electronic surveillance in the post-Katz era where one party consents, has been developed and refined by the lower courts. On the issue of what constitutes valid consent, the Second Circuit said that:

> . . . [i]t will normally suffice for the government to show that informer went ahead . . . after knowing what the law enforcement officers were doing [recording or monitoring.][525]

The government will have difficulty proving capacity to consent in the rare situation where the informant is incompetent at the time of the alleged consent.[526] On the other hand, informant's ulterior selfish motive for consenting, for example, an expectation of immunity, does not invalidate his consent to the surveillance.[527]

A few guidelines have been formulated on the issue of

---

[525] United States v. Bonanno, 487 F.2d 654, 658 (2d Cir. 1973). In that case, even though the consenting party was incompetent to testify at trial, since the government agents testified that the consenting party was aware of the agents' presence and purpose and nevertheless engaged in the conversations, a valid consent was inferred.

[526] In United States v. Napier, 451 F.2d 552 (5th Cir. 1971), the informant was incompetent at the time of recording, incompetent at trial, and had a history of mental illness. The court held that consistent with its burden to prove consent, the government must prove capacity to consent in such a situation. Id. at 555.

[527] See, State v. Rich, 518 F.2d 980 (8th Cir. 1975); United States v. Frank, 511 F.2d 25 (6th Cir. 1975); United States v. Osser, 483 F.2d 727 (3d Cir. 1973).

the accuracy of any tapes admitted as evidence.[528] Two issues for the discretion of the trial judge are whether transcripts of the tapes may be admitted,[529] and whether unintelligible or immaterial matters on the recording may be included.[530]

Most states that have considered the issue of one party consent to electronic surveillance have adopted the White

---

[528]The recording instrument must be accurate, secure from tampering and must have been operated correctly. United States v. McMillan, 508 F.2d 101 (8th Cir. 1974). The individuals speaking on the tape must be identified as to connect the defendant with the incriminating statements. This may be done through testimony ofthe informant or agents who overheard the conversation. United States v. Cosby, 500 F.2d 405 (9th Cir. 1974). The only requirement for voice identification is that the identifier has heard the voice of the alleged speaker at some time. United States v. Rizzo, 492 F.2d 443 (2d Cir. 1974). Once the accuracy of the mechanical device and the identity of the speakers has been established, the foundation has been laid permitting the admission of the tapes in evidence.

[529]United States v. Roska, 443 F.2d 1167 (2d Cir. 1971). Transcripts are of great value to a jury when the recording is long, of poor quality, or involves several persons. Transcripts are required to be produced when a foreign language is spoken on the tape. United States v. Avila, 443 F.2d 792 (5th Cir. 1971). Transcripts are a valuable prosecution tool if they are admitted into evidence since the jury may retain and consult them during deliberations. See, United States v. Roska, supra.

[530]United States v. Howard, 504 F.2d 1281 (8th Cir. 1974). The tape will be admitted unless the unintelligible portions are so substantial as to render the recording as a whole untrustworthy. United States v. Avila, supra note 529.

The presence of obscenities on the tape admitted does not constitute prejudicial error. United States v. Gocke, 507 F.2d 821 (8th Cir. 1974). Even a reference to a prior criminal conviction in the course of a recorded conversation has been deemed a harmless inclusion. Id.

rationale completely.[531] A few states accept White, but restrict its scope somewhat;[532] a few reject White completely and require a search warrant for one party consent surveillance.[533]

b. Court-order surveillance

Federal law and the laws of twenty-three states permit court-ordered electronic surveillance where a party to the

---

[531] The Fourth Amendment still prohibits warrantless surveillance which, though characterized as a White situation, is in reality a Katz-style bugging. In United States v. Padilla, 520 F.2d 526 (1st Cir. 1975), for example, federal agents bugged a hotel room that was to be used by their informant and others. The government argued that the resulting tape was the identical item that would have been obtained had the informant recorded or transmitted. In rejecting this reasoning, the court stated:

> No case has been presented to us which would allow the government to engage in unlawful electronic surveillance and profit from the fruits of that surveillance on the ground that had a different means been employed, the recordings would have been admissible. We reject the invitation to so extend the holding of White.

Id. at 528. See, e.g., Kerr v. State, 512 S.W.2d 13 (Ark. 1974); State v. Karathonas, 493 P.2d 326 (Ariz. 1972); People v. Murphy, 8 Cal. 3d 349, 503 P.2d 594, 105 Cal. Rptr. 138 (1972); State v. Delmonaco, 328 A.2d 672 (Conn. 1973); Tollet v. State, 272 So.2d 490 (Fla. 1973); Cross v. State, 198 S.E.2d 338 (Ga. 1973); State v. Daniels, 215 Kan. 164, 523 P.2d 368 (1974); Everett v. State, 248 So.2d 439 (Miss. 1971); People v. Holman, 356 N.Y.S.2d 958 (S.Ct. N.Y. 1974); Thrush v. State, 515 S.W.2d 122 (Tex. 1972). In Florida, however, there may be severe practical restrictions on such surveillance due to the courts' conception of "valid consent"; See Tollet v. State, supra.

[532] See, e.g., State v. Beavers, 227 N.W.2d 571 (Mich. 1975); Arnold v. County Court, 51 Wis.2d 434 (1972); People v. Richardson, 328 N.E.2d 260 (Ill. 1975).

[533] See, e.g., Wash. Rev. Code Ann. §§9.73.030-9.73.090 (1974); 18 Pa. Cons. Stat. Ann. §§5701-5705 (Purdon Supp. 1976).

conversation has not consented to it.[534] Most of these statutes set out explicit requirements governing when such electronic surveillance orders may issue and how the surveillance is conducted. Statutes governing the use of this kind of electronic surveillance limit the instances of its use in one (or more) of four ways: (1) by offense ("murder," "bribery," etc.); (2) in general terms ("crime"); (3) by status ("organized crime activity," "national security," etc.); or (4) by result ("harm to person").

Most wiretap laws catalogue the offenses for which authorization orders may issue; with very few exceptions,[535] "bribery" and "extortion" are among the offenses listed.[536] All of these statutes are almost identical to the federal wiretap statute, Title III of the Omnibus Crime Control

---

[534] On the use of court order electronic surveillance in corruption investigations, See Electronic Surveillance Report of the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance at 148 (1976)("used sparingly to investigate official corruption").

[535] New Mexico's statute, for example, allows electronic surveillance for extortion, but not bribery. N.M. Stat. Ann. §40A-12-1.1(1) (Supp. 1975).

[536] See, 18 U.S.C. §251b(1) (Supp. 1976); Ariz. Rev. Stat. Ann. §13-1057 (A) (Supp. 1973); Col. Rev. Stat. Ann. §16-15-102 (1)(a) (1973); Del. Code Ann., tit.11, §1336(g) (1974); D.C. Code Ann. §23-546(c) (1973); Fla. Stat. Ann. §934.07 (Supp. 1976); Ga. Code Ann. §26-3004 (c) (1972); Kan. Stat. Ann. §22-2515(1)(j) (1974); Mass Gen. Laws Ann., ch.272, §99(F) (Supp. 1975); Minn. Stat. Ann. §626A.05 (2) (Supp. 1975); Neb. Rev. Stat. §86-703 (1971); Nev. Rev. Stat. §86-703 (1971); Nev. Rev. Stat. §179.460(1) (1975); N.J. Stat. Ann. §2A:156A-8 (Supp. 1975); S.D. Compiled Laws Ann. §23-13A-3 (Supp. 1975) Va. Code Ann. §19.2-66 (1975); Wis. Stat. Ann. §968.28 (Supp. 1975).

and Safe Streets Act of 1968.[537] The same is true of the Maryland statues,[538] which allows electronic surveillance in general terms.[539] The enumeration of crimes by Congress in the federal statute limits states' power to allow electronic surveillance.[540] When a state statute allows wiretapping to gather evidence of "crimes," no crimes other than those listed on the federal statute may be included.[541] There are a few statutes limiting wiretapping by status[542]

---

[537] 18 U.S.C. §2517 (1970).

[538] Md. Cts. & Jud. Pro. Code Ann. §10-403 (1974).

[539] Under the Maryland statute, id., authorization orders may issue when:

> (1) there are reasonable grounds to believe that a crime has been committed or is about to be committed; or
>
> (2) there are reasonable grounds to believe that evidence will be obtained essential to the solution of a crime, or which may enable the prevention of a crime.

[540] United States v. Curreri 388 F.Supp. 607 (D.Md. 1974).

[541] Id. The federal statute allows orders to issue concerning, among others, the crimes of extortion, bribery of public officials or witnesses, and influencing or injuring an officer, juror or witness, 18 U.S.C. 2516 (1) (1970).

[542] See, Conn. Gen. Stat. Ann. §54-41(b)(Supp. 1975) (offenses involving "felonious crimes of violence"); Mass. Gen. Laws Ann., ch. 772, §99(B) (7) (Supp. 1975) ("in connection with organized crime"); N.H. Rev. Stat. Ann. §570-A:7 (1974) ("evidence of the commission of organized crime").

or by result.[543]

The federal statute sets out clearly the required procedures for obtaining an order. Issues arising after use of a legitimate tap are dealt with by federal and state statutes. Under Title III, a law enforcement officer may generally disclose the contents of the tape to another law enforcement officer or agency.[544] Additionally, a law

---

[543] See, Ore. Rev. Stat. §133.725 (1975) ("crime directly and immediately affecting the safety of human life or national security"). Wash. Rev. Code Ann. §9.73.040(1) (Supp. 1975) also provides:

> (1) An ex parte order for the interception of any communication or conversation listed in RCW 9.73.030 may be issued by any superior court judge in the state upon verified application of either the state attorney general or any county prosecuting attorney setting forth fully facts and circumstances upon which the application is based and stating that:
>
> (a) There are reasonable grounds to believe that national security is endangered, that a human life is in danger, that arson is about to be committed, or that a riot is about to be committed, and
>
> (b) There are reasonable grounds to believe that evidence will be obtained essential to the protection of national security, the preservation of human life, or the prevention of arson or a riot, and
>
> (c) There are no other means readily available for obtaining such information.

[544] 18 U.S.C. §2517(1)(1970). See also, Colo. Rev. Stat. Ann. §16-15-102(12)-(16) (1973); Del. Code Ann., tit. 11, §1336 (0)(1)-(0)(2) (1974); D.C. Code Ann. §23-553(a) & (b) (1973); Fla. Stat. Ann. §934.08 (1)-(5) (1973); Ga. Code Ann. §26-3304 (g) (1972); Kan. Stat. Ann. §22-2515(2)-(6) (1974); Mass. Gen. Laws Ann., ch. 272, §99(d)(2) (a)-(e) (Supp. 1975); Minn. Stat. Ann. §626A.09 (1)-(5)(Supp. 1976); Neb. Rev. Stat.§86.704 (1)-(5) (1971); Nev. Rev. Stat.§179.465(1)-(4) (1975);N.J. Stat. Ann.§2A:156A-17(a) & (b)(Supp. 1975); N.M. Stat. Ann. §40A-12-1.8(A)-(B) (Supp. 1975); N.Y. Crim. Pro. Law §700.65 (1)-(4) (McKinney 1971); R.I. Gen. Laws Ann. §12-5.1-10 (a)-(c) (Supp. 1975); Va. Code Ann. §19.2-67(1)-(3) (1975); Wis. Stat. Ann. §968.29(1)-(5) (Supp. 1975).

enforcement officer may use the contents of a tape of intercepted communications in performing his official duties.[545] The tapes may also be used as evidence in a criminal trial.[546]

Practical problems peculiar to the dynamics of official corruption, however, often arise when court-ordered electronic surveillance is used. These should be kept in mind during the use of such surveillance and when critical analysis of any electronic surveillance statute is undertaken. At the outset, it is difficult to predict when and where illegal conversations will occur in corruption investigations that often lack an on-going pattern of behavior. Often, the public official solicits or accepts a bribe through an agent in order to avoid detection. The suspect may avoid use of the telephone. If the probable cause standard is not met, electrnoic surveillance is precluded. Another problem involves the duration of surveillance; crimes of corruption may or may not include ongoing corrupt relationships. To be lawful, extended surveillance requires strict supervision. Obtaining wiretap extensions, if needed, raise legal difficulties. When communications relating to offenses other than those specified in the original authorization order

---

[545] 18 U.S.C. §2517(2) (1970). See also, state statutes, supra note 544.

[546] 18 U.S.C. §2517(3). See also, state statutes, supra note 544.

are intercepted, special procedures must also be followed.[547] While these problems[548] discourage casual use of electronic surveillance, this investigative technique can be successfully employed.

3. Simulated Offense

When a widespread problem with official corruption exists, and it is not possible to obtain informant or electronic surveillance of the unlawful behavior, it may become necessary to probe the activity with an undercover operation. Such an operation may be particularly well-suited to the investigation of corruption in the criminal justice system itself.

---

[547] 18 U.S.C. §2517(5) (1970) governs. It provides:

> (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.

Most state statutes have a similar provision. See, statutes, supra note 544.

[548] See generally Note "Post-authorization Problems in The Use of Wiretaps: Minimization, Amendment. Sealing and Inventories," 61 Cornell L. Rev. 92 (1975).

Such undercover operations have, however, recently occasioned sharp criticism from the judiciary.[549] Nevertheless, it is difficult to distinguish them from similar investigative techniques usually thought lawful that require police participation in conduct that would be criminal but for the general law enforcement justification.[550] Accomplished

---

[549] United States v. Archer, 486 F.2d 670 (2d Cir. 1973) (simulated weapons arrest used to test integrity of state prosecutor); Matter of Nigrone v. Murtagh 46 App. Div. 2d 343, 362 N.Y.S. 2d 513 (2d Dept. 1974) (simulated robbery arrest used to test integrity of judge).

In Archer, the Court of Appeals dismissed the Federal bribery prosecution, after sharp criticism of the technique, on Federal jurisdictional ground. The state reindicted, double jeopardy issues were resolved, Matter of Klein v. Murtagh, 44 App. Div.2d 465, 355 N.Y.S.2d 622 (2d Dept.), aff'd, 34 N.Y.2d 988, 318 N.E.2d 606, 360 N.Y.S.2d 416 (1974), and the case is now pending. The trial judge, Mr. Justice Sandler, however, has rejected motions to dismiss the prosecution on grounds of prosecution misconduct. Justice Sandler observed:

> I am persuaded that the carefully selective use of the controversial crime under appropriately compelling circumstances comes close to being indispensable in the investigation of corruption at levels that touch intimately the basic integrity of the criminal justice system.

People v. Archer, ____ Misc.2d____, ____ N.Y.S.2d____ (Sup. Ct. Queens County, March 9, 1977).

[550] W. LaFave & A. Scott, Criminal Law §§50,51,56 pp. 383-84, 389, 406-07 (1972); N.Y.Penal Law §35.05 (McKinney 1975); Utah Code §76-2-40(2)(Supp. 1926); United States v. Russell, 411 U.S. 423 (1972) (sale of drug); Hampton v. United States, 425 U.S. 484 (1976) (repurchase of drug sold); State v. Dougherty, 86 N.J.L. 525, 93 A.98,102 (1915) ("not invasion...to...test integrity..."); Wilson v. People, 103 Colo. 441, 87 P.2d 5 (1939) (feign accomplice not guilty of burglary); People v. Bennett, 182 App. Div. 871 (2d Dept. 1918), aff'd, 224 N.Y. 594, 120 N.E. 871, 180 N.Y.S. 13 (1918) (participation in jury bribery); People v. Mills, 91 App. Div. 331 (1st Dept. 1904), aff'd, 178 N.Y. 274, 70 N.E. 786, 138 N.Y.S. 560 (1904) (participation

under careful supervision, they would seem to be permissible and essential investigative techniques in the corruption area.[551]

D. Process of Trial

1. Accomplice testimony

Securing evidence of official corruption is important. It must, however, also be successfully presented at trial. In many prosecutions of official corruption, much of the evidence comes from participants in the crime.[552] Whether a conviction is allowed based on the testimony of these

---

550(continued)
in theft of court records); Papadakis v. United States, 208 F.2d 945 (9th Cir. 1953) (filing false tax returns); State v. Busscher, 81 Nev. 587, 591, 407 P.2d 715, 714 (1965) (subordination of perjury) ("deception...permissible ...good faith...detecting crime"); State v. Dingman, 232 S.W.2d 919 (Mo. 1950) (decoy engaged in sodomy). But see Crawford v. Ferguson, 5 Okla. Crim. 377, 115 P. 278 (1911) (incite riot guilty even if intent to enforce law: dictum); State v. Turphy, 78 Mo.App. 206 (1899) (join gang of murderers guilty of murder even if intent to gather evidence) (dissenting opinion).

551Sandard 1.10, Organized Crime: Report of the Task Force on Organized Crime, National Advisory Committee on Criminal Justice Standards and Goals at 52 (1976). In addition, it would seem that even if the tactic were illegal, it would not excuse the defendant's independent act of illegal conduct. See, e.g., Vinyard v. United States, 335 F.2d 171, 181 (8th Cir. 1964)(bribery not fruit of illegal arrest); United States v. Perdiz, 256 F.Supp. 805 (D.C.N.Y. 1966) (same).

552See, Biegel, The Investigation and Prosecution of Police Corruption, 65 J. Crim. L.C. & P.S., 135, 152-52 (1974) for examples of prosecutorial situations in bribery-extortion cases.

"accomplices," therefore, is of crucial importance.[553]

Since the 1700's, there has been a general practice to discourage a conviction based solely upon the testimony of an accomplice.[554] This was considered part of the judge's "exercise of his common law function of advising a jury upon the weight of the evidence and was not . . . binding upon the jury."[555] The omission of a cautionary instruction was not a ground for a new trial.[556] Toward the end of the nineteenth century in the United States, however, the cautionary practice was turned into a rule of law by statute

---

[553]The practice of requiring that the accomplices be corroborated did not arise in Anglo-American law until the end of the eighteenth century. Until that time, the chief issue concerning the accomplice witnesses was over their competence to testify. 7 J. Wigmore, Evidence §526 (3d Ed. 1940). If the accomplice had been found guilty of a felony, however, he was incompetent on that ground alone. See, People v. Coffey, 161 Cal. 433, 438, 119 P. 901, 903 (1911).

Once a witness was found competent to testify, no issue was made as to the quality of his testimony--"one oath was as good as another oath." J. Wigmore, supra §2056 at 312.

The reasons generally offered for regarding accomplice testimony with suspicion are two: (1) the inherent suspicion of committing a crime, see Marrs, The Informant and Accomplice Witness: Problems for the Prosecution, 9 John Marshall, J. Prac. & Pro., 243-44 (1975); and (2) the feeling that the accomplice, "may expect to save himself from punishment by procuring the conviction of others" through false accusation, 7 J. Wigmore, supra, §2057 at 322.

[554]See, 1 M. Hale, Pleas of the Crown 305 (2d ed. 1680); 7 J. Wigmore, supra note 553, §2056, at 313.

[555]7 J. Wigmore, supra note 553 at 313.

[556]Id. at 319.

in many states. According to Wigmore, the reason for this development was the elimination in many states of the common law function of the judge to comment on the evidence.[557] These states require corroboration of accomplice testimony.[558] Today, the relevant inquiries concerning accomplice corroboration in the prosecution of official corruption are: (1) whether a witness is an "accomplice" for purposes of the particular crime; (2) whether an accomplice's testimony requires corroboration; and (3) what evidence is sufficient to meet a requirement of corroboration.

Often, the accomplice corroboration statute includes a definition of the person to whom the rule is applicable.[559] Some define an accomplice as one who is liable for the identical offense with which the defendant is charged.[560] Others expand that definition to include a witness who "may reasonably be considered to have participated in the offense charged" or an "offense based upon the same or some of the same facts or conduct."[561] Still others use the substantive

---

[557] Id. at §2551, at 322.

[558] Under these statutes, a verdict of guilty may be set aside for lack of corroboration; refusal to give the cautionary instruction when requested is also reversable error. Id. §2056 at 320-21.

[559] See, e.g., Cal. Penal Code §1111 (1970); N.Y. Crim. Pro. Law §60.22 (McKinney 1971); Nev. Rev. Stat. §175.291(1) (1973); Mass. Ann. Laws ch. 233 §201 (1974) (applies only to witnesses granted immunity).

[560] See, California and Nevada statutes, supra note 559.

[561] N.Y. Crim. Pro. Law §60,22(2) (McKinney 1971).

law on complicity for purposes of the rule.[562]

In a minority of jurisdictions, where an "identical offense" test prevails, a briber is not an accomplice of a bribee.[563] Generally, however, the offerer of a bribe is an accomplice of the public official who accepts the bribe.[564] In contrast, the participants in the crime of extortion are the extortionist and the victim. Victims are not accomplices, so their testimony requires no corroboration.[565] The prosecutor's decision, when confronted with an instance of official corruption, to charge bribery or extortion, therefore, can have a decisive effect on trial proof.

The states split on the issue of whether an accomplice's testimony requires corroboration. Of those states having statutes that require accomplice corroboration, some

---

[562] See, e.g., Tex. Code Crim. Pro. Ann., art. 38.14 (1966). These substantive definitions tend to expand to include anyone "connected with the crime by an unlawful act of omission on his part transpiring either before, at the time of, or after commission of the offense, whether or not he participated in the offense." Brown v. State, 505 S.W.2d 850 (Tex. Crim. App. 1974).

[563] See, California and Nevada statutes, supra note 559.

[564] See, e.g., N.Y. Crim. Pro. Law §60.22 (McKinney 1971); Tex. Code Crim. Pro. Ann. art 38.14 (1966). The requirement of accomplice corroboration in a bribery case has recently been abolished in Pennsylvania. See, Pa. Stat. Ann., tit. 18, §4701 (1973).

[565] See, N.Y. Penal Law §155.40 (McKinney 1976) for a statutory definition of extortion explicitly recognizing the other participant as the "victim."

require corroboration as a general rule[566] while others require corroboration in only specific instances.[567] In many states requiring corroboration in some form or another, refusal to instruct as to accomplice corroboration, when requested, constitutes reversible error.[568] A similar instruction must be given, however, in many of the non-corroboration jurisdictions, even though corroboration is not required to uphold the verdict.[569]

In those states that require corroboration, some require such corroboration "as shall tend to connect the defendant with the commission of the offense."[570] Others, however, only require that there be corroboration of some other element of proof necessary to convict the defendant, or even of relevant and material facts directly relating to the main fact involved.[571] These less stringent requirements,

---

[566] See, e.g., Cal. Penal Code §1111 (1970); N.Y. Crim. Pro. Law §60.22 (McKinney 1971); Nev. Rev. Stat. §175.291(1) (1973); Tex. Code Crim. Pro. Ann., art. 38.14 (1966).

[567] See, e.g., Mass. Ann. Laws ch. 233, §201 (1974) (requiring corroboration only in the case of an immunized witness).

[568] See, e.g., People v. Hoover, 12 Cal.3d 875, 528 P.2d 760, 117 Cal. Rptr. 672 (1974), State v. Pray, 64 Nev. 179, 179 P.2d 449 (1947); People v. Basch, 36 N.Y.2d 154, 325 N.E.2d 156, 365 N.Y.S.2d 836 (1975).

[569] See, e.g., People v. Georgev, 38 Ill.2d 165, 230 N.E.2d 851 (1967), cert. denied, 390 U.S. 998 (1968); People v. McCoy, 392 Mich. 231, 220 N.W.2d 456 (1974); Comm. v. Mouzon, 456 Pa. 230, 318 A.2d 703 (1974)

[570] See, e.g., statutes of California, New York, Texas and Nevada cited at note 566, supra.

[571] See, e.g., Commonwealth v. DeBrodsky, 297 N.E.2d 493 (Mass. 1973); Comm. v. Staudenmeyer, 230 Pa. Super. 521, 326 A.2d 421 (1974).

in Wigmore's words, "seem not to mean more, in any case, than that the corroboration must have the effect of persuading to trust the testimony."[572]

2. Issues of character

The successful prosecution of official corruption often depends on the ability of the government to persuade juries to accept a characterization of events radically different than that put forth by the defendant. Typically, a government official brought to trial has an unblemished public record. He retains highly competent counsel and the government case against him involves ambiguous fact patterns from which the jury must nevertheless infer corrupt intent, for example, was the payment of money a campaign contribution or a bribe? Adequate trial proof usually necessitates, therefore, the use of testimony of participants in the corrupt scheme. Consequently, the important trial issues concerning character testimony arise in two situations: (1) when the defendant public official calls a character witness to exploit his presumption of credibility by testifying that the defendant has too honest a character to be guilty of the charges against him; and (2) when proof

---

[572] 7 J. Wigmore, Evidence §2059 at 333 (3d ed. 1940). Wigmore's theory that corroboration statutes came in place of the judge's common law function of commenting on the evidence no longer seems valid. Of the states with corroboration statutes, few completely deny their judges the power to comment on the evidence; those that do are: Nev. Const. art. 6 §12 (1943); Tex. Code Crim. Pro. Ann. arts. 36.14 and 38.04 (1966). Some non-corroboration states, moreover, deny their judges the power to comment. Ill. Ann. Stat., ch. 38, §115-4[i] (Smith-Hurd 1970); La. Code Crim. Pro. Ann. arts 772, 802, 806 (West 1967); State v. Pella, 101 R.I. 62, 220 A.2d 226 (1966).

of the corrupt scheme rests upon the testimony of a key government witness whose character, motivation and veracity are peculiarly subject to attack due to conceded past involvement in the crime.

a. Defense character witnesses

The defense may choose to introduce character evidence in two distinct situations. The use of character evidence allows the defense to show innocence by showing the defendant incapable of committing the acts of which he stands accused.[573] On the other hand, character evidence offered to prove "character in issue" is used by the defense when the defendant's character is a material fact in issue. For example, in prosecutions for extortion through the use of fear, character evidence regarding the defendant's reputation for violence, if known to the victim, is material to the question of the victim's fear and its reasonableness, since the government must prove that the extortion was accomplished by threats against the victim.[574]

In general, the defense has an absolute right to make use of character evidence.[575] The prosecution, however, may

---

[573] See, e.g., United States v. Kenny, 462 F.2d 1205, 1225 (3d Cir. 1972), where the former governor of New Jersey was called as a character-witness for a public official accused of violating Federal conspiracy laws.

[574] See, e.g., United States v. Billingsley, 474 F.2d 63, 66 (6th Cir. 1973); United States v. Tropiano, 418 F.2d 1069 (2d Cir. 1969), cert. denied, 397 U.S. 1021 (1971).

[575] See, e.g., Fed. Rules Evid. Rule 404(a); 1.J. Wigmore, Evidence §56 (3d ed. 1940).

make use of character evidence only to rebut defense use,[576] or where character evidence is offered to impeach a witness.[577] Evidence of specific instances of misconduct is not admissible to prove character, but may be admissible to prove "motive, opportunity, intent, preparation, knowledge, identity, or absence of mistake or accident."[578] The scope of admissible character evidence is often also limited by exclusion of evidence that would result in harrassment or unfair prejedice.[579] Where character evidence is being offered circumstantially, the methods of proving character are by (1) testimony as to reputation[580] or (2) testimony in the form of opinion.[581]

---

[576] Id. See also, United States v. Masino, 275 F.2d 129, 133 (2d Cir. 1960).

[577] See, e.g., Fed. Rules Evid., Rules 608 and 609. The prosecution must be prepared to explain precisely how evidence of specified instances of misconduct will tend to disprove or prove consequential facts such as intent or knowledge. See, Bullard v. United States, 395 F.2d 658 (5th Cir. 1968).

[578] Fed. Rules Evid., Rule 404(b).

[579] See, e.g., Fed. Rules Evid., Rules 403 and 611.

[580] Under the Fed. Rules Evidence, the defendant may elect to begin a discussion of his character by calling a witness to testify regarding the defendant's reputation in the community for a particular character trait. Rules 404 and 405. The trait must be one which, if proved, would be relevant to a jury inference of defendant's innocence. The reputation witness must not only be familiar with defendant's reputation and be a competent spokesman for the community, Whiting v. United States, 296 F.2d 512 (1st Cir. 1961), but must relate his testimony to a time contemporaneous with the acts charged, Awkward v. United States, 352 F.2d 641 (D.C. Cir. 1965). The prosecution may impeach reputation testimony on cross-examination or call its own reputation witness in rebuttal. On cross-examination, in order to test the witness' knowledge of defendant's reputation, the prosecution may ask the witness if he has "heard" of prior specific instances of defendant's conduct. Thus, it

In addition, where character is in issue, or where motive, intent, or the like is to be proved, character may be shown by evidence of relevant specific instances of conduct. Impeachment of a character witness in cross-examination consists of inquiries into the basis of the opinion formed or the learning of the reputation.[582]

Another method of opening the door to character testimony

580(continued)
is permissible for a cross-examiner to raise defendant's prior convictions, not otherwise admissible against the defendant. See, Rule 609. The prosecutor is bound only by considerations of good faith, see, United States v. Giddins, 273 F.2d 843, 845 (2d Cir. 1960), and relevancy, see, United States v. Lewis, 482 F.2d 632, 639 (D.C. Cir. 1973). The reputation witness who denied he heard or knew of defendant's prior bad acts may not be impeached with extrinsic evidence proving such acts. Rule 405(b).

581Under the Fed. Rules Evid. Rule 405, for example, testimony in the form of opinion may be offered from one acquainted with the defendant or by experts competent by virtue of their training to form opinions about the character of people. Opinion testimony by character witnesses chosen by defendant on the basis of the personal relationship they share with each other, the main concern for our purposes, presents the same issues discussed supra, note 580. The only significant distinction is one of form. Opinion testimony may be elicited in a more direct and less artificial fashion than can reputation testimony. One must only establish that the character witness has known the defendant long enough to form an opinion as to a relevant character trait.

582Since defendant public officials offer character testimony from witnesses whose own personal characters and reputations could not seriously be challenged, the impeachment reduces to a challenge of what was said rather than who is now saying it. Questions should be directed to how much contact the witness had with the defendant, under what circumstances, and under what conditions and with whom defendant's reputation was discussed. The cross-examiner most often seeks to show the witness relied on isolated or irrelevant instances of conduct, had no real familiarity with the defendant, or held a personal grudge or prejudice.

is for the defendant to take the stand.[583] Although the defendant thereby puts his character in issue, the permissible scope of character impeachment is strictly limited to the character trait of truthfulness.[584] Thus, the defendant may be asked on cross-examination only about non-conviction misconduct, or prior convictions that are relevant to his character for truthfulness.

Practically speaking, character evidence offered to circumstantially prove innocence is of strictly limited value at trial. Although the literature on character evidence is significant,[585] defense counsel is rarely urged to use character witnesses. Not only might character evidence backfire by opening the door to a discussion of the defendant's past, but it may cause jurors to feel defense counsel is trying to hoodwink them.[586] Character evidence is best reserved for situations in which defense counsel is desperate to provide the jury a peg on which to hang a not

---

[583] As a practical matter, defendant public officials accused of corruption run the risk that an election not to testify on their own behalf will result in conviction by jurors suspicious of their silence. The prosecution, however, may not comment upon a defendant's refusal to take the stand. Griffin v. California, 380 U.S. 609 (1965).

[584] See, e.g., Fed. Rules Evid., Rules 609 and 609: United States v. Harris, 331 F.2d 185, 188 (4th Cir. 1964).

[585] For a useful bibliography, see, A. Amsterdam, B. Segal, and M. Miller, Trial Manual for the Defense of Criminal Cases, (3d ed. 1975).

[586] A parade of character witnesses of diverse types and backgrounds arouses jurors' suspicion that defense council is appealing to their prejudices and underestimating their capacity to comprehend complex, incriminating fact patterns.

guilty verdict.[587] This tactic is most appropriate in a minority jurisdiction that permits a charge that character evidence alone is sufficient to raise a reasonable doubt.[588]

The prosecution should cross-examine character witnesses only in two situations: (1) where there is an opportunity thereby to acquaint the jury with instances of defendant's past conduct that are otherwise inadmissible; and (2) where knowledge of reputation or familiarity with the defendant appear peculiarly suspect. Attempts to impeach without such bases smack of harassment.

b. Shady government witnesses

As noted above, it is not likely that the prosecution's case in official corruption prosecutions can be based on the testimony of unimpeachable witnesses. In bribery situations for example, the government's indictment may very well charge both the defendant and the government's chief witness with the same basic offense. It is to be expected, therefore, that the defense will sharply attack the government's key witnesses.

---

[587] This would occur where an objective evaluation of the evidence implies almost certain conviction, yet defendant has presented a personable and sympathetic appearance to the jury.

[588] Compare United States v. Lowenthal, 224 F.2d 248, 249 (2d Cir. 1955) with United States v. Donnelly, 179 F.2d 227 (7th Cir. 1950).

Relevant traditional impeachment methods[589] are (1) the use of prior inconsistent statements,[590] (2) a showing of bias or interest,[591] (3) criminal convictions used to attack a witness' character,[592] (4) prior acts of misconduct,[593]

---

[589]Fed. Rules Evid., Rule 607 permits impeachment of a party's own witness. This is an important change in federal law.

In New York, impeachment of one's own witness is not permitted except through prior written and signed inconsistent statements or prior inconsistent statements made under oath. N.Y. Crim. Pro. Law, §4515 (McKinney 1972). In criminal cases, however, turncoat witnesses who surprise the calling party may be similarly impeached. N.Y. Crim. Pro. Law, §60.35 (McKinney 1971).

[590]Fed. Rules Evid., Rule 804(d) (1)(A) changes prior Federal law by allowing prior inconsistent statements to be considered as substantive evidence.

Rule 613(b) requires that a foundation to be laid prior to production of a witness' inconsistent statement, thus allowing the witness a chance to rebut or explain the inconsistency.

[591]Bias is never classified as collateral; a cross-examiner may introduce extrinsic evidence to show a witness' bias or interest. See, Hale, "Bias as Affecting Credibility," 1 Hastings L.J. 1 (1949). No foundation need be laid.

[592]Fed. Rules Evid., Rule 609(a), for example, provides for impeachment of a witness by eliciting from him the fact of prior criminal convictions or putting into evidence a public record of the witness' convictions. The conviction, however, must have been punishable by imprisonment in excess of one year (unless the crime involved dishonesty or false statement), and its probative value must outweigh prejudice to the defendant. Generally, the crime must have been committed within the last 10 years. The prosecution must also provide notice to the defense that it intends to move to use such convictions.

[593]Extrinsic evidence of specific acts of misconduct that did not culminate in criminal conviction or involve false statements cannot be used to impeach a witness under Fed. Rules Evid., Rule 609. In the federal courts and the majority or jurisdictions, however, a witness may be pressed to admit such acts on cross-examination if they are (1) probative to character for truthfulness, (2) the danger of unfair prejudice does not outweigh probativeness, and (3) harassment or undue embarrassment would not result. See, Rules 608, 403, and 611. The inquiry must be in good faith.

(5) poor reputation for truthfulness.[594]

After a witness' character has been attacked, the party first calling him may attempt to rehabilitate by calling witnesses to testify to his character for truthfulness.[595] In federal courts and the majority of jurisdictions, prior consistent statements are inadmissible to counter impeachment by a prior inconsistent statement, with one exception: where (1) the prior consistent statement antedates the existence of an alleged motive to falsify at trial, and (2) the testimony is attached as a recent contrivance.

While good defense strategy mandates emphasizing prosecution-witness bias in official corruption trials,[596] it is arguably good strategy for the prosecutor to be first in time to bring out impeaching facts. The prosecutor should "draw the teeth" of cross-examination by eliciting facts

---

[594]Generally, bad character is considered irrelevant to a witness' in-court veracity. Fed. Rule 608 requires the character trait proved by opinion or reputation testimony be that of truthfulness only. In New York, impeachment by evidence of bad reputation for truthfulness necessitates the introduction of extrinsic evidence. The impeaching witness may not testify to specific instances of untruthful conduct or to his opinion based on personal observation. Carlson v. Winterson, 147 N.Y. 652, 42 N.E. 347, 107 N.Y.S. 397 (1895).

[595]The "no bolstering rule" precludes the admission of evidence of good character for truthfulness before such good character has been attacked. An attack is made by explicit opinion or reputation testimony as to untruthfulness, evidence of prior conviction, or witness acknowledgment of non-conviction misconduct. C. McCormick, Evidence §49 (1954).

[596]If a prosecution witness falsely responds that he has made no deal with the prosecution in exchange for his testimony, the prosecutor must disclose the truth. Giglio v. United States, 405 U.S. 150 (1972).

on direct examination, which would otherwise only be revealed to the jury on cross-examination. A witness gains credibility when such facts are voluntarily elicited by friendly counsel, especially when those facts include plea bargains made with the witness in exchange for his testimony. Further it should be brought out that no plea arrangements or immunity grant covers perjury, and, therefore, the witness must tell the truth. Finally, the point can be made on closing that the Government must take its witnesses as it finds them; it was the defendant who first chose himself to associate with the shady witness.[597]

3. Joinder and Severance

Ideally, if an organized crime offender is involved, it is best to put the corrupt official on trial with him, though a motion for severance will surely follow.[598] It is good strategy, too, to call sophisticated suspects before an

---

[597] In United States v. Corallo, 413 F.2d 1306, 1322 (2d Cir. 1969), this instruction was upheld:

> In certain types of crime the government, of necessity, is frequently compelled to rely upon the testimony of accomplices, persons with criminal records, or informers. Otherwise it would be difficult to detect or prosecute some wrong-doers, and this is particularly true in conspiracy cases. Often it has no choice in the matter. It must take the witnesses to the transactions as they are.

[598] See, e.g., United States v. Addonizio, 451 F.2d 49, 62-63 (3d Cir.), cert. denied, 405 U.S. 936 (1972), where the mayor of Newark objected to being tried with the "underworld" figures; his motion was rejected.

investigative grand jury in its later stages.[599] If they have good explanations, it is better for all concerned that no indictment issue. If they try to lie their way out of it, the careful prosecutor will be in a superior position at trial having had time to check out their false story. They can also be indicted for perjury, and that offense can be added to their others.[600] Consequently, it cannot be too strongly emphasized that in the investigation and prosecution of official corruption joinder and severance rules are especially important.

Most states have cast these rules in statutory form, although some states rely solely on common law rules.[601] In either case, because of the need to do justice in criminal trials, most states leave substantial room for the exercise of discretion by the court in ruling on joinder and severance motions.[602] In all jurisdictions, the essential question

---

[599] See, e.g., United States v. Isaacs, 493 F.2d 1124 (6th Cir. 1974); United States v. Sweig, 441 F.2d 114 (2nd Cir. 1971); United States v. Corallo, 413 F.2d 1306 (2nd Cir. 1969); United States v. Addonizio, 313 F.Supp. 486 (D. N.J. 1970), aff'd 451 F.2d 40 (3rd Cir.), cert. denied, 405 U.S. 936 (1972); each case is an excellent example of the use of the strategy in a corruption setting.

[600] See, e.g., United States v. Isaacs, supra note 599.

[601] Common law states are New Hampshire, Rhode Island, South Carolina and Tennessee.

[602] In some statutes this discretion is bound up in complex verbal formulation. See, e.g., American Bar Association Project on Minimum Standards for Criminal Justice: Standards Relating to Joinder and Severance (1967) §2.3(b)(i) (hereinafter cited as ABA Standards) (severance should be granted before trial where "it is deemed appropriate to promote a fair determination of the defendant's guilt or innocence.")

In others, the discretion is literally unbounded. See, e.g., Conn. Gen. Stat. Ann. §54-57 (1960) (permitting joinder of offenses "unless the court orders otherwise.")

in deciding joinder and severance motions is whether the prejudice to the defendant outweighs the value to the state of a single trial.[603]

By far the most influential codification of joinder and severance has been the Federal Rules of Criminal Procedure.[604] Most states have adopted the Federal Rules verbatim,[605] used them as a model,[606] or combined them with the ABA rules.[607]

602(continued)

Statutes do exist which grant the defendant an absolute right to severance from other defendants, see, e.g., W.Va. Code Ann. §62-3-8 (1966); Va. Court Rules 3A: 13(a), or an absolute right to severance of offenses. See, e.g., Texas Penal Code Ann. §3.04(a)(1974).

603 See also 2 L. Orfield, Criminal Procedure Under the Federal Rules, §14:65, p. 389 (1966).

604 Approximately three-fifths of the states have adopted joinder and severance statutes patterned entirely or in large part on either the Federal Rules or the ABA rules, supra note 602.

605 Alaska R. Crim. P. 8, 13, and 14; Delaware R. Crim. P. 8, 13 and 14; Haw. R. Crim. P. 8, 13, and 14; Ill. Rev. Stat. c. 38, §§111-4, 111-7, and 111-8 (1971); Ky. R. Crim. P. 6.18, 6.20, 9.12, and 9.16; Me. R. Crim. P. 8,13, and 14; 2A Nebr. Rev. Stat. §29-2002 (1964); 6 Nev. Rev. Stat. §§143.113, 173.1135, 174.155, and 174.165 (1975); N.J. Court Rules (Cr. Prac.) §§3:7-6, 3:7-7, 3:15-1, and 3:15-2 (1976); N.D.R. Crim. P. 8, 13, and 14; 42A Wisc. Stat. Ann. §971.12 (1971); Wyo. R. Crim. P. 8,13, and 14.

606 Colo. R. Crim. P. 8, 13, and 14; 4 Idaho Code Ann. §§19-2106 and 19-1432 (Supp. 1965); Kan. Stat. Ann. §§22-3203, 22-3204 (1974); La. Civ. Code Ann. (Code Crim. Pro. arts. 493, 494, and 495.1; Supp. 1975); 9B Md. Code Ann. 716, 734 and 735 (1971); 8 Mont. Rev. Code Ann. §95-1504 (1969); Ohio R. Crim. P. 8,13, and 14; 22 Okla Stat. tit. 22, §§436-439 (1969); Pa. Rules of Court (Cr.Pr. 219) (1975); 8 Utah Code Ann. §77-21-31 and 77-21-44 (Supp. 1975).

607 Ariz. R. Crim. P. 13.3 and 13.4 (1973); 33 Florida Stat. Ann. 3.150-3.152 (1975); 6 N.M. Stat. Ann. §§41-23-10, 41-23-11, and 41-23-34 (1964); 1 C N.C. Gen. Stat. §§15A-92b and 15A-927 (1975).

Rule 8(a) permits joinder of same or similar offenses, a most controversial provision,[608] and Rule 8(b) permits joinder of defendants.[609]

---

[608] Some commentators call for its abolition. See, Note "Joint and Single Trials Under Rules 8 and 14 or the Federal Rules of Criminal Procedure," 74 Yale L.J. 553 (1964); Maguire, "Proposed New Federal Rules of Criminal Procedure," 23 Or. L. Rev. 56 (1943); Orfield,"A Note on Joinder of Offenses", 41 Or. L. Rev. 128 (1962).

The view has been expressed that if the aim of criminal justice is to convict on the evidence, then the combination of several crimes (not sharing commonality of time, place, or purpose) in one indictment serves only to prejudice the jury or to prevent the defendant from selectively choosing which crime he wishes to challenge on the witness stand.

Joinder of offenses based on the same transactions, or acts, or transactions growing out of a common scheme or plan, on the other hand, is subject to less criticism because the considerations that make similar offense joinder undesirable are minimized in similar transaction joinder. The root premise of similar transaction joinder--the need to consider the broad and pervasive designs that might be lost(or inadmissible) in several individual trials--is fully consistent with the "other crimes" rule. Moreover, the likelihood that a defendant would wish to testify as to only one of several allegedly related crimes is much less likely. The usual considerations of time, expense and energy are also more relevant here where common elements of proof reach beyond the defendant's name and the crime with which he is charged.

[609] If a number of defendants are "alleged to have participated in the same act of transaction or in the same series of acts or transactions constituting the offense or offenses" then taking proof in a joint trial of all such defendants is more efficient and permits the jury to view the big picture. See, generally, "Joinder of Defendants in Criminal Prosecutions," 42 N.Y.U. L. Rev. 513 (1967).

The chief problem in joinder of defendants is whether joinder may retroactively be held improper on the basis of failure of proof of connection at the trial. The key word in Rule 8 is "alleged" and the Supreme Court held in Schaffer v. United States, 362 U.S. 511 (1960), that as long as the prosecutor alleges in good faith that defendants are part of a series of transactions, joinder remains proper even after issues of commonality are disposed of in the defendant's favor by the trial court.

CONTINUED

2 OF 4

NEW HAMPSHIRE (N) §640:4 (§640:5)	solicits, accepts or agrees to accept; offers, gives or promises	public servant or juror pecuniary benefit for past official act (from person interested in official act pending or possible)	---	--- (offerer knowingly)	--- (offerer has knowledge)	misdemeanor
Note: See also §640:6 (compensation for services).						
NEW JERSEY §2A:105-1	receives or takes	judge, magistrate or public officer fee or reward, not allowed by law, for official act under color of office	receives	---	---	felony
NEW MEXICO (N)	NO GENERAL STATUTE ON GRAFT. But see, e.g., §14-9-6 (mayor or officer receiving fees).					
NEW YORK (N) §§200.35; 200.30	solicits, accepts or agrees to accept; offers, confers or agrees to confer	public servant benefit, not authorized, for official act required	---	---; knowingly	---; knowledge	misdemeanor
Note: See also §§200.20, 200.25 (reward for official misconduct).						
NORTH CAROLINA	NO GENERAL STATUTE ON GRAFT.					
NORTH DAKOTA (N) §12.1-12-01 (Bribery)	solicits, accepts or agrees to accept; offers, gives or agrees to give	public servant thing of value as consideration for official act or violation of duty, including past act or violation	---	knowingly	knowledge	felony
Note: Per §12.1-12-01(2) it is no defense that the recipient was not qualified.						
OHIO (N) §2921.43	solicits or receives	public servant compensation or fee, greater than provided by law, for performance of duty	---	knowingly	---	misdemeanor, bar to office
Note: See also, e.g., §2921.41 (theft in office), §2921.42 (interest in contract).						

OKLAHOMA 74 §1404 (§1409) (not penal code)	solicits or receives	state employee (legislator) compensation impairing judgment in official act (not authorized by law, from source other than state)	(receives)	---	---	dismissal, reprimand
Note: See also, e.g., §386 (gift to juror).						
OREGON (N) §244.040 (not penal code)	solicits or receives; offers	public official or candidate or member of his household gifts with aggregate value over $100 within year, from source interested in official act	---	---	---	fine, forfeiture
Note: See also §§162.405, 162.415 (official misconduct).						
PENNSYLVANIA (N)	NO GENERAL STATUTE ON GRAFT. But see, e.g., 16 §§7802, 4803 (receiving gratuities--1st class counties, 2nd class counties).					
RHODE ISLAND §§11-7-3; 11-7-4 (part of Bribery)	obtains or attempts to obtain, accepts or agrees to accept; offers or gives	public servant gift or valuable consideration as reward for past official act or omission corruptly	---	---	---	misdemeanor
Note: Per §11-7-6 injured person may recover double damages.						
SOUTH CAROLINA §16-213	accepts	public officer rebate or compensation greater than provided by law	accepts	---	---	felony or misdemeanor
SOUTH DAKOTA (N) §22-12A-8	asks or receives	public servant unauthorized gratuity, reward, emolument or consideration for official act	---	---	---	misdemeanor, bar to office
Note: See also §22-12A-9 (solicitaion of compensation for omission of duty).						
TENNESSEE	NO GENERAL STATUTE ON GRAFT.					

TEXAS (N) §36.07 (§36.08; §36.09)	solicits, accepts or agrees to accept; offers, confers or agrees to confer	public servant pecuniary benefit for favorable past official act (from person subject to jurisdiction of public servant)	---	intentionally or knowingly (---)	--- (knowledge of jurisdiction)	misdemeanor
UTAH (N) §76-8-105	solicits, accepts or agrees to accept; offers, gives or promises	public servant pecuniary benefit for past official act	---	recklessly	---	misdemeanor
Note: See also §76-8-201 (official misconduct) and, e.g., §67-16-5 (ethics act: gift or loan).						
VERMONT	NO GENERAL STATUTE ON GRAFT.					
VIRGINIA (N) §§2.1-351, 2.1-354	accepts	public servant or juror gift, favor or service that might influence official duties	accepts	knowingly	---	misdemeanor
WASHINGTON (N) §42.22.040	receives or agrees to receive; gives	public officer unauthorized compensation from source other than state, for official services	receives or agrees; gives	---	---	misdemeanor
Note: See also §9A.68.030 (unlawful compensation) and, e.g., §42.18.200 (gift to state employee).						
WEST VIRGINIA §61-5A-4 (§61-5A-6)	solicits, accepts or agrees to accept; offers, confers or agrees to confer (accepts or agrees to accept)	public servant or juror pecuniary benefit for past official act or violation of duty (from person interested in official act)	--- (accepts or agrees)	---	--- (knowledge)	misdemeanor
WISCONSIN (N) §946.12(5)	solicits or accepts	public servant valuable thing, greater or less in value than fixed by law, for performance of duty under color of office	---	intentionally	knowledge	misdemeanor
Note: See also §946.12(3) (official misconduct).						

WYOMING	NO GENERAL STATUTE ON GRAFT.					
DISTRICT OF COLUMBIA						
§1-1181(d)	solicits or receives; offers or pays	public officer money in excess of that provided by law for advice or assistance in official capacity	---	---	---	misdemeanor

Note: See also, e.g., §4-129 (emolument to police).

SELECTED BIBLIOGRAPHY

The following is a selected portion of the subject list of P. Martin, Organized Crime: A Bibliography (Cornell Institute on Organized Crime, 1976). The complete bibliography, available through the Cornell Institute on Organized Crime, is a major improvement on prior bibliographies on organized crime in a number of ways. It contains an extensive and detailed subject listing that allows access to each bibliographic item by an average of five subject descriptors. It also provides complete bibliographic information, facilitating location of the item. Finally, it contains 1750 entries, eighty per cent more entries than the largest previously existing bibliography on the organized crime.

The bibliography was compiled with the expectation that it will be comprehensive in the future. As a result, all literature located on organized crime was included. The bibliographers have made no value judgements either as to length or quality.

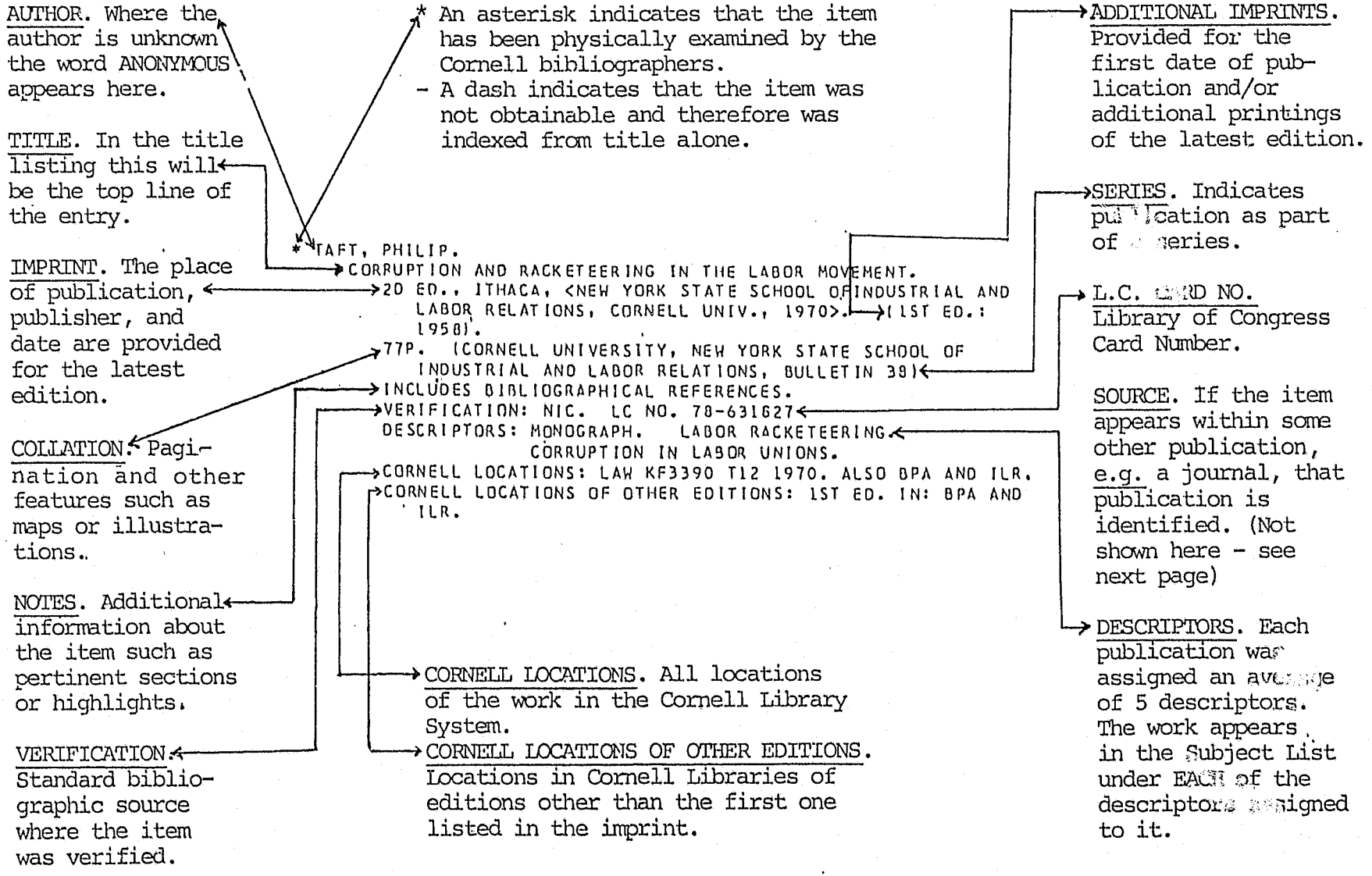
At this point, the bibliography omits only newspaper articles and non-law related social articles.

The following selected portion of the bibliography contains items that relate to corruption as it relates to organized crime; it is not a bibliography on the general topic of corruption. There are also other items in the bibliography that relate to corruption that appear under more general descriptors such as "Organized Criminal Activities" or "Labor Racketeering." The following, however, can be

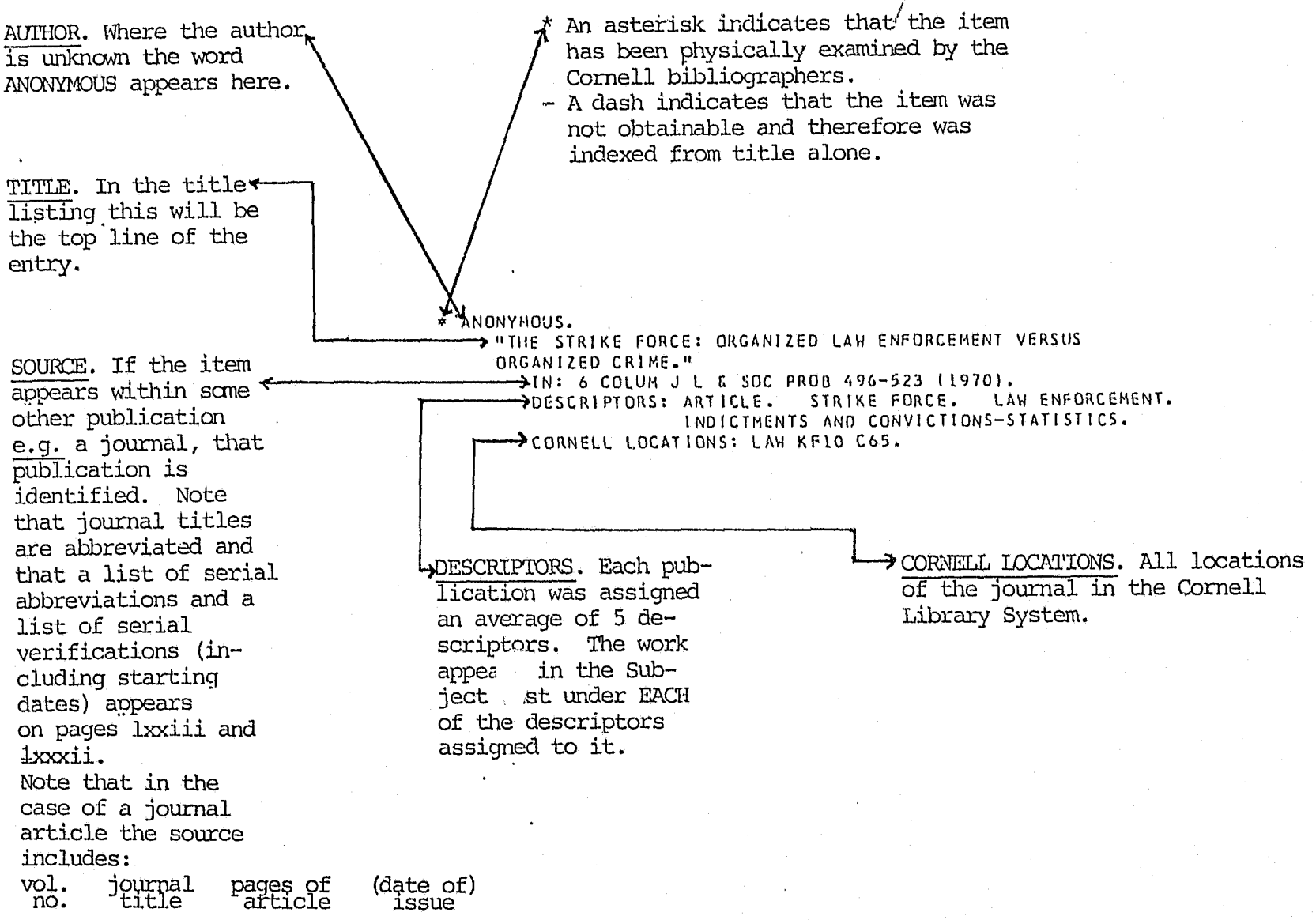
used as a starting point for research on corruption. Nevertheless, the complete bibliography should be used if a thorough search is being conducted. In addition, this selection was taken from the bibliography before it was completed, so a few more documents will appear under these corruption descriptors in the final bibliography.

A sample monograph entry and a sample serial article appear in the following pages to facilitate use of the printout. Instructions on how to use the bibliography appear in the larger work from which this printout was selected.

SAMPLE MONOGRAPH ENTRY



SAMPLE SERIAL ARTICLE ENTRY



COMMERCIAL BRIBERY.

* ANONYMOUS.
"BRIBERY IN COMMERCIAL RELATIONSHIPS."
IN: 45 HARV L REV 1248-1252 (MAY 1932).
DESCRIPTORS: ARTICLE. COMMERCIAL BRIBERY.
CORNELL LOCATIONS: LAW KF10 H34. ALSO ILR.

* MASSACHUSETTS. LEGISLATIVE RESEARCH COUNCIL.
REPORT RELATIVE TO COMMERCIAL BRIBERY.
<BOSTON> THE COUNCIL, 1975.
40P. (<MASS. GENERAL COURT> HOUSE <OF REPRESENTATIVES. DOCUMENTS. DOCUMENTS>; NO. 5533).
VERIFICATION: NIC-L.
DESCRIPTORS: REPORT. COMMERCIAL BRIBERY.
CORNELL LOCATIONS: LAW KFM2968 A1 A25 1975.

CORRUPTION IN LABOR UNIONS.

* BELL, DANIEL.
THE END OF IDEOLOGY; ON THE EXHAUSTION OF POLITICAL IDEAS IN THE FIFTIES.
REV. ED., N.Y., FREE PR. <1965>. (1ST PUB.: <1960>).
474P.
SEE PART 2 CH. 7: "CRIME AS AN AMERICAN WAY OF LIFE", PP. 127-150, CH. 8: "THE MYTH OF CRIME WAVES", PP. 151-174, AND CH. 9: "THE RACKET-RIDDEN LONGSHOREMEN", PP. 175-209.
INCLUDES BIBLIOGRAPHIES.
VERIFICATION: NUC('63-'67) VOL.5 P.436. LC NO. 66-18564
DESCRIPTORS: CHAPTER. SOCIO-ECONOMIC CLIMATE. GAMBLING. MAFIA-MYTH OR REALITY? ETHNIC GROUPS. CORRUPTION IN LABOR UNIONS. LABOR RACKETEERING. WATERFRONT.
CORNELL LOCATIONS: ILR HN57 B45 1965.
CORNELL LOCATIONS OF OTHER EDITIONS: 1960 ED. IN OLIN HN57 B43. ALSO UNDGR AND MANN. 1962 ED. IN MANN.

* BELL, J.F.
"CORRUPTION AND UNION RACKETEERING."
IN: 36 CURR HIST 343-346 (JUNE 1959).
DESCRIPTORS: ARTICLE. LABOR RACKETEERING. MCCLELLAN COMMITTEE. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: OLIN D410 C97. ALSO UNDGR.

CORRUPTION IN LABOR UNIONS.
(CONTD.)

* HUTCHINSON, JOHN.
"THE ANATOMY OF CORRUPTION IN TRADE UNIONS."
IN: 8 INDUS REL 135-150 (FEB 1969).
DESCRIPTORS: ARTICLE. LABOR RACKETEERING. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: LAW KF10 I435. ALSO BPA AND ILR.

* HUTCHINSON, JOHN.
CORRUPTION IN AMERICAN TRADE UNIONS.
BERKELEY, 1957.
PP.1-22. (CALIFORNIA. UNIVERSITY. INSTITUTE OF INDUSTRIAL RELATIONS. REPRINT NO.91).
REPRINTED FROM THE POLITICAL QUARTERLY, VOL.28, JULY-SEPT 1957.
DESCRIPTORS: ARTICLE. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: ILR HD6961 A1 C25 NO.91.
CORNELL LOCATIONS OF OTHER EDITIONS: POLITICAL QUARTERLY: OLIN JA8 P755. ALSO UNDGR.

* HUTCHINSON, JOHN.
THE IMPERFECT UNION: A HISTORY OF CORRUPTION IN AMERICAN TRADE UNIONS.
<1ST ED.> N.Y., DUTTON, 1970.
477P.
INCLUDES BIBLIOGRAPHICAL REFERENCES.
VERIFICATION: NUC('68-'72) VOL.42 P.590. LC NO. 71-95467
DESCRIPTORS: MONOGRAPH. CORRUPTION IN LABOR UNIONS. LABOR RACKETEERING. WATERFRONT. CONSTRUCTION. HOFFA, JIMMY. TEAMSTERS. MCCLELLAN COMMITTEE. VENDING MACHINE RACKET. FOOD SERVICE INDUSTRIES. WELFARE FRAUD.
CORNELL LOCATIONS: UNDGR HD6490 R3 H97. ALSO ILR.

* KENNEDY, ROBERT F.
THE ENEMY WITHIN.
<1ST ED.> N.Y., HARPER <1960>.
338P. ILLUS.
INTRODUCTION BY ARTHUR KROCK.
VERIFICATION: NIC. LC NO. 60-6206
DESCRIPTORS: MONOGRAPH. MCCLELLAN COMMITTEE. LABOR RACKETEERING. TEAMSTERS. INFILTRATION OF LEGITIMATE BUSINESS. HOFFA, JIMMY. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: LAW KF3438 K36. ALSO UNDGR, ILR, AND MANN.

CORRUPTION IN LABOR UNIONS.
(CONTD.)

* MARTIN, JOHN B.
JIMMY HOFFA'S HOT; A CREST SPECIAL.
GREENWICH, CONN., FAWCETT PUBLICATIONS <1959>.
176P. (CREST BOOK, 340).
"ORIGINALLY PUB. IN THE SATURDAY EVENING POST UNDER TITLE 'THE STRUGGLE TO GET HOFFA'."
VERIFICATION: NUC('58-'62) VOL.29 P.444. LC NO. 59-65472
DESCRIPTORS: MONOGRAPH. LABOR RACKETEERING. MCCLELLAN COMMITTEE. HOFFA, JIMMY. TEAMSTERS. EMBEZZLEMENT. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: ILR HD6515 T3 M3.

* MCCLELLAN, JOHN LITTLE.
CRIME WITHOUT PUNISHMENT.
<1ST ED.> N.Y., DUELL, SLOAN, AND PEARCE <1962>.
300P. ILLUS.
VERIFICATION: NIC-L. LC NO. 62-8523
DESCRIPTORS: MONOGRAPH. MCCLELLAN COMMITTEE. TEAMSTERS. CORRUPTION IN LABOR UNIONS. LABOR RACKETEERING. CHICAGO. APALACHIN MEETING.
CORNELL LOCATIONS: LAW HD6490 R3 U73. ALSO ILR.

* MCNAMARA, PATRICK.
"CRIME AND THE LABOR MOVEMENT."
IN: HERBERT A. BLOCH, ED., CRIME IN AMERICA.
N.Y., PHILOSOPHICAL LIBRARY <1961>.
PP. 189-199.
VERIFICATION: NIC. LC NO. 60-13642
DESCRIPTORS: ARTICLE. MCCLELLAN COMMITTEE. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: OLIN HV6777 B65. ALSO UNDGR.

* MOLLENHOFF, CLARK R.
TENTACLES OF POWER: THE STORY OF JIMMY HOFFA.
<1ST ED.> CLEVELAND, WORLD PUBLISHING CO. <1965>.
415P.
BIBLIOGRAPHY PP. 412-415.
VERIFICATION: NUC('63-'67) VOL.37 P.248. LC NO. 65-23359
DESCRIPTORS: MONOGRAPH. HOFFA, JIMMY. TEAMSTERS. LABOR RACKETEERING. MCCLELLAN COMMITTEE. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: OLIN HD6515 T2 M72. ALSO ILR.

CORRUPTION IN LABOR UNIONS.
(CONTD.)

* SHEED, WILFRID.
THREE MOBS: LABOR, CHURCH, AND MAFIA.
N.Y., SHEED AND WARD <1974>.
157P.
VERIFICATION: NUC(1975). LC NO. 74-1546
DESCRIPTORS: MONOGRAPH. CORRUPTION IN LABOR UNIONS. RELIGION. ORGANIZED CRIME (OVERVIEW).
CORNELL LOCATIONS: OLIN HN65 S54.

* TAFT, PHILIP.
CORRUPTION AND RACKETEERING IN THE LABOR MOVEMENT.
2D ED., ITHACA, <NEW YORK STATE SCHOOL OFINDUSTRIAL AND LABOR RELATIONS, CORNELL UNIV., 1970>. (1ST ED.: 1958).
77P. (CORNELL UNIVERSITY, NEW YORK STATE SCHOOL OF INDUSTRIAL AND LABOR RELATIONS, BULLETIN 38)
INCLUDES BIBLIOGRAPHICAL REFERENCES.
VERIFICATION: NIC. LC NO. 78-631827
DESCRIPTORS: MONOGRAPH. LABOR RACKETEERING. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: LAW KF3390 T12 1970. ALSO BPA AND ILR.
CORNELL LOCATIONS OF OTHER EDITIONS: 1ST ED. IN: BPA AND ILR.

* U.S. CONGRESS. HOUSE. COMMITTEE ON EDUCATION AND LABOR.
INVESTIGATION OF WELFARE FUNDS AND RACKETEERING.
HEARINGS BEFORE A SPECIAL SUBCOMMITTEE, 83D CONG., PURSUANT TO S.RES.115, HELD NOV. 23-27, 1953.
WASH., GPO, 1954.
502P.
VERIFICATION: NUC('53-'57) VOL.24 P.354. LC NO. 54-61060
DESCRIPTORS: CONGRESSIONAL HEARING. CORRUPTION IN LABOR UNIONS. TEAMSTERS. HOFFA, JIMMY.
CORNELL LOCATIONS: OLIN HD8051 B2 W44. ALSO ILR.

* U.S. CONGRESS. HOUSE. COMMITTEE ON EDUCATION AND LABOR.
INVESTIGATION OF WELFARE FUNDS AND RACKETEERING. REPORT OF A SPECIAL SUBCOMMITTEE, PURSUANT TO H.RES.115 .
WASH., GPO, 1954.
AT HEAD OF TITLE: COMMITTEE PRINT, 83D CONG., 2D SESS. HR.
VERIFICATION: NUC('53-'57) VOL.24 P.354. LC 54-60503
DESCRIPTORS: CONGRESSIONAL REPORT. LABOR UNIONS. TEAMS[illegible] JIMMY.
CORNELL LOCATIONS: OLIN HD8051 B62

CORRUPTION IN LABOR UNIONS.
(CONTD.)

* U.S. CONGRESS. SENATE. COMMITTEE ON GOVERNMENT OPERATIONS. JAMES R. HOFFA AND CONTINUED UNDERWORLD CONTROL OF NEW YORK TEAMSTER LOCAL 239. REPORT MADE BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, 87TH CONG., 2D SESS.
JULY 25, 1962.
58P.
S.RPT.87-1784.
VERIFICATION: SS.
DESCRIPTORS: CONGRESSIONAL REPORT. HOFFA, JIMMY. TEAMSTERS. CORRUPTION IN LABOR UNIONS.
CORNELL LOCATIONS: LAW KF31 AND KF26 G6 (1962 V.4), OLIN SS12418.

CORRUPTION OF PUBLIC OFFICIALS.

* ALLSOP, KENNETH.
THE BOOTLEGGERS AND THEIR ERA.
<1ST ED.> N.Y., DOUBLEDAY, 1961.
383P. ILLUS.
INCLUDES BIBLIOGRAPHIES.
VERIFICATION: NIC. LC NO. 61-9475
DESCRIPTORS: MONOGRAPH. PROHIBITION. LIQUOR. CAPONE, AL. CHICAGO. CORRUPTION OF PUBLIC OFFICIALS. MURDER.
CORNELL LOCATIONS: OLIN HV6795 C4 A44. ALSO UNDGR.

* BARNES, HARRY E. TEETERS, NEGLEY K.
NEW HORIZONS IN CRIMINOLOGY: THE AMERICAN CRIME PROBLEM.
3D ED. ENGLEWOOD CLIFFS, N.J., PRENTICE-HALL, 1959. (1ST ED.: 1943).
1069P. ILLUS.
SEE CH. 2: "THE REVOLUTION IN THE NATURE OF CRIME", PP. 17-40 AND CH. 3: "THE NATURE OF WHITE-COLLAR CRIME, RACKETEERING, AND POLITICAL GRAFT", PP. 41-76.
VERIFICATION: NIC-L. LC NO. 59-5873
DESCRIPTORS: CHAPTER. WHITE-COLLAR CRIME. HISTORY. GAMBLING. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW HV6025 B26 1959.
CORNELL LOCATIONS OF OTHER EDITIONS: LAW, OLIN, AND MANN.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* BORKIN, JOSEPH.
THE CORRUPT JUDGE; AN INQUIRY INTO BRIBERY AND OTHER HIGH CRIMES AND MISDEMEANORS IN THE FEDERAL COURTS.
<1ST ED.> N.Y., C.N. POTTER <1962>.
310P.
CONTAINS BIBLIOGRAPHY.
VERIFICATION: NIC. LC NO. 62-19290
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. JUDGES. LAWYER CRIMINAL.
CORNELL LOCATIONS: LAW KF9419 B73, OLIN JK1551 B73.

* CARLSON, RICHARD. BRISSON, LANCE.
"THE WEB THAT LINKS SAN FRANCISCO'S MAYOR ALIOTO AND THE MAFIA."
IN: 33 LOOK 17-21 (SEPT 23, 1969).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. CALIFORNIA. ALIOTO, JOSEPH.
CORNELL LOCATIONS: OLIN AP2 L86++. ALSO UNDGR.

* CAVALLARO, VINCENZO.
LA MAFIA DEGLI AMMASSI.
<ROMA> A.R.N.I.A. <1960>.
2V. (ALVEARE; COLLANA DI STUDI ECONOMICO-POLITICI, 2-3).
ITALIAN.
VERIFICATION: NIC. LC NO. 64-50792
DESCRIPTORS: MONOGRAPH. ITALY. CORRUPTION OF PUBLIC OFFICIALS. MAFIA--CONTROL.
CORNELL LOCATIONS: OLIN HN480 C37.

* CHAMBLISS, WILLIAM J.
"VICE, CORRUPTION, BUREAUCRACY AND POWER."
IN: 1971(4) WIS L REV 1150-1173 (1971).
DESCRIPTORS: RESEARCH RESULTS. STRATEGIC AND TACTICAL CRIMES. CORRUPTION OF PUBLIC OFFICIALS. SOCIOLOGICAL ANALYSIS. ARTICLE.
CORNELL LOCATIONS: LAW KF10 W815.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* CONKLIN, JOHN E., COMP.
THE CRIME ESTABLISHMENT: ORGANIZED CRIME AND AMERICAN SOCIETY.
ENGLEWOOD CLIFFS, N.J., PRENTICE-HALL <1973>.
181P. (THE AMERICAN ESTABLISHMENTS SERIES) (A SPECTRUM BOOK).
A BOOK OF READINGS.
BIBLIOGRAPHY PP. 177-181.
VERIFICATION: NIC. LC NO. 73-9772
DESCRIPTORS: MONOGRAPH. ORGANIZED CRIME (OVERVIEW). ECONOMIC ANALYSIS. MAFIA-MYTH OR REALITY? CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW HV6446 C75, OLIN HV6446 C75.

* COOK, FRED J. GLEASON, GENE.
"THE SHAME OF NEW YORK."
IN: 189 NATION 261-321 (OCT 31, 1959).
SEE PART 2: "THE MEN BEHIND THE TIGER" AND PART 9: "RACKETS-AND PAY-OFFS".
DESCRIPTORS: ARTICLE. MURDER, INC. COSTELLO, FRANK. NEW YORK CITY. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN AP2 N26++. ALSO UNDGR.

* CRESSEY, DONALD R.
THEFT OF THE NATION: THE STRUCTURE AND OPERATIONS OF ORGANIZED CRIME IN AMERICA.
<1ST ED.> N.Y., HARPER AND ROW <1969>.
367P.
BIBLIOGRAPHICAL REFERENCES INCLUDED IN "NOTES" (PP. 325-342).
VERIFICATION: NIC-L. LC NO. 68-15987
DESCRIPTORS: MONOGRAPH. MEMBERSHIP AND ORGANIZATION. PUBLIC ATTITUDE. CORRUPTION OF PUBLIC OFFICIALS. ORGANIZED CRIME (OVERVIEW).
CORNELL LOCATIONS: LAW HV6791 C92, OLIN HV6791 C92. ALSO BPA AND ILR.

* CRESSEY, DONALD RAY.
"ORGANIZED CRIME IMPACT ON CITY GOVERNMENT AND CITY PROBLEMS."
IN: 46 CONG CITIES. PROCEEDINGS 86-91 (1969).
VOLUME TITLE: "CITIES IN THE '70S."
CATALOGUED IN NUC AS "AMERICAN MUNICIPAL CONGRESS. PROCEEDINGS."
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. MUNICIPAL GOVERNMENT.
CORNELL LOCATIONS: LAW KF5305 A5 C74. ALSO FA.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* DOBYNS, FLETCHER.
THE UNDERWORLD OF AMERICAN POLITICS.
N.Y., FLETCHER DOBYNS, PUBLISHER <C1932>.
211P.
"THE STORY OF THE ORIGIN, DEVELOPMENT, AND TRIUMPH OF...CHICAGO'S TAMMANY HALL."
VERIFICATION: NIC. LC NO. 32-21461
DESCRIPTORS: MONOGRAPH. CHICAGO. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN F548.5 D63.

* DORMAN, MICHAEL.
PAY OFF: THE ROLE OF ORGANIZED CRIME IN AMERICAN POLITICS.
N.Y., MCKAY <1972>.
333P.
VERIFICATION: NIC. LC NO. 73-186559
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. INFILTRATION OF LEGITIMATE BUSINESS. CORALLO, ANTONIO (TONY DUCKS).
CORNELL LOCATIONS: OLIN HV6791 D71.

* FORD, HENRY JONES.
"MUNICIPAL CORRUPTION."
IN: 19 POL SCI Q 673-686 (DEC 1904).
DESCRIPTORS: BOOK REVIEW. CORRUPTION OF PUBLIC OFFICIALS. MUNICIPAL GOVERNMENT.
CORNELL LOCATIONS: LAW KF10 P775, OLIN H1 P775. ALSO ILR.

* GARDINER, JOHN A.
THE POLITICS OF CORRUPTION: ORGANIZED CRIME IN AN AMERICAN CITY.
N.Y., RUSSELL SAGE FOUNDATION, 1970.
129P.
VERIFICATION: NIC. LC NO. 79-107958
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. STERN, IRVING. PUBLIC ATTITUDE--STATISTICS. POLITICAL ANALYSIS. RESEARCH METHOD. CORRUPTION. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW JS401 G22. ALSO ILR.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* GARDINER, JOHN.
THEFT OF THE CITY. READINGS ON CORRUPTION IN URBAN AMERICA.
INDIANA UNIV. PR., BLOOMINGTON & LONDON, 1974.
432P.
VERIFICATION: NIC-L. LC NO. 73-16519
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION. MUNICIPAL GOVERNMENT. CORRUPTION.
CORNELL LOCATIONS: LAW JS401 G22 T37.

* GARRIGUES, CHARLES HARRIS.
YOU'RE PAYING FOR IT. A GUIDE TO GRAFT.
N.Y. AND LONDON, FUNK & WAGNALLS CO., 1936.
254P.
VERIFICATION: NIC. LC NO. 36-27398
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. BRIBERY. CORRUPTION--DEFINITION.
CORNELL LOCATIONS: LAW JK1994 G24, OLIN JK1994 G24.

* GERTH, JEFF.
"NIXON AND THE MAFIA."
IN: 1 SUNDANCE 30-42+ (NOV-DEC 1972).
DESCRIPTORS: ARTICLE. NIXON, RICHARD. CORRUPTION OF PUBLIC OFFICIALS. FLORIDA.
CORNELL LOCATIONS: UNDGR CIRCULATION DESK.

* GIBNEY, FRANK.
THE OPERATORS.
<1ST ED.> N.Y., HARPER <1960>.
284P.
VERIFICATION: NUC('58-'62) VOL.17 P.47. LC NO. 59-6307
DESCRIPTORS: MONOGRAPH. WHITE-COLLAR CRIME. FRAUDS. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN HV6635 G44. ALSO UNDGR.

* GOODMAN, WALTER.
A PERCENTAGE OF THE TAKE.
N.Y., FARRAR, STRAUS & GIROUX <1971>.
225P. ILLUS.
SEE "A GOOD FRIEND AT CITY HALL".
VERIFICATION: NUC('68-'72) VOL.35 P.205. LC NO. 72-137751
DESCRIPTORS: MONOGRAPH. MARCUS, JAMES. CORRUPTION OF PUBLIC OFFICIALS. NEW YORK CITY.
CORNELL LOCATIONS: OLIN F128.52 G65. ALSO UNDGR.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* HEARD, ALEXANDER.
THE COSTS OF DEMOCRACY.
CHAPEL HILL, UNIV. OF N. CAROLINA PR. <1966, C1960>.
493P.
SEE "UNDERWORLD MONEY AND POLITICS", PP.154-168.
REPRINT OF 1960 ED.
1962 ED. BY DOUBLEDAY PUB. UNDER TITLE: THE COSTS OF DEMOCRACY; FINANCING AMERICAN POLITICAL CAMPAIGNS.
VERIFICATION: NIC.
DESCRIPTORS: ARTICLE. ILLICIT FUNDS. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: ILR JK1991 H39 1966.
CORNELL LOCATIONS OF OTHER EDITIONS: 1960 ED. IN OLIN JK1991 H43. ALSO UNDGR. OTHER ED. IN UNDGR.

* KOHN, AARON, ED.
THE KOHN REPORT: CRIME AND POLITICS IN CHICAGO.
N.Y. ARNO PR., 1974.
122P. ILLUS. (CRIMINAL JUSTICE IN AMERICA).
REPRINT OF THE 1953 ED. PUB. BY THE INDEPENDENT VOTERS OF ILLINOIS, CHICAGO.
VERIFICATION: NIC-L. LC NO. 74-3822
DESCRIPTORS: REPORT. CHICAGO. POLICE CORRUPTION. CORRUPTION OF PUBLIC OFFICIALS. INVESTIGATION.
CORNELL LOCATIONS: LAW HV6795 C4 K79 1974.

* LAIT, JACK. MORTIMER, LEE.
WASHINGTON CONFIDENTIAL.
N.Y., CROWN PUBLISHERS <1951>.
310P. MAPS.
SEE CH. 24-27: PP. 171-213 AND PART F OF THE APPENDIX.
VERIFICATION: LC('48-'52) VOL.12 P.32. LC NO. 51-1950
DESCRIPTORS: CHAPTER. WASHINGTON, D.C. MAFIA. CORRUPTION OF PUBLIC OFFICIALS. KEFAUVER COMMITTEE.
CORNELL LOCATIONS: OLIN F196 L18 1951.

* LANDESCO, JOHN.
"CHICAGO'S CRIMINAL UNDERWORLD OF THE '80'S AND '90'S. II."
IN: 25 J CRIM L, CRIM & PS 928-940 (MAR-APR 1935).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. ELECTION FRAUD. PICKPOCKETS. JACKSON, EDDIE. CHICAGO.
CORNELL LOCATIONS: LAW KF10 J743, OLIN HV6001 J86.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* LANDESCO, JOHN.
ORGANIZED CRIME IN CHICAGO.
IN: ILLINOIS ASSOCIATION FOR CRIMINAL JUSTICE. ILLINOIS CRIME SURVEY, PART III.
<CHICAGO, C1929> (REPRINTED BY UNIV. OF CHICAGO PR., 1968).
PP. 815-1100.
REPRINTED UNDER MAIN ENTRY: ILLINOIS ASSOCIATION FOR CRIMINAL JUSTICE. ORGANIZED CRIME IN CHICAGO.
VERIFICATION: NIC. LC NO. 29-16696
DESCRIPTORS: MONOGRAPH. PROHIBITION. CHICAGO. PROSTITUTION. GAMBLING. BOMBING. CORRUPTION OF PUBLIC OFFICIALS. PSYCHOLOGICAL ANALYSIS. SOCIOLOGICAL ANALYSIS. LIQUOR. TORRIO, JOHNNY. MURDER. ORGANIZED CRIMINAL ACTIVITIES. ORGANIZED CRIME FIGURES. HISTORY. EXTORTION. BLACK HAND. LABOR RACKETEERING. ELECTION FRAUD. CONTROL AND PREVENTION--RECOMMENDATIONS. TENNES, MONT. FUNERALS.
CORNELL LOCATIONS: LAW KFI1762 A75 I29, OLIN HV6793 I3 A5+ 1929.

* LANDESCO, JOHN.
"POLITICS AND ADMINISTRATION IN THE PRACTISE OF PENOLOGY."
IN: 26 J CRIM L, CRIM & PS 235-246 (JULY-AUG 1935).
"THE FOLLOWING REPRESENTS A PART OF A COMPREHENSIVE STUDY OF CHICAGO'S UNDERWORLD IN THE 1880'S AND 1890'S."
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. CORRECTIONS. JACKSON, EDDIE. CHICAGO.
CORNELL LOCATIONS: LAW KF10 J743, OLIN HV6001 J86.

* LANDO, BARRY.
"THE MAFIA AND THE MEXICANS: CROOKED JUSTICE FROM THE INS."
IN: 5(2) WASH MONTHLY 16-21 (APR 1973).
DESCRIPTORS: ARTICLE. IMMIGRATION AND NATURALIZATION SERVICE. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN JA3 W31.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* LAVINE, EMMANUEL H.
SECRETS OF THE METROPOLITAN POLICE (CHEESE IT-THE COPS).
GARDEN CITY, N.Y., GARDEN CITY PUB. CO., INC. <1937>.
(1ST PUB.: VANGUARD PR., 1936 UNDER TITLE: CHEESE IT-THE COPS).
307P. <STAR BOOKS>.
VERIFICATION: CBI('33-'37) P.1379. LC NO. 36-1717
DESCRIPTORS: MEMOIRS. SCHULTZ, DUTCH. CORRUPTION OF PUBLIC OFFICIALS. NEW YORK CITY.
CORNELL LOCATIONS: LAW HV8138 L41.

* LYNCH, DENIS T.
CRIMINALS AND POLITICIANS.
IN: N.Y., THE MACMILLAN CO., 1932.
256P.
REPRINTED FROM THE NEW YORK HERALD TRIBUNE.
VERIFICATION: NIC. LC NO. 32-33381
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. LIQUOR. PROHIBITION. FOOD SERVICE INDUSTRIES. SERVICE INDUSTRIES.
CORNELL LOCATIONS: LAW HV6783 L98. OLIN HV6783 L98.

* LYNCH, DENIS TILDEN.
"BOSS" TWEED: THE STORY OF A GRIM GENERATION.
N.Y., BONI AND LIVERIGHT. 1927. (ALSO: BLUE RIBBON BOOKS <C1927>).
433P.
BIBLIOGRAPHY PP. 419-423.
VERIFICATION: NIC. LC NO. 27-20559
DESCRIPTORS: MONOGRAPH. TWEED, BOSS. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN F128.47 T96 L98. ALSO UNDGR.
CORNELL LOCATIONS OF OTHER EDITIONS: OLIN.

* MCCLELLAN, JOHN L.
"WEAK LINK IN OUR WAR ON THE MAFIA."
IN: 96(575) READER'S DIG 56-61 (MAR 1970).
DESCRIPTORS: ARTICLE. MAFIA. CORRUPTION OF PUBLIC OFFICIALS. SENTENCING--RECOMMENDATIONS.
CORNELL LOCATIONS: OLIN AP2 R28. ALSO UNDGR.

* MCKEAN, DAYTON D.
"WHO GETS THE BILLION GRAFT?"
IN: 38 NAT MUN REV 546-550, 570 (DEC 1949).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. GAMBLING.
CORNELL LOCATIONS: OLIN JS39 N27+. ALSO BPA.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* MCLELLAN, HOWARD.
"GANGS, BOSSES, AND JUDGES."
IN: 82(4) REV OF REVS & WW 50-55 (OCT 1930).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. NEW YORK CITY. JUDGES. TAMMANY HALL.
CORNELL LOCATIONS: OLIN AP2 R45+.

* MERRIAM, CHARLES E.
CHICAGO: A MORE INTIMATE VIEW OF URBAN POLITICS.
N.Y., THE MACMILLAN CO., 1929.
305P.
VERIFICATION: NIC. LC NO. 29-12608
DESCRIPTORS: MONOGRAPH. CHICAGO. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN F548.5 M56. ALSO MANN.

* MOCKRIDGE, NORTON. PRALL, ROBERT H.
THE BIG FIX.
<1ST ED.> N.Y., HOLT <1954>.
337P.
VERIFICATION: NIC. LC NO. 54-9655
DESCRIPTORS: MONOGRAPH. BOOKMAKING. GROSS, HARRY. NEW YORK STATE. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW HV6721 N5 M68, OLIN HV6721 N5 M68.

* MUNRO, WILLIAM B.
"GRAFT: A THREAT TO DEMOCRACY."
IN: NY TIMES MAG, APR 12, 1931, AT 1-2.
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN AN N562++.

- NEW JERSEY. LEGISLATURE. SPECIAL LEGISLATIVE COMMITTEE TO INVESTIGATE CERTAIN ALLEGATIONS AFFECTING THE LEGISLATURE AND ITS MEMBERS.
REPORT <ALLEGED ASSOCIATION OF LEGISLATORS WITH ORGANIZED CRIME>.
<TRENTON> JANUARY 14, 1969.
30P.
VERIFICATION: MCSP(1969) P.305.
DESCRIPTORS: REPORT. NEW JERSEY. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: NONE.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* NEW YORK (STATE). STATE CRIME COMMISSION.
PUBLIC HEARINGS (NO. 4) CONDUCTED...PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER OF MAR 29, 1951. NEW YORK CITY, N.Y., NOV 13<-19> 1952.
<N.Y.? 1952>.
4V. IN 2 (1037P.).
VERIFICATION: NUC('53-'57) VOL.17 P.225. LC NO. A53-9702
DESCRIPTORS: PUBLIC HEARING. NEW YORK STATE. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW HV6793 N5 A51 1951, OLIN HV6793 N5 A4 1952+. ALSO ILR.

* NEW YORK (STATE). TEMPORARY STATE COMMISSION OF INVESTIGATION.
CORRUPT PRACTICES IN NEW YORK CITY'S DEPARTMENT OF BUILDINGS. <INVESTIGATION CONDUCTED BY THE COMMISSION'S> SPECIAL UNIT.
<N.Y.> 1960.
42L.
VERIFICATION: NUC('63-'67) VOL.39 P.478. LC NO. A61-9273.
DESCRIPTORS: MONOGRAPH. NEW YORK CITY. CORRUPTION OF PUBLIC OFFICIALS. BRIBERY.
CORNELL LOCATIONS: NONE.

* NEW YORK (STATE). TEMPORARY STATE COMMISSION OF INVESTIGATION.
REPORT OF AN INVESTIGATION OF CERTAIN ORGANIZED CRIME ACTIVITIES AND PROBLEMS OF LAW ENFORCEMENT IN ROCHESTER, NEW YORK.
N.Y. <1966>.
72L.
VERIFICATION: NUC('68-'72) VOL.69 P.370. LC NO. 68-63740
DESCRIPTORS: REPORT. INVESTIGATIVE AGENCIES (STATE). INVESTIGATION. ROCHESTER. VALENTI, FRANK. GAMBLING. LAW ENFORCEMENT PROBLEMS. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: NONE.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* OLSON, DAVID J. GARDINER, JOHN A.
"WINCANTON: THE POLITICS OF CORRUPTION."
IN: U.S. TASK FORCE ON ORGANIZED CRIME. TASK FORCE REPORT.
APPENDIX B, PP. 61-79.
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. GAMBLING. PUBLIC ATTITUDE. POLITICAL ANALYSIS.
CORNELL LOCATIONS: LAW HV6025 U58 AND KF9223 A85 T2 NO.5, OLIN HV6775 A58+.

* PETERSON, ROBERT W., ED.
CRIME & THE AMERICAN RESPONSE.
N.Y., FACTS ON FILE <C1973>.
237P. ILLUS.
SEE "ORGANIZED CRIME", PP. 79-125 AND "WHITE-COLLAR CRIME", PP. 141-177.
VERIFICATION: NIC-L. LC NO. 73-75879
DESCRIPTORS: CHAPTER. CONTROL AND PREVENTION. INDICTMENTS AND CONVICTIONS. NEW JERSEY. CORRUPTION OF PUBLIC OFFICIALS. WHITE-COLLAR CRIME.
CORNELL LOCATIONS: LAW HV6789 P48.

* PETERSON, VIRGIL W.
"CHICAGO'S CRIME PROBLEM."
IN: 35 J CRIM L, CRIM & PS 3-15 (MAY-JUNE 1944).
DESCRIPTORS: ARTICLE. CHICAGO. PUBLIC ATTITUDE. GAMBLING--HISTORY. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW KF10 J743, OLIN HV6001 J86.

* PORAMBO, RON.
NO CAUSE FOR INDICTMENT; AN AUTOPSY OF NEWARK.
<1ST ED.> N.Y., HOLT, RINEHART AND WINSTON <1971>.
398P.
SEE PP.60-65, 69-72, 76-77.
VERIFICATION: NUC('68-'72) VOL.76 P.592. LC NO. 71-138894
DESCRIPTORS: CHAPTER. NEWARK. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN F144 N53 P83. ALSO UNDGR.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* RECKLESS, WALTER C.
VICE IN CHICAGO.
MONTCLAIR, N.J., PATTERSON SMITH, 1969. (1ST PUB.: UNIV. OF CHICAGO PR. <C1933>).
314P. TABLES. (PATTERSON-SMITH REPRINT SERIES IN CRIMINOLOGY, LAW ENFORCEMENT AND SOCIAL PROBLEMS. PUBLICATION NO. 84).
SEE CH. 3: "THE RESISTANCE OF ORGANIZED VICE", PP. 69-98.
VERIFICATION: NIC-L. LC NO. 69-16243
DESCRIPTORS: CHAPTER. CHICAGO. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW HQ146 C4 R29 1969.

* REDDIG, WILLIAM M.
TOM'S TOWN, KANSAS CITY AND THE PENDERGAST LEGEND.
1ST ED., PHILA. & N.Y., J.B. LIPPINCOTT CO. <1947>.
394P. ILLUS. MAP.
VERIFICATION: LC('42) VOL.31 P.31. LC NO. 47-3771
DESCRIPTORS: MONOGRAPH. PENDERGAST, TOM. KANSAS CITY. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN F474 K16 R31.

* SACKETT, RUSSELL. SMITH, SANDY. LAMBERT, WILLIAM.
"THE CONGRESSMAN AND THE HOODLUM."
IN: 65 LIFE 20-27 (AUG 9, 1968).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. GALLAGHER, NEIL.
CORNELL LOCATIONS: OLIN AP2 L72++. ALSO UNDGR.

* SCHULTZ, WILLIAM.
"PORTRAIT OF A MOBSTER."
IN: 97(580) READER'S DIG 58-62 (AUG 1970).
DESCRIPTORS: ARTICLE. MARCELLO, CARLOS. LOUISIANA. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN AP2 R28. ALSO UNDGR.

* SMITH, SANDY.
"THE FIX."
IN: 63(9) LIFE 22-23, 42-45 (SEPT 1, 1967).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION.
CORNELL LOCATIONS: OLIN AP2 L72++. ALSO UNDGR.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* SMITH, SANDY. LAMBERT, WILLIAM.
"THE MOB; A CLASSIC CASE HISTORY OF HOW THE MAFIA FINDS A PIGEON AND PENETRATES THE RESPECTABLE SEGMENTS OF OUR SOCIETY."
IN: 64(1) LIFE 44-51 (JAN 5, 1968).
DESCRIPTORS: ARTICLE. NEW YORK CITY. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN AP2 L72++. ALSO UNDGR.

* STOKER, CHARLES.
THICKER 'N THIEVES.
SANTA MONICA, CALIF., SIDEREAL CO. <C1951>.
415P.
VERIFICATION: LC('48-'52) VOL.20 P.59. LC NO. A51-10671
DESCRIPTORS: MEMOIRS. LOS ANGELES. LAW ENFORCEMENT OFFICER. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION. BOWRON, FLETCHER E.
CORNELL LOCATIONS: NONE.

* TANNENBAUM, FRANK.
CRIME AND THE COMMUNITY.
BOSTON, N.Y. <ETC.> GINN AND CO. <C1938>.
487P. (SOCIAL SCIENCE SERIES).
SEE CH. 4: "ORGANIZED CRIME", PP. 82-127, AND CH. 5: "POLITICS AND CRIME", PP. 128-152, AND CH. 6: "POLITICS AND POLICE", PP. 153-173, AND CH. 7: "THE PHILOSOPHY OF THE PROFESSIONAL CRIMINAL", PP. 174-195.
VERIFICATION: NIC-L. LC NO. 38-13156
DESCRIPTORS: CHAPTER. PROFESSIONAL CRIMINAL. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION. ORGANIZED CRIME (OVERVIEW).
CORNELL LOCATIONS: LAW HV6025 T16, OLIN HV6025 T16. ALSO UNDGR AND ILR.

* TYLER, GUS.
"THE BIG FIX."
IN: TYLER, GUS, ED., ORGANIZED CRIME IN AMERICA; A BOOK OF READINGS.
ORIGINALLY APPEARED IN ADA WORLD, SEPT 1951.
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW HV6777 T98, OLIN HV6777 T98+.
CORNELL LOCATIONS OF OTHER EDITIONS: UNDGR.

CORRUPTION OF PUBLIC OFFICIALS.
(CONTD.)

* U.S. CONGRESS. HOUSE. SELECT COMMITTEE ON CRIME.
ORGANIZED CRIME IN SPORTS (RACING). HEARINGS, 92D CONG., 2D SESS., MAY 9-JULY 27, 1972.
WASH., GPO, 1973.
4 PTS. (1853P.) ILLUS.
VERIFICATION: NIC. LC NO. 73-601062
DESCRIPTORS: CONGRESSIONAL HEARING. SPORTS TAMPERING. SPORTS BETTING. CORRUPTION OF PUBLIC OFFICIALS. SPORTS BRIBERY.
CORNELL LOCATIONS: LAW KF27.5 C7, OLIN HV6775 A3 S76 1972.

* U.S. CONGRESS. HOUSE. SELECT COMMITTEE ON CRIME.
ORGANIZED CRIMINAL INFLUENCE IN HORSERACING. REPORT, 93D CONG., 1ST SESS.
WASH., GPO, 1973.
114P.
H.RPT.93-326.
VERIFICATION: GPO(1973)
DESCRIPTORS: CONGRESSIONAL REPORT. SPORTS TAMPERING. SPORTS BRIBERY. SPORTS BETTING. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW SS13022-7, OLIN SS13022-7

* WENDT, LLOYD. KOGAN, HERMAN.
BOSSES IN LUSTY CHICAGO; THE STORY OF BATHHOUSE JOHN AND HINKY DINK.
BLOOMINGTON, INDIANA UNIV. PR. <1967, C1943>.
384P. MAP. (A MIDLAND BOOK, MB-109).
PUB. EARLIER UNDER TITLE: LORDS OF THE LEVEE; THE STORY OF BATHHOUSE JOHN AND HINKY DINK.
INTRODUCTION BY PAUL H. DOUGLAS.
BIBLIOGRAPHY PP. 361-364.
VERIFICATION: NIC. LC NO. 67-25139
DESCRIPTORS: BIOGRAPHY. CHICAGO. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: OLIN F548.5 W47 1967.

* WILSON, JAMES Q.
"CORRUPTION: THE SHAME OF THE STATES."
IN: 2 PUB INTEREST 28-38 (WIN 1966).
DESCRIPTORS: CORRUPTION OF PUBLIC OFFICIALS. INVESTIGATION. MASSACHUSETTS. ARTICLE.
CORNELL LOCATIONS: OLIN AP2 P976. ALSO UNDGR, BPA, AND ILR.

CORRUPTION OF PUBLIC OFFICIALS--CONTROL.

* ANONYMOUS.
"METHODS OF INVESTIGATING MUNICIPAL CORRUPTION."
IN: 20 U CHI L REV 717-741 (SUM 1953).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS--CONTROL. MUNICIPAL GOVERNMENT.
CORNELL LOCATIONS: LAW KF10 U652.

* BRUNKER, ALBERT R.
"THWARTING OFFICIAL CRIME AND CORRUPTION IN CHICAGO."
IN: 18 NAT MUN REV 663-669 (NOV 1929).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS--CONTROL. CHICAGO. PROHIBITION.
CORNELL LOCATIONS: OLIN JS39 N27+. ALSO BPA.

* BULLER, ARTHUR.
"LEGAL METHODS FOR THE SUPPRESSION OF ORGANIZED CRIME. I. LEGAL REMEDIES AGAINST CORRUPT LAW ENFORCEMENT OFFICERS."
IN: 48 J CRIM L, CRIM & PS 414-430 (NOV-DEC 1957).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS--CONTROL. LAW ENFORCEMENT--RECOMMENDATIONS.
CORNELL LOCATIONS: LAW KF10 J743, OLIN HV6001 J86.

* JOHNSON, EARL, JR.
"ORGANIZED CRIME: CHALLENGE TO THE AMERICAN LEGAL SYSTEM. PART III-LEGAL ANTIDOTES FOR THE POLITICAL CORRUPTION INDUCED BY ORGANIZED CRIME."
IN: 54 J CRIM L, CRIM & PS 127-145 (JUNE 1963).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS--CONTROL. PROSECUTOR.
CORNELL LOCATIONS: LAW KF10 J743, OLIN HV6001 J86.

* NATIONAL ASSOCIATION OF ATTORNEYS GENERAL. COMMITTEE ON THE OFFICE OF ATTORNEY GENERAL.
PROSECUTING ORGANIZED CRIME: SUMMARIES OF SPEECHES TO NAAG SEMINARS, 1974.
<RALEIGH, N.C.>: THE COMMITTEE, 1974.
65P.
VERIFICATION: NIC-L.
DESCRIPTORS: SYMPOSIUM. PROSECUTION. TAXATION. ANTITRUST VIOLATIONS--CONTROL. CONTROL AND PREVENTION. CORRUPTION OF PUBLIC OFFICIALS--CONTROL.
CORNELL LOCATIONS: LAW KF9375 A75 N27.

CORRUPTION OF PUBLIC OFFICIALS--CONTROL.
(CONTD.)

* SUNDERLAND, LOUIS.
"LEGAL METHODS FOR THE SUPPRESSION OF ORGANIZED CRIME. III. CIRCUMVENTING THE CORRUPT PROSECUTOR."
IN: 48 J CRIM L, CRIM & PS 531-541 (JAN-FEB 1958).
DESCRIPTORS: ARTICLE. PROSECUTOR. CORRUPTION OF PUBLIC OFFICIALS--CONTROL. ATTORNEY GENERAL (STATE).
CORNELL LOCATIONS: LAW KF10 J743. OLIN HV6001 J86.

* WYRICK, SAMUEL T.
LEGISLATION CONCERNING THE CORRUPTION OF PUBLIC OFFICIALS.
<RALEIGH, N.C.> NATIONAL ASSOC. OF ATTORNEYS GENERAL, COMMITTEE ON THE OFFICE OF ATTORNEY GENERAL <1974>.
85P.
VERIFICATION: NUC(JULY-SEPT 1975) P.573.
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS--CONTROL.
CORNELL LOCATIONS: NONE.

CORRUPTION OF PUBLIC OFFICIALS--HISTORY.

* PETERSON, VIRGIL W.
BARBARIANS IN OUR MIDST: A HISTORY OF CHICAGO CRIME AND POLITICS.
<1ST ED.> BOSTON, LITTLE, BROWN <1952>.
395P.
"AN ATLANTIC MONTHLY PR. BOOK."
FOREWORD BY ESTES KEFAUVER.
VERIFICATION: LC('48-'52) VOL.16 P.320. LC NO. 52-5871
DESCRIPTORS: MONOGRAPH. CHICAGO. HISTORY. CORRUPTION OF PUBLIC OFFICIALS--HISTORY. KEFAUVER COMMITTEE. ORGANIZED CRIME FIGURES.
CORNELL LOCATIONS: OLIN HV6795 C4 P48.

CORRUPTION OF PUBLIC OFFICIALS--LEGISLATION.

* STERN, HERBERT J.
"PROSECUTIONS OF LOCAL POLITICAL CORRUPTION UNDER THE HOBBS ACT: THE UNNECESSARY DISTINCTION BETWEEN BRIBERY AND EXTORTION."
IN: 3 SETON HALL L REV 1-17 (FALL 1971).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS--LEGISLATION. EXTORTION.
CORNELL LOCATIONS: LAW KF10 S48.

CORRUPTION.

* ALLEN, EDWARD JOSEPH.
MERCHANTS OF MENACE-THE MAFIA: A STUDY OF ORGANIZED CRIME.
SPRINGFIELD, ILL., THOMAS <1962>.
326P. ILLUS.
VERIFICATION: NUC('58-'62) VOL.1 P.580. LC NO. 62-8640
DESCRIPTORS: MONOGRAPH. MAFIA--HISTORY. JUKE BOX RACKET. GOVERNMENTAL INVESTIGATION. VIOLENCE. COPRUPTION. LAW ENFORCEMENT. CONTROL AND PREVENTION--RECOMMENDATIONS.
CORNELL LOCATIONS: OLIN HV6446 A42.

* ANONYMOUS.
THE CRIME SOCIETY: ORGANIZED CRIME AND CORRUPTION IN AMERICA, BY FRANCIS A.J. IANNI, ELIZABETH REUSS-IANNI.
N.Y., NEW AMERICAN LIBRARY, C1976.
379P.
A BOOK OF READINGS.
BIBLIOGRAPHY PP. 375-377.
VERIFICATION: OCLC NO.2715657. LC NO. 76-12013
DESCRIPTORS: MONOGRAPH. MEMBERSHIP AND ORGANIZATION. HISTORY. ORGANIZED CRIMINAL ACTIVITIES. CORRUPTION. CONTROL AND PREVENTION. ORGANIZED CRIME (OVERVIEW).
CORNELL LOCATIONS: LAW HV6791 I113.

* ASBURY, HERBERT.
THE GANGS OF NEW YORK: AN INFORMAL HISTORY OF THE UNDERWORLD.
N.Y. & LONDON, A.A. KNOPF, 1928.
382P. ILLUS.
BIBLIOGRAPHY PP. 381-382.
VERIFICATION: NIC. LC NO. 28-10023
DESCRIPTORS: MONOGRAPH. NEW YORK CITY. GANGS. HISTORY. CORRUPTION.
CORNELL LOCATIONS: OLIN HV6439 U7 N48.

* ASHMAN, CHARLES.
THE CIA-MAFIA LINK.
N.Y., MANOR BOOKS, 1975.
234P.
VERIFICATION: OCLC NO.1673478
DESCRIPTORS: MONOGRAPH. MURDER. CORRUPTION.
CORNELL LOCATIONS: NONE.

CORRUPTION.
(CONTD.)

* BENSON, GEORGE CHARLES SUMNER. ENGEMAN, THOMAS S.
AMORAL AMERICA. WRITTEN WITH THE COLLABORATION OF ELLEN RILEY AND RUTH AURA ROSS.
STANFORD, CALIF.: HOOVER INSTITUTION PR., STANFORD UNIV., 1975.
294P. (HOOVER INSTITUTION PUBLICATIONS; 150).
SEE "THE PAYOFF IN BUSINESS, UNIONS, & GOVERNMENT", PP.63-96.
BIBLIOGRAPHY PP.269-288.
VERIFICATION: NIC. LC NO. 75-20272
DESCRIPTORS: CHAPTER. CORRUPTION.
CORNELL LOCATIONS: LAW HN90 V5 B47, OLIN HN90 V5 B47.

* BLAKEY, G. ROBERT.
"ORGANIZED CRIME AND CORRUPTION PRACTICES."
IN: NATIONAL SYMPOSIUM ON LAW ENFORCEMENT SCIENCE AND TECHNOLOGY. 1 LAW ENFORCEMENT SCIENCE AND TECHNOLOGY; PROCEEDINGS 15-20 (1967).
VERIFICATION: NIC-L. LC NO. 67-29532
DESCRIPTORS: ARTICLE. CORRUPTION.
CORNELL LOCATIONS: LAW HV6777 N27.

* BOLITHO, WILLIAM.
"THE NATURAL HISTORY OF GRAFT."
IN: 64 SURVEY 138-140, 170-176 (MAY 1, 1930).
DESCRIPTORS: ARTICLE. CHICAGO. CORRUPTION.
CORNELL LOCATIONS: OLIN HV1 S96+.

* CLINARD, MARSHALL B.
"CORRUPTION RUNS FAR DEEPER THAN POLITICS."
IN: NY TIMES MAG, AUG 10, 1952, AT 7+.
DESCRIPTORS: ARTICLE. CORRUPTION.
CORNELL LOCATIONS: OLIN AN N562++.

* COMMITTEE FOR ECONOMIC DEVELOPMENT.
REDUCING CRIME AND ASSURING JUSTICE: A STATEMENT ON NATIONAL POLICY BY THE RESEARCH AND POLICY COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT.
<N.Y.> 1972.
86P.
SEE CH. 6: "ORGANIZED GAMBLING AND OFFICIAL CORRUPTION", PP. 49-56.
VERIFICATION: NIC. LC NO. 72-81298
DESCRIPTORS: CHAPTER. CORRUPTION.
GAMBLING--LEGALIZATION.
CORNELL LOCATIONS: LAW KF9223 Z9 C73. ALSO BPA.

CORRUPTION.
(CONTD.)

* DAVIS, CLYDE BRION.
SOMETHING FOR NOTHING.
<1ST ED.> PHILA., LIPPINCOTT, 1956 <C1955>.
290P.
VERIFICATION: NUC('53-'57) VOL.6 P.221. LC NO. 55-10461
DESCRIPTORS: MONOGRAPH. GAMBLING. PUBLIC ATTITUDE. CORRUPTION. LOTTERIES. DICE GAMES. CARD GAMES. SLOT MACHINES.
CORNELL LOCATIONS: NONE.

* ELIASBERG, WLADIMIR.
"CORRUPTION AND BRIBERY."
IN: 42 J CRIM L, CRIM & PS 317-331 (SEPT-OCT 1951).
DESCRIPTORS: ARTICLE. BRIBERY. CORRUPTION. PSYCHOLOGICAL ANALYSIS. SOCIOLOGICAL ANALYSIS.
CORNELL LOCATIONS: LAW KF10 J743, OLIN HV6001 J86.

* GARDINER, JOHN A.
THE POLITICS OF CORRUPTION: ORGANIZED CRIME IN AN AMERICAN CITY.
N.Y., RUSSELL SAGE FOUNDATION, 1970.
129P.
VERIFICATION: NIC. LC NO. 79-107958
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. STERN, IRVING. PUBLIC ATTITUDE--STATISTICS. POLITICAL ANALYSIS. RESEARCH METHOD. CORRUPTION. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW JS401 G22. ALSO ILR.

* GARDINER, JOHN A.
"PUBLIC ATTITUDES TOWARD GAMBLING AND CORRUPTION."
IN: 374 ANNALS 123-134 (NOV 1967).
DESCRIPTORS: ARTICLE. GAMBLING. CORRUPTION. PUBLIC ATTITUDE.
CORNELL LOCATIONS: LAW KF10 A49, OLIN H1 A49. ALSO UNDGR, ILR, AND MANN.

* GARDINER, JOHN.
THEFT OF THE CITY. READINGS ON CORRUPTION IN URBAN AMERICA.
INDIANA UNIV. PR., BLOOMINGTON & LONDON, 1974.
432P.
VERIFICATION: NIC-L. LC NO. 73-16519
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION. MUNICIPAL GOVERNMENT. CORRUPTION.
CORNELL LOCATIONS: LAW JS401 G22 T37.

CORRUPTION.
(CONTD.)

* HOOVER, J. EDGAR.
"GAMBLING AND CORRUPTION."
IN: 40(8) FBI L ENF BULL 10-12, 27 (AUG 1971).
DESCRIPTORS: ARTICLE. GAMBLING. CORRUPTION.
CORNELL LOCATIONS: LAW HV6201 F28.

* LAIT, JACK. MORTIMER. LEE.
CHICAGO: CONFIDENTIAL.
N.Y., CROWN PUBLISHERS <1950>.
303P. MAPS.
VERIFICATION: NIC. LC NO. 50-6201
DESCRIPTORS: MONOGRAPH. CHICAGO. ETHNIC GROUPS. ORGANIZED CRIME FIGURES. PROSTITUTION. GAMBLING. CORRUPTION. LIQUOR. MAFIA.
CORNELL LOCATIONS: OLIN F548.5 L18. ALSO UNDGR.

* MCKITRICK, ERIC L.
"THE STUDY OF CORRUPTION."
IN: 72 POL SCI Q 502-514 (DEC 1957).
DESCRIPTORS: ARTICLE. CORRUPTION. SOCIOLOGICAL ANALYSIS.
CORNELL LOCATIONS: LAW KF10 P775. OLIN H1 P775. ALSO ILR AND UNDGR.

* MOYNIHAN, DANIEL P.
"THE PRIVATE GOVERNMENT OF CRIME."
IN: 25(1) REPORTER 14-20 (JULY 6, 1961).
DESCRIPTORS: ARTICLE. NEW YORK STATE. ILLEGAL BUSINESS ACTIVITIES--CONTROL. CORRUPTION.
CORNELL LOCATIONS: OLIN JX1901 R42+. ALSO UNDGR.

* NEW YORK (STATE). TEMPORARY STATE COMMISSION OF INVESTIGATION.
AN INVESTIGATION OF THE LOAN-SHARK RACKET; A REPORT.
<N.Y.> 1965.
88P.
VERIFICATION: NUC('63-'67) VOL.39 P.478. LC NO. 66-7004
DESCRIPTORS: REPORT. LOAN SHARKING. DISCIPLINE. NEW YORK STATE. CORRUPTION. LOAN SHARKING--PROPOSED LEGISLATION.
CORNELL LOCATIONS: LAW KFN5261 A88, OLIN HG2067 N5 A3.

CORRUPTION.
(CONTD.)

* REID, ED. DEMARIS, OVID.
THE GREEN FELT JUNGLE.
LONDON, HEINEMAN <1965>. (ALSO PUB.: N.Y., TRIDENT PR., 1963, AND POCKET BOOKS, INC <C1963> WITH ADDENDUM).
231P.
VERIFICATION: NUC('68-'72) VOL.79 P.331. LC NO. 69-13769
DESCRIPTORS: MONOGRAPH. LAS VEGAS. TEAMSTERS. SIEGEL, BUGSY. CASINOS. ORGANIZED CRIME FIGURES. CORRUPTION.
CORNELL LOCATIONS: NONE.

* RIORDAN, WILLIAM L.
PLUNKITT OF TAMMANY HALL; A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS. DELIVERED BY EX-SENATOR GEORGE WASHINGTON PLUNKITT, THE TAMMANY PHILOSOPHER, FROM HIS ROSTRUM, THE NEW YORK COUNTY COURT-HOUSE BOOTBLACK STAND, AND RECORDED BY W.L. RIORDAN.
N.Y., A.A. KNOPF, 1948. (PBK. ED. PUB. BY DUTTON, 1963).
131P.
INTRODUCTION BY ROY V. PEEL.
VERIFICATION: LC('48-'52) VOL.17 P.464. LC NO. 48-8750
DESCRIPTORS: MONOGRAPH. TAMMANY HALL. CORRUPTION.
CORNELL LOCATIONS: OLIN JK2319 N56 R5 1948.
CORNELL LOCATIONS OF OTHER EDITIONS: 1963 ED. IN UNDGR JK2319 N57 R58 1963.

* STEFFENS, LINCOLN.
THE SHAME OF THE CITIES.
N.Y., HILL AND WANG <1957>. (1ST PRINTED BY MCCLURE, PHILLIPS & CO., 1904).
306P.
VERIFICATION: NIC. LC NO. 57-9760
DESCRIPTORS: MONOGRAPH. CORRUPTION. ST. LOUIS. MINNEAPOLIS. PITTSBURGH. PHILADELPHIA. CHICAGO. NEW YORK STATE.
CORNELL LOCATIONS: OLIN JS403 1957 S81. ALSO BPA AND FA.
CORNELL LOCATIONS OF OTHER EDITIONS: UNDGR AND BPA. 1904 ED. IN CLIN JS403 1904 S81.

CORRUPTION.
(CONTD.)

* SUTHERLAND, EDWIN H. CRESSEY, DONALD R.
CRIMINOLOGY.
9TH ED., PHILA., LIPPINCOTT, <1974>. (1ST PUB.: 1924).
658P.
SEE PP.198-199, 229-233, 261-278.
A REVISION OF THE AUTHOR'S: PRINCIPLES OF CRIMINOLOGY.
INCLUDES BIBLIOGRAPHIES.
VERIFICATION: NIC. LC NO. 74-8508
DESCRIPTORS: CHAPTER. MEMBERSHIP AND ORGANIZATION. CORRUPTION. ORGANIZED CRIME (OVERVIEW).
CORNELL LOCATIONS: LAW HV6025 S96 1974.
CORNELL LOCATIONS OF OTHER EDITIONS: LAW AND OLIN.

* U.S. TASK FORCE ON ORGANIZED CRIME.
ORGANIZED CRIME: REPORT OF THE TASK FORCE ON ORGANIZED CRIME.
WASH., NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS, GPO, 1976.
288P.
BIBLIOGRAPHY PP.251-265.
VERIFICATION: NIC-L.
DESCRIPTORS: REPORT. CONTROL AND PREVENTION. STATE GOVERNMENT. CONTROL AND PREVENTION--STANDARDS. CORRUPTION. CORRUPTION--CONTROL. CONTROL AND PREVENTION UNITS. PUBLIC ATTITUDE. CITIZEN INVOLVEMENT IN LAW ENFORCEMENT. INFILTRATION OF LEGITIMATE BUSINESS. BUSINESS IN CRIME CONTROL. STATE CONTROL AND PREVENTION PROGRAMS. INTELLIGENCE. INVESTIGATION. PROSECUTION. SENTENCING. CORRECTIONS. POLICE TRAINING. ORGANIZED CRIME-DEFINITION.
CORNELL LOCATIONS: LAW KF9375 A88.

CORRUPTION--CONTROL.

* ANONYMOUS.
ANNUAL PROSECUTOR'S WORKSHOP, 1976: PROSECUTING WHITE COLLAR CRIMES, PUBLIC CORRUPTION. D. JEFFREY HIRSCHBERG, CHAIRMAN.
N.Y., PRACTISING LAW INSTITUTE, 1976.
432P. MAPS. CHARTS. (CRIMINAL LAW AND URBAN PROBLEMS COURSE HANDBOOK SERIES; NO.88).
A BOOK OF READINGS.
"PREPARED FOR DISTRIBUTION AT THE ANNUAL PROSECUTOR'S WORKSHOP, AUGUST 1976."
VERIFICATION: NIC-L. LC NO. 76-474255
DESCRIPTORS: MONOGRAPH. PROSECUTION. WHITE-COLLAR CRIME--CONTROL. CORRUPTION--CONTROL. INCOME TAX EVASION--CONTROL. CIVIL PROCEEDINGS.
CORNELL LOCATIONS: LAW KF9619.3 A61 1976.

* U.S. TASK FORCE ON ORGANIZED CRIME.
ORGANIZED CRIME: REPORT OF THE TASK FORCE ON ORGANIZED CRIME.
WASH., NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS, GPO, 1976.
288P.
BIBLIOGRAPHY PP.251-265.
VERIFICATION: NIC-L.
DESCRIPTORS: REPORT. CONTROL AND PREVENTION. STATE GOVERNMENT. CONTROL AND PREVENTION--STANDARDS. CORRUPTION. CORRUPTION--CONTROL. CONTROL AND PREVENTION UNITS. PUBLIC ATTITUDE. CITIZEN INVOLVEMENT IN LAW ENFORCEMENT. INFILTRATION OF LEGITIMATE BUSINESS. BUSINESS IN CRIME CONTROL. STATE CONTROL AND PREVENTION PROGRAMS. INTELLIGENCE. INVESTIGATION. PROSECUTION. SENTENCING. CORRECTIONS. POLICE TRAINING. ORGANIZED CRIME-DEFINITION.
CORNELL LOCATIONS: LAW KF9375 A88.

CORRUPTION--DEFINITION.

* GARRIGUES, CHARLES HARRIS.
YOU'RE PAYING FOR IT. A GUIDE TO GRAFT.
N.Y. AND LONDON, FUNK & WAGNALLS CO., 1936.
254P.
VERIFICATION: NIC. LC NO. 36-27398
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. BRIBERY. CORRUPTION--DEFINITION.
CORNELL LOCATIONS: LAW JK1994 G24, OLIN JK1994 G24.

POLICE CORRUPTION.

* ADRIAN, CHARLES R. PRESS, CHARLES.
GOVERNING URBAN AMERICA.
4TH ED., N.Y., MCGRAW-HILL <1972>.
577P. ILLUS. (MCGRAW-HILL SERIES IN POLITICAL SCIENCE).
SEE CH. 14: "PUBLIC SAFETY", PP. 413-431.
INCLUDES BIBLIOGRAPHIES.
VERIFICATION: NIC. LC NO. 70-37086
DESCRIPTORS: CHAPTER. PUBLIC ATTITUDE. LAW ENFORCEMENT PROBLEMS. GAMBLING. POLICE CORRUPTION.
CORNELL LOCATIONS: OLIN JS331 A52 1972.
CORNELL LOCATIONS OF OTHER EDITIONS: LAW, OLIN, UNDGR. AND BPA. 3D ED. IN LAW KF5305 A73 1968 AND OLIN.

* AMEN, JOHN HARLAN.
REPORT OF KINGS COUNTY INVESTIGATION, 1938-1942.
<N.Y.? 1942?>.
247P.
SEE E: "GAMBLING RACKET", PP. 123-130, AND "JUFFE-WAPINSKY KIDNAPPING CASE", PP. 177-178, AND "BENSON AND SIEGEL", PP. 178-181.
VERIFICATION: NIC-L. LC NO. 44-12762
DESCRIPTORS: REPORT. NEW YORK CITY. POLICE CORRUPTION. GAMBLING. ADONIS, JOE. LOAN SHARKING.
CORNELL LOCATIONS: LAW KFX2095.4 A88.

* ARM, WALTER.
PAY-OFF: THE INSIDE STORY OF BIG CITY CORRUPTION.
N.Y., APPLETON-CENTURY-CROFTS <1951>.
267P.
FOREWORD BY MILES F. MCDONALD.
VERIFICATION: NIC. LC NO. 51-7552
DESCRIPTORS: MONOGRAPH. NEW YORK CITY. POLICE CORRUPTION. BOOKMAKING.
CORNELL LOCATIONS: LAW HV6721 N5 A72, OLIN HV6721 N5 A72.

* BARKER, THOMAS. ROEBUCK, JULIAN.
AN EMPIRICAL TYPOLOGY OF POLICE CORRUPTION; A STUDY IN ORGANIZATIONAL DEVIANCE.
SPRINGFIELD, ILL., C.C. THOMAS <1973>.
63P.
VERIFICATION: NIC. LC NO. 73-8525
DESCRIPTORS: MONOGRAPH. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW HV7935 B25, OLIN HV7935 B25.

POLICE CORRUPTION.
(CONTD.)

* BROWN, WILLIAM P.
"THE POLICE AND CORRUPTION."
IN: U.S. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE. SELECTED CONSULTANTS PAPERS.
<N.P.> 1967.
V.1 NO.4 193P.
VERIFICATION: NUC('68-'72) VOL.97 P.441, LC NO. 68-75051
DESCRIPTORS: ARTICLE. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW KF9223 A85 C7.

* COHEN, BERNARD.
THE POLICE INTERNAL ADMINISTRATION OF JUSTICE IN NEW YORK CITY.
<SANTA MONICA, CALIF.> RAND, 1970.
84P. (<RAND CORPORATION. RAND REPORT> R-621-NYC).
SPONSORED BY THE CITY OF NEW YORK AND THE NEW YORK CITY RAND INSTITUTE).
VERIFICATION: NIC-L. LC NO. 74-194066
DESCRIPTORS: REPORT. NEW YORK CITY. POLICE CORRUPTION. STATISTICAL ANALYSIS.
CORNELL LOCATIONS: LAW HV8148 N52 C67.

* DALEY, ROBERT.
TARGET BLUE-AN INSIDER'S VIEW OF THE N.Y.P.D.
N.Y., DELACORTE BOOKS <1973>.
562P.
VERIFICATION: NUC(1973) VOL.4 P.61. LC NO. 73-4258
DESCRIPTORS: MONOGRAPH. NEW YORK CITY. POLICE CORRUPTION.
CORNELL LOCATIONS: OLIN HV8148 N5 D14.

- DUCHAINE, NINA.
POLICE CORRUPTION: A SELECTED, ANNOTATED BIBLIOGRAPHY.
N.Y., ANTI-CORRUPTION MANAGEMENT PROGRAM, CRIMINAL JUSTICE CENTER, JOHN JAY COLLEGE OF CRIMINAL JUSTICE, 1976.
78L.
VERIFICATION: OCLC NO.2723468.
DESCRIPTORS: BIBLIOGRAPHY. POLICE CORRUPTION.
CORNELL LOCATIONS: NONE.

POLICE CORRUPTION.
(CONTD.)

* GARDINER, JOHN A.
THE POLITICS OF CORRUPTION: ORGANIZED CRIME IN AN AMERICAN CITY.
N.Y., RUSSELL SAGE FOUNDATION, 1970.
129P.
VERIFICATION: NIC. LC NO. 79-107958
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. STERN, IRVING. PUBLIC ATTITUDE--STATISTICS. POLITICAL ANALYSIS. RESEARCH METHOD. CORRUPTION. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW JS401 G22. ALSO ILR.

* GARDINER, JOHN.
THEFT OF THE CITY. READINGS ON CORRUPTION IN URBAN AMERICA.
INDIANA UNIV. PR., BLOOMINGTON & LONDON, 1974.
432P.
VERIFICATION: NIC-L. LC NO. 73-16519
DESCRIPTORS: MONOGRAPH. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION. MUNICIPAL GOVERNMENT. CORRUPTION.
CORNELL LOCATIONS: LAW JS401 G22 T37.

* GOLDSTEIN, HERMAN.
POLICE CORRUPTION: A PERSPECTIVE ON ITS NATURE AND CONTROL.
WASH., POLICE FOUNDATION <1975>.
64P.
BIBLIOGRAPHY PP. 60-63.
VERIFICATION: NIC-L. LC NO. 75-4228
DESCRIPTORS: MONOGRAPH. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW HV7936 C85 G62.

* KINGS COUNTY, N.Y. GRAND JURY.
A PRESENTMENT CONCERNING THE ENFORCEMENT BY THE POLICE DEPARTMENT OF THE CITY OF NEW YORK OF THE LAWS AGAINST GAMBLING/BY THE GRAND JURY FOR THE EXTRAORDINARY SPECIAL AND TRIAL TERM, SUPREME COURT, STATE OF NEW YORK, COUNTY OF KINGS.
N.Y., ARNO PR., 1974.
167P. ILLUS. (CRIMINAL JUSTICE IN AMERICA).
REPRINT OF THE 1942 ED. PUB. BY THE APPEAL PRINTING CO., N.Y.
VERIFICATION: NIC-L.
DESCRIPTORS: REPORT. GAMBLING. POLICE CORRUPTION. NEW YORK CITY. GRAND JURIES.
CORNELL LOCATIONS: LAW KFX2064 A73 1974.

POLICE CORRUPTION.
(CONTD.)

* KOHN, AARON, ED.
THE KOHN REPORT: CRIME AND POLITICS IN CHICAGO.
N.Y. ARNO PR., 1974.
122P. ILLUS. (CRIMINAL JUSTICE IN AMERICA).
REPRINT OF THE 1953 ED. PUB. BY THE INDEPENDENT VOTERS OF ILLINOIS, CHICAGO.
VERIFICATION: NIC-L. LC NO. 74-3822
DESCRIPTORS: REPORT. CHICAGO. POLICE CORRUPTION. CORRUPTION OF PUBLIC OFFICIALS. INVESTIGATION.
CORNELL LOCATIONS: LAW HV6795 C4 K79 1974.

* MAAS, PETER.
SERPICO.
N.Y., VIKING PR. <1973>.
314P. ILLUS.
VERIFICATION: NIC. LC NO. 72-79002
DESCRIPTORS: MONOGRAPH. SERPICO, FRANK. POLICE CORRUPTION. NEW YORK CITY.
CORNELL LOCATIONS: OLIN HV7911 S48 M11. ALSO UNDGR.

* MOCKRIDGE, NORTON. PRALL, ROBERT H.
THE BIG FIX.
<1ST ED.> N.Y., HOLT <1954>.
337P.
VERIFICATION: NIC. LC NO. 54-9655
DESCRIPTORS: MONOGRAPH. BOOKMAKING. GROSS, HARRY. NEW YORK STATE. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW HV6721 N5 M68, OLIN HV6721 N5 M68.

* MURTAGH, JOHN M.
"GAMBLING AND POLICE CORRUPTION."
IN: 206(5) ATLANTIC 49-53 (NOV 1960).
DESCRIPTORS: ARTICLE. GAMBLING. POLICE CORRUPTION. NEW YORK CITY.
CORNELL LOCATIONS: OLIN AP2 A88+. ALSO UNDGR.

* NEW YORK (CITY). KNAPP COMMISSION.
THE KNAPP COMMISSION REPORT ON POLICE CORRUPTION.
N.Y., G. BRAZILLER <1973?>.
283P. MAP.
VERIFICATION: NUC(1973) VOL.10 P.182. LC NO. 73-76969
DESCRIPTORS: REPORT. KNAPP COMMISSION. POLICE CORRUPTION. NEW YORK CITY.
CORNELL LOCATIONS: LAW KFX2017.7 A732, OLIN HV8148 N5 A3.

POLICE CORRUPTION.
(CONTD.)

* NEW YORK (STATE). LEGISLATURE. SENATE. COMMITTEE ON THE POLICE DEPARTMENT OF THE CITY OF NEW YORK. (LEXOW COMMITTEE).
REPORT AND PROCEEDINGS OF THE SENATE COMMITTEE APPOINTED TO INVESTIGATE THE POLICE DEPARTMENT OF THE CITY OF NEW YORK.
ALBANY, J.B. LYON, STATE PRINTER, 1895.
5V.
INCLUDES INDEX (N.Y. & ALBANY, WYNKOOP HALLENBECK CRAWFORD CO., 1899. 191P.).
OLIN LACKS INDEX.
VERIFICATION: NIC. LC NO. 10-4854-5
DESCRIPTORS: REPORT. NEW YORK CITY. POLICE CORRUPTION. GOVERNMENTAL INVESTIGATION. LEXOW COMMITTEE.
CORNELL LOCATIONS: LAW KFX2017.7 A76, OLIN ARW32093.

* NEW YORK (STATE). TEMPORARY STATE COMMISSION OF INVESTIGATION.
SUMMARY OF THE ACTIVITIES DURING 1962.
N.Y., 1963.
134P. (LEGISLATIVE DOCUMENTS NO. 102).
VERIFICATION: NUC('63-'67) VOL.39 P.478. LC NO. 66-68282
DESCRIPTORS: REPORT. INVESTIGATION. POLICE CORRUPTION. SYRACUSE. LAW ENFORCEMENT. GAMBLING--CONTROL.
CORNELL LOCATIONS: LAW KFN6100 A88.
CORNELL LOCATIONS OF OTHER EDITIONS: LEGIS. DOCS.: LAW KFN6005 N533.

* PENNSYLVANIA. CRIME COMMISSION.
REPORT ON THE POLICE CORRUPTION AND THE QUALITY OF LAW ENFORCEMENT IN PHILADELPHIA.
<SAINT DAVIDS>: THE COMMISSION, 1974.
874P. ILLUS.
VERIFICATION: NIC-L. LC NO. 74-620106
DESCRIPTORS: REPORT. PHILADELPHIA. POLICE CORRUPTION. STATE CRIME COMMISSIONS.
CORNELL LOCATIONS: LAW HV8148 P5 P41 1974.

* POSTON, TED.
"THE NUMBERS RACKET."
IN: TYLER, GUS, ED., ORGANIZED CRIME IN AMERICA; A BOOK OF READINGS.
ORIGINALLY APPEARED IN NY POST FEB 29-MAR 10, 1960.
DESCRIPTORS: ARTICLE. NEW YORK CITY. NUMBERS. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW HV6777 T98, OLIN HV6777 T98+.
CORNELL LOCATIONS OF OTHER EDITIONS: UNDGR.

POLICE CORRUPTION.
(CONTD.)

* ROEBUCK, JULIAN. BARKER, THOMAS.
"A TYPOLOGY OF POLICE CORRUPTION."
IN: INTERAMERICAN CONGRESS OF CRIMINOLOGY, 2D, CARACAS, 1972. CRIME PREVENTION AND SOCIAL CONTROL; <PAPERS> EDITED BY RONALD L. AKERS <AND> EDWARD SAGARIN.
N.Y., PRAEGER <1974>.
PP. 118-128. (PRAEGER SPECIAL STUDIES IN U.S. ECONOMIC, SOCIAL AND POLITICAL ISSUES).
"PUBLISHED IN COOPERATION WITH THE AMERICAN SOCIETY OF CRIMINOLOGY."
INCLUDES BIBLIOGRAPHICAL REFERENCES.
VERIFICATION: NIC-L. LC NO. 74-5473
DESCRIPTORS: ARTICLE. POLICE CORRUPTION.
CORNELL LOCATIONS: LAW HV6010 I59 1972.

* SHERMAN, LAWRENCE W. COMP.
POLICE CORRUPTION, A SOCIOLOGICAL PERSPECTIVE.
<1ST ED.> GARDEN CITY, ANCHOR PR., 1974.
347P.
BIBLIOGRAPHY PP. 325-332.
VERIFICATION: NIC-L. LC NO. 73-20939
DESCRIPTORS: MONOGRAPH. POLICE CORRUPTION. SOCIOLOGICAL ANALYSIS.
CORNELL LOCATIONS: LAW HV8143 S55.

* SMITH, SANDY.
"THE FIX."
IN: 63(9) LIFE 22-23, 42-45 (SEPT 1, 1967).
DESCRIPTORS: ARTICLE. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION.
CORNELL LOCATIONS: OLIN AP2 L72++. ALSO UNDGR.

* SMITH, SANDY.
"YOU CAN'T EXPECT POLICE ON THE TAKE TO TAKE ORDERS."
IN: 65 LIFE 40-43 (DEC 6, 1968).
DESCRIPTORS: ARTICLE. CHICAGO. POLICE CORRUPTION.
CORNELL LOCATIONS: OLIN AP2 L72++. ALSO UNDGR.

* STOKER, CHARLES.
THICKER 'N THIEVES.
SANTA MONICA, CALIF., SIDEREAL CO. <C1951>.
415P.
VERIFICATION: LC('48-'52) VOL.20 P.59. LC NO. A51-10671
DESCRIPTORS: MEMOIRS. LOS ANGELES. LAW ENFORCEMENT OFFICER. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION. BOWRON, FLETCHER E.
CORNELL LOCATIONS: NONE.

POLICE CORRUPTION.
(CONTD.)

* TANNENBAUM, FRANK.
CRIME AND THE COMMUNITY.
BOSTON, N.Y. <ETC.> GINN AND CO. <C1938>.
487P. (SOCIAL SCIENCE SERIES).
SEE CH. 4: "ORGANIZED CRIME", PP. 82-127, AND CH. 5: "POLITICS AND CRIME", PP. 128-152, AND CH. 6: "POLITICS AND POLICE", PP. 153-173, AND CH. 7: "THE PHILOSOPHY OF THE PROFESSIONAL CRIMINAL", PP. 174-195.
VERIFICATION: NIC-L. LC NO. 38-13156
DESCRIPTORS: CHAPTER. PROFESSIONAL CRIMINAL. CORRUPTION OF PUBLIC OFFICIALS. POLICE CORRUPTION. ORGANIZED CRIME (OVERVIEW).
CORNELL LOCATIONS: LAW HV6025 T16, OLIN HV6025 T16. ALSO UNDGR AND ILR.

* U.S. CONGRESS. SENATE. COMMITTEE ON THE DISTRICT OF COLUMBIA.
INVESTIGATION OF CRIME AND LAW ENFORCEMENT IN THE DISTRICT OF COLUMBIA. HEARINGS, BEFORE THE SUBCOMMITTEE ON CRIME AND LAW ENFORCEMENT, 82D CONG., 1ST AND 2D SESS., PURSUANT TO S.RES.136, HELD JAN 14- JUNE 10, 1952.
WASH., GPO, 1952.
918P. 2 PTS.
VERIFICATION: NUC('53-'57) VOL.24 P.494. LC NO. 52-61165 REV
DESCRIPTORS: CONGRESSIONAL HEARING. GAMBLING. WASHINGTON, D.C. DRUGS. TELEPHONE AND TELEGRAPH SERVICE. POLICE CORRUPTION.
CORNELL LOCATIONS: OLIN F191 U59 C92 1952.

* U.S. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT (WICKERSHAM COMMISSION).
REPORT NO.14-POLICE.
IN: "ITS" REPORTS.
140P.
DESCRIPTORS: REPORT. POLICE CORRUPTION. WICKERSHAM COMMISSION.
CORNELL LOCATIONS: LAW KF9223 A844.
CORNELL LOCATIONS OF OTHER EDITIONS: 1968 ED. IN LAW.

POLICE CORRUPTION.
(CONTD.)

* WHYTE, WILLIAM F.
STREET CORNER SOCIETY: THE SOCIAL STRUCTURE OF AN ITALIAN SLUM.
ENL. 2D ED., <CHICAGO> UNIV. OF CHICAGO PR. <1955>. (1ST ED.: 1943).
366P.
SEE CH. 4: "THE SOCIAL STRUCTURE OF RACKETEERING", PP. 111-146, AND CH. 5: "THE RACKETEER IN THE CORNERVILLE S. AND A. CLUB", PP. 147-193, AND APPENDIX NO. 11: "STUDYING RACKETEERING", PP. 328-337.
VERIFICATION: NIC. LC NO. 55-5152
DESCRIPTORS: CHAPTER. PROTECTION RACKET. GAMBLING. SOCIOLOGICAL ANALYSIS. POLICE CORRUPTION.
CORNELL LOCATIONS: OLIN HV6439 U5 W62 1955. ALSO UNDGR. BPA. MANN, ENGR, FA, AND HOTEL.
CORNELL LOCATIONS OF OTHER EDITIONS: 1ST ED. IN OLIN, UNDGR, ILR, MANN, AND HOTEL.

POLICE CORRUPTION--CONTROL.

* BEIGEL, HERBERT.
"THE INVESTIGATION AND PROSECUTION OF POLICE CORRUPTION."
IN: 65 J CRIM L, CRIM & PS 135-156 (JUNE 1974).
DESCRIPTORS: ARTICLE. POLICE CORRUPTION--CONTROL.
CORNELL LOCATIONS: LAW KF10 J743, OLIN HV6001 J86.

* KNAPP, WHITMAN.
"CAN THE UNIVERSAL PERVASIVENESS OF POLICE CORRUPTION BE OBVIATED?"
IN: CRIME AND JUSTICE. EDITED BY FESTUS JUSTIN VISER. <MEMPHIS> MEMPHIS STATE UNIV. PR., 1974.
PP.11-24. (THE M.L. SEIDMAN MEMORIAL TOWN HALL LECTURE SERIES, 1972-73).
VERIFICATION: NIC. LC NO. 74-1064
DESCRIPTORS: ARTICLE. POLICE CORRUPTION--CONTROL.
CORNELL LOCATIONS: LAW HV6789 C913, OLIN HV6789 C918.

SPORTS BRIBERY.

* ASINOF, ELIOT.
EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES. <1ST ED.> N.Y., HOLT, RINEHART AND WINSTON <1963>. 302P. ILLUS.
VERIFICATION: NUC('63-'67) VOL.3 P.506. LC NO. 63-12606
DESCRIPTORS: MONOGRAPH. ROTHSTEIN, ARNOLD. SPORTS BRIBERY. SPORTS TAMPERING.
CORNELL LOCATIONS: OLIN GV875 C53 A83.

* U.S. CONGRESS. HOUSE. SELECT COMMITTEE ON CRIME. ORGANIZED CRIME IN SPORTS (RACING). HEARINGS, 92D CONG., 2D SESS., MAY 9-JULY 27, 1972.
WASH., GPO, 1973.
4 PTS. (1853P.) ILLUS.
VERIFICATION: NIC. LC NO. 73-601062
DESCRIPTORS: CONGRESSIONAL HEARING. SPORTS TAMPERING. SPORTS BETTING. CORRUPTION OF PUBLIC OFFICIALS. SPORTS BRIBERY.
CORNELL LOCATIONS: LAW KF27.5 C7, OLIN HV6775 A3 S76 1972.

* U.S. CONGRESS. HOUSE. SELECT COMMITTEE ON CRIME. ORGANIZED CRIMINAL INFLUENCE IN HORSERACING. REPORT, 93D CONG., 1ST SESS.
WASH., GPO, 1973.
114P.
H.RPT.93-326.
VERIFICATION: GPO(1973)
DESCRIPTORS: CONGRESSIONAL REPORT. SPORTS TAMPERING. SPORTS BRIBERY. SPORTS BETTING. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW SS13022-7, OLIN SS13022-7

* U.S. CONGRESS. SENATE. COMMITTEE ON GOVERNMENT OPERATIONS. GAMBLING AND ORGANIZED CRIME. REPORT...MADE BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, 87TH CONG., 2D SESS., 1962.
WASH., GPO, 1962.
48P. ILLUS. MAP.
S.RPT.1310.
VERIFICATION: NUC('58-'62) VOL.46 P.289. LC NO. 62-61054
DESCRIPTORS: CONGRESSIONAL REPORT. GAMBLING. TELEPHONE AND TELEGRAPH SERVICE. SPORTS BRIBERY. BOOKMAKING. SPORTS BETTING.
CORNELL LOCATIONS: OLIN SS12416.

SPORTS BRIBERY--PROPOSED LEGISLATION.

* U.S. CONGRESS. SENATE. COMMITTEE ON THE JUDICIARY.
BRIBERY IN SPORTING CONTESTS. REPORT, 88TH CONG., 1ST SESS., TO ACCOMPANY S.741.
WASH., GPO, 1963.
6P.
S.RPT.88-593.
VERIFICATION: GPO (1963) NO.20588.
DESCRIPTORS: CONGRESSIONAL REPORT. SPORTS BRIBERY--PROPOSED LEGISLATION.
CORNELL LOCATIONS: OLIN SS12535.

SPORTS TAMPERING.

* ASINOF, ELICT.
EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES.
<1ST ED.> N.Y., HOLT, RINEHART AND WINSTON <1963>.
302P. ILLUS.
VERIFICATION: NUC('63-'67) VOL.3 P.506. LC NO. 63-12606
DESCRIPTORS: MONOGRAPH. ROTHSTEIN, ARNOLD. SPORTS BRIBERY. SPORTS TAMPERING.
CORNELL LOCATIONS: OLIN GV875 C53 A83.

* DANFORTH, HAROLD R. HORAN, JAMES D.
THE D.A.'S MAN.
N.Y., CROWN PUBLISHERS <C1957>.
361P. ILLUS.
VERIFICATION: NUC('58-'62) VOL.11 P.282. LC NO. 57-8770
DESCRIPTORS: MEMOIRS. LAW ENFORCEMENT OFFICER. LUCIANO, LUCKY. SCHULTZ, DUTCH. HINES, JIMMY. SPORTS TAMPERING.
CORNELL LOCATIONS: NONE.

* KATCHER, LEO.
THE BIG BANKROLL: THE LIFE AND TIMES OF ARNOLD ROTHSTEIN.
<1ST ED.> N.Y., HARPER <1959>.
369P. ILLUS.
INCLUDES BIBLIOGRAPHIES.
VERIFICATION: NUC('58-'62) VOL.24 P.250. LC NO. 58-12452
DESCRIPTORS: BIOGRAPHY. ROTHSTEIN, ARNOLD. GAMBLING. SPORTS TAMPERING. RUM RUNNING. LABOR RACKETEERING. NARCOTICS.
CORNELL LOCATIONS: OLIN HV6248 R84 K19.

SPORTS TAMPERING.
(CONTD.)

* U.S. CONGRESS. HOUSE. SELECT COMMITTEE ON CRIME. ORGANIZED CRIME IN SPORTS (RACING). HEARINGS, 92D CONG., 2D SESS., MAY 9-JULY 27, 1972.
WASH., GPO, 1973.
4 PTS. (1853P.) ILLUS.
VERIFICATION: NIC. LC NO. 73-601062
DESCRIPTORS: CONGRESSIONAL HEARING. SPORTS TAMPERING. SPORTS BETTING. CORRUPTION OF PUBLIC OFFICIALS. SPORTS BRIBERY.
CORNELL LOCATIONS: LAW KF27.5 C7, OLIN HV6775 A3 S76 1972.

* U.S. CONGRESS. HOUSE. SELECT COMMITTEE ON CRIME. ORGANIZED CRIMINAL INFLUENCE IN HORSERACING. REPORT, 93D CONG., 1ST SESS.
WASH., GPO, 1973.
114P.
H.RPT.93-326.
VERIFICATION: GPO(1973)
DESCRIPTORS: CONGRESSIONAL REPORT. SPORTS TAMPERING. SPORTS BRIBERY. SPORTS BETTING. CORRUPTION OF PUBLIC OFFICIALS.
CORNELL LOCATIONS: LAW SS13022-7, OLIN SS13022-7

* U.S. CONGRESS. SENATE. COMMITTEE ON GOVERNMENT OPERATIONS. GAMBLING AND ORGANIZED CRIME. HEARINGS BEFORE THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, 87TH CONG., 1ST SESS., PURSUANT TO S.RES.69. AUG 22-SEPT 8, 1961.
WASH., GPO, 1961.
809P. ILLUS. 3 PTS.
VERIFICATION: NUC('58-'62) VOL.46 P.289. LC NO. 61-64811
DESCRIPTORS: CONGRESSIONAL HEARING. GAMBLING. BOOKMAKING. TELEPHONE AND TELEGRAPH SERVICE. TAXATION. SPORTS TAMPERING.
CORNELL LOCATIONS: LAW KF26 G6 1961 V.1. OLIN JK416 A16 G19 1961.

SPORTS TAMPERING.
(CONTD.)

* U.S. CONGRESS. SENATE. COMMITTEE ON THE JUDICIARY. SUBCOMMITTEE ON ANTITRUST AND MONOPOLY.
PROFESSIONAL BASKETBALL. HEARING, 92D CONG., 1ST SESS., ON S.2373, PURSUANT TO S.RES.32, HELD SEPT. 21, 1971-MAY 9, 1972.
WASH., GPO, 1972.
2V.(1328P.) ILLUS.
SEE STMT. BY SAM STEIGER PP.677-723, AND STMT. BY G. ROBERT BLAKEY, PP.723-725.
VERIFICATION: NUC('68-'72) VOL.96 P.635. LC NO. 72-602783
DESCRIPTORS: TESTIMONY. SPORTS TAMPERING.
CORNELL LOCATIONS: OLIN JK1521 A3 B31 1971 PT.1 ONLY.

END